

**TOMSON PACIFIC LIMITED**

**WORLD TRADE CENTRE GROUP  
LIMITED**

Investigation under section 143(1)(c) of the  
Companies Ordinance, Chapter 32 of the  
Laws of Hong Kong

Report by John Robert Lees, Inspector  
appointed by the Financial Secretary

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## **LIST OF PARTIES NAMED IN REPORT AND ABBREVIATIONS USED WHERE APPLICABLE**

A significant number of names are mentioned throughout this report. In many cases abbreviations for these persons, corporations and firms have been used. These names (and their abbreviations, as shown within the brackets) are listed below with a short description of their involvement.

The short description is provided as a guide only. Many of these persons, companies and individuals are, where necessary, introduced in more detail elsewhere in the report.

**374 Broadway Associates** - A partnership and vendor of the New York properties.

**Adiasa, Abraham** ("Mr Abraham Adiasa") - An Indonesian national who traded heavily in WTCG shares during the WTCG placement.

**Adiasa, Trina** ("Madam Trina Adiasa") - An Indonesian national who traded heavily in WTCG shares during the WTCG placement.

**Agincourt Securities & Company** ("Agincourt Securities") - A firm of stockbrokers who received funds from Cheung On's 12/F Cash Client account for the settlement of its client's share purchases.

**Aldus Limited** ("Aldus") - A company which is the largest shareholder of Widelines.

**American Express Bank Limited** ("Amex Bank") - A bank where David Tong Company and several Taiwanese nationals held accounts.

**Appraisal Group International** - Real estate appraisers of the three units in the Mandarin Plaza, New York who were instructed by Mr John Lees.

**Arral Associates (HK) Limited** ("Arral Associates") - A company where Mr Raymond Ling was a former fund manager.

**Asia Equity Limited** ("Asia Equity") - A placee of WTCG shares.

**Astbury International Limited** ("Astbury") - A BVI company which is the beneficial owner of the New York properties.

**Atkinson, John** ("Mr John Atkinson") - Solicitor at Baker & McKenzie.

**Audrey P F Chow** ("Audrey Chow") - A firm of stockbrokers used by Spinus to trade Far East Consortium shares.

**Baker & McKenzie** - A firm of solicitors.

**Ban Hin Securities Company** ("Ban Hin Securities") - A firm of stockbrokers who received cheques from Cheung On's 12/F Cash Client account for the settlement of Madam Loo Kwee Huay's share purchases.

**Banque Indosuez** - A bank which issued a cashier's order for Commercial Success's WTCG share placement.

**Baring Securities (Hong Kong) Limited** ("Baring Securities") - A firm of stockbrokers used by Martra and South View to trade shares.

**Becmac Limited** ("Becmac") - A secretarial company and a division of Deloittes.

**Bell, Rodney** ("Mr Rodney Bell") - Director of Joint Sincerity and Mr George Tan's former business associate at Carrion Holdings Limited.

**Bermuda Trust (Far East) Limited** ("Bermuda Trust") - This company established Sawbridge Limited, trustees of the Sameton Charitable Trust.

**Blake, Cassels and Graven** - A firm of Canadian solicitors.

**Blott, Godfrey** ("Mr Godfrey Blott") - A former director of WTCG.

**Bo Shing Real Estate (Company) Limited** - Acquired an interest in the Guangzhou Land.

**Bond Corporation Holdings Limited** ("WTCG") - An Australian company and holding company of BCIHL.

**Bond Corporation International Holdings Limited** ("BCIHL") - Former holding company of WTCG.

**Bond Corporation International Limited** ("WTCG") - A publicly listed company that changed its name to World Trade Centre Group Limited and is now known as "Top Glory International Limited."

**Boughton Peterson Yang & Anderson** ("BPYA") - A firm of Canadian solicitors.

**Boulton Limited** ("Boulton") - A British Virgin Islands company which is a shareholder of Fulldiamond and is controlled by Madam Alice Lam, Madam Stella Hui and Madam Nerrissa Lo.

**Brentford Investments Inc** ("Brentford") - A placee of WTCG shares and a wholly owned subsidiary of FEHIL.

**But, Yuk Yiu** ("Mr But Yuk Yiu") - Employee of Cheung On.

**Carrian Holdings Limited** - A company formerly controlled by Mr George Tan.

**Cathay General Incorporated** ("Cathay General") - A placee of WTCG shares and a wholly owned subsidiary of Far East Consortium.

**Catley, William** ("Mr Bill Catley") - Solicitor at Fairbairns.

**CEF Securities Limited** ("CEF Securities") - A firm of stockbrokers where Mr Ng Kin Wah traded shares.

**Chan, Hei Gei** ("Mr Chan Hei Gei") - Recipient of monies from Grand Ocean.

**Chan, Kyhe Wah** ("Mr Chan Kyhe Wah") - Recipient of monies from Cheung On's 12/F Cash Client account.

**Chan, Man Si** ("Mr Chan Man Si") - Shroff Office Manager at the Golden Room, Lisboa Casino, Macau who held a beneficial interest in Killenny.

**Chan, Shu Kit** ("Mr Chan Shu Kit") - Chairman of Tack Hsin Holdings who held a beneficial interest in Killenny.

**Chan, Tai Tak** ("Mr Chan Tai Tak") - Money from Cheung On's 12/F Cash Client account was used to settle his share purchases.

**Chan, Wai Hung** ("Mr Chan Wai Hung") - Garment dealer and property agent. Agent in the acquisition of 335 Nathan Road.

**Chan, Wai Lung Anthony** ("Mr Anthony Chan") - Director of Shun Tak's property division who was involved in the acquisition of the three New York properties.

**Chan, Wai Keung** ("Mr Chan Wai Keung") - Director and shareholder of Maddis.

**Chan, William** ("Mr Bill Chan") - Canadian tax advisor at Price Waterhouse who gave advice relating to the acquisition of the three New York properties.

**Chan, Yi Sang** ("Mr Y S Chan") - The alleged owner of a floor of the Hong Kong & Macau Building and also an associate of the owner of Cheung On and Cheung On Fat.

**Chang, Chiu-Fen** ("Mr Chiu-Fen Chang") - A placee of Rivera shares.

**Chang, Jen Chiang Jackson** ("Mr Jackson Chang") - Former director of Tomson Pacific, WTCG and Rivera.

**Chang, Yueh Chun** ("Madam Chang Yueh Chun") - A Taiwanese national and director of South View.

**Charoong Thai Wire & Cable Company Limited** ("Charoong Thai") - An electrical and telephone wire and cable company in Thailand in which WTCG acquired a 9.9% interest in the issued share capital.

**Chen, Chiu Pu** ("Mr Chen Chiu Pu") - An associate of Mr Ng Kin Wah who purchased WTCG shares.

**Chen, Te-Feng** ("Mr Chen Te-Feng") - A placee of Rivera shares.

**Chen, Wen Hsiu** ("Mr Chen Wen Hsiu") - A director of Chung Lam Assets and a placee of Rivera Shares.

**Cheng, Chi Kit Clarence** ("Mr Clarence Cheng") - A partner of Cheng Yeung & Co.

**Cheng Yeung & Co** - A firm of solicitors.

**Chesterton Petty & Co** ("Chestertons") - Property consultants.

**Cheung, Hooi Hong** ("Mr Cheung Hooi Hong") - Chairman of Tian Teck.

**Cheung On & Co** ("Cheung On") - A firm of stockbrokers where the 12/F Cash Client account is maintained.

**Cheung On Fat** - A Chinese gold dealing firm controlled by Mr Tam Cham Kai which received a commission in relation to the World Trade Centre transaction.

**Cheung, Pek Ping** ("Mr Cheung Pek Ping") - Money from Cheung On's 12/F Cash Client account was used to settle his share purchases.

**Chiang, Pei Ling** ("Madam Chiang Pei Ling") - A Taiwanese national and a director of Hauxton.

**Chiang, Wee Thiong** ("Mr Chiang Wee Thiong") - Sales Manager at Cresvale during the time of the WTCG placement.

**Chiao, Ting-Piao** ("Mr Chiao Ting-Piao") - Chairman of Walsin Lihwa in Taiwan.

**Chiltern Limited** ("Chiltern") - A placee of WTCG shares.

**Chim, Pui Chung** ("The Hon Chim Pui Chung") - A member of Hong Kong's Legislative Council.

**China Strategic Investment Limited** - Employer of Mr Jackson Chang and Mr Mico Chung after they resigned from Tomson Pacific.

**Chitung Limited** ("Chitung") - A firm of stockbrokers who acted as a placing agent for the WTCG shares. It is now known as "Standard Chartered Securities Limited."

**Chitung Securities Finance Limited** ("Chitung Finance") - A subsidiary of Chitung and a company which provided credit facilities primarily for margin trading.

**Chitung Nominees Limited** ("Chitung Nominees") - A subsidiary of Chitung and a company which provided the deposit and safe custody of securities.

**Chiu, James** ("Mr James Chiu") - A shareholder of Regent Leader Limited.

**Chiu, Lam Pui Kam Rebecca** ("Madam Rebecca Chiu") - A shareholder of Regent Leader.

**Chiu, Ming Hung** ("Mr Chiu Ming Hung") - A Taiwanese national and member of the Chiu Ming Hung Syndicate.

**Chiu Ming Hung Syndicate** - A syndicate consisting of Mr Chiu Ming Hung, Mr Huang Jen Chung, Mr Wang Ke Jing, Mr John Ho, Mr Ma De-Ling and Rosen Pacific. Placee of WTCG shares.

**Chiu, Nancy** ("Madam Nancy Chiu") - Wife of Mr David Chiu and one of the placees of WTCG shares.

**Chiu, Tan San Dick** ("Mr Dick Chiu") - Brother of Mr David Chiu. Former director of Spinus.

**Chiu, Tat Cheong David** ("Mr David Chiu") - Managing Director of Far East Consortium.

**Chiu, Te Ken Deacon** ("Mr Deacon Chiu") - Father of Mr David Chiu. Chairman of the Far East Group.

**Chu, Kai Ying** ("Mr Chu Kai Ying") - Money from Cheung On's 12/F Cash Client account was used to settle his share purchases.

**Chung, Cho Yee Mico** ("Mr Mico Chung") - Former director and General Manager of WTCG. Associate Director at Standard Chartered Asia prior to joining WTCG.

**Chung, Chi Wah Dennis** ("Mr Dennis Chung") - Former director of Widelines and assistant to Mr Roy Loffill.

**Chung Lam Assets Limited** ("Chung Lam Assets") - A British Virgin Islands company which contributed 70,000,000 of the 80,000,000 WTCG shares Sun Hung Kai sold in June 1993.

**Chung Tak & Co** - A firm of stockbrokers who held shares for Mr Chiu Ming Hung.

**Chung Wah Shipping & Engineering (Holdings) Co Ltd** ("Chung Wah") - A company in which approximately 18% of the issued share capital was acquired by WTCG.

**City Enterprises Limited** ("City Enterprises") - A company of which Mr Mico Chung and Mr Jackson Chang were two of its directors.

**Clever Life Limited** ("Clever Life") - A placee of WTCG shares.

**Commercial Success Limited** ("Commercial Success") - A British Virgin Islands company and a placee of WTCG shares.

**Compania de Telefonos de Chile S A** - A Chilean telephone company in which WTCG had an interest up until April 1990.

**Cortney Enterprises Limited** ("Cortney") - A Liberian company managed by Madam Hsu Jye.

**Cresvale Far East Nominee** - A shareholder of WTCG.

**Cresvale Hong Kong Limited** ("Cresvale Hong Kong") - A placee of WTCG shares.

**David Tong Company Limited** ("David Tong Company") - A company controlled by Mr David Tong and Madam Hsu Feng.

**Davies, David** ("Mr David Davies") - A former Director of WTCG.

**Deloitte Touche Tohmatsu** ("Deloitte") - Auditors of Tomson Pacific, WTCG and Rivera.

**Ditton Investments Limited** ("Ditton") - Wholly owned subsidiary of Great Eagle which sold 145,000,000 Tian Teck shares to Spinus.

**DMT Finance Limited** ("DMT Finance") - A subsidiary of DMT Securities that provided credit facilities for its clients.

**DMT Securities Company Limited** ("DMT Securities") - A stockbroker who maintained a securities account for Mr Huang Wen Hui, Madam Chang Yueh Chun and Grand Ocean.

**Don't Fight Investment Limited** ("Don't Fight") - A placee of Regal shares.

**Eagleco Enterprises Limited** ("Eagleco Enterprises") - A company which received money from Cheung On's 12/F Cash Client account.

**Emperor Group** - A group of companies which acquired an indirect 40% interest in the Guangzhou Land.



**Everkent Limited** ("Everkent") - A subsidiary of Far East Consortium and a shareholder of Tomson Pacific.

**Evertop Surplus Limited** ("Evertop Surplus") - A subsidiary of Tomson Pacific which purchased 34.5% of WTCG shares pursuant to the share sale agreement.

**E Y Lau Co Inc** - A United States company which valued the units at Mandarin Plaza, New York for Astbury.

**Fairbairn Catley Low & Kong** ("Fairbairns") - A firm of solicitors

**Fang Brothers Knitting Limited** - A company of which Mr Kenneth Fang is the Managing Director.

**Fang, Hang Kenneth** ("Mr Kenneth Fang") - Managing Director of Fang Brothers Knitting Limited. Held an interest in HFT Corporation.

**Fanlaw Limited** ("Fanlaw") - A company which held an indirect shareholding in Widelines.

**Far East Biscuit Factory (China) Limited** ("Far East Biscuit China") - A wholly owned subsidiary of Far East Biscuit (HK).

**Far East Biscuit Factory (HK) Limited** ("Far East Biscuit (HK)") - A company in which Tomson Pacific acquired a 50% interest.

**Far East China Flour Mills Limited** ("Far East China Flour") - A wholly owned subsidiary of Far East Flour (HK).

**Far East Consortium China Limited** ("Far East Consortium China") - A subsidiary of Far East Consortium. The vendor of the Far East Biscuit (HK) shares sold to Tomson Pacific.

**Far East Consortium International Limited** ("Far East Consortium International") - An investment holding company based in the Cayman Islands.

**Far East Consortium Limited** ("Far East Consortium") - A publicly listed company in Hong Kong substantially controlled by interests of the Chiu family.

**Far East Development Limited** ("Far East Development") - A subsidiary of the Far East Group.

**Far East Flour Mills (HK) Limited** ("Far East Flour (HK)") - A company with which Far East Biscuit (HK) had intercompany loans.

**Far East Group of Companies** ("Far East Group") - A group of companies substantially controlled by the Chiu family and their interests.

**Far East Holdings International Limited** ("FEHIL") - A publicly listed company in Hong Kong which is substantially controlled by interests of the Chiu family.

**Ferreira, Santos** ("Dr Santos Ferreira") - One of the alleged beneficial owners of La Fayette.

**First Pacific Bancshares Holdings Limited** ("First Pacific Bancshares") - A publicly listed company which is the holding company of First Pacific Bank.

**First Pacific Bank** - A bank which was formed following a merger with Far East Bank.

**First Pacific Special Assets Limited** - One time owner of the Tian Teck shares ultimately sold to WTCG.

**Foreground Finance Company Limited** ("Foreground Finance") - A company associated with Mr Eddie Lo where he acquired 1,000,000 WTCG placement shares for Madam Alice Lam.

**Forty Enterprises Company Limited** ("Forty Enterprises") - A subsidiary of Tomson Pacific.

**Francis Lau (Surveyors) Ltd** - Surveyors who carried out the feasibility study jointly with Raine, Horne & Lau of the Guangzhou Land on the instructions of Metrotown.

**Frenes Limited** ("Frenes") - A foreign company which received an agency fee from TSL Jewellery for the acquisition of 335 Nathan Road.

**Fulldiamond Limited** ("Fulldiamond") - A company which retained Mr Eddie Lo as a consultant.

**Fung, Yiu Fai Peter** ("Mr Peter Fung") - Managing Director of Sun Hung Kai.

**Gameway Limited** ("Gameway Limited") - A company which employed Mr Dennis Chung.

**Gilded Gain Limited** ("Gilded Gain") - A company owned by Mr David Tong and Madam Hsu Feng.

**Gracey, John** ("Mr John Gracey") - Director of Cresvale Hong Kong.

**Grand Ocean Corporation** ("Grand Ocean") - A Liberian company controlled by Madam Hsu Jye.

**Grande Holdings Limited** - A publicly listed company of which Mr Christopher Ho is the Deputy Chairman and Group Chief Executive Officer.

**Great Eagle Holdings Limited** ("Great Eagle") - A publicly listed company engaged in property development and investment, hotel management and share trading who sold 145,000,000 Tian Teck shares to Spinus.

**Guangzhou Hammul Limited** ("Guangzhou Hammul") - A Chinese company that is a wholly owned subsidiary of Hammul.

**Hammul Limited** ("Hammul") - A company incorporated in Hong Kong whose share capital was bought by a subsidiary of WTCG and ultimately controlled the Guangzhou Land.

**Hanson, Mark** ("Mr Mark Hanson") - Director of the Listing Division of the Stock Exchange.

**Harvester Stock Investment Company** ("Harvester Stock") - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Hauxton Limited** ("Hauxton") - A Liberian company and placee of WTCG shares.

**Hellman, Dennis** ("Mr Dennis Hellman") - Solicitor at Baker & McKenzie in New York who gave advice relating to the acquisition of the three New York properties.

**Herman H Y Ng & Company** - A firm of accountants who provided company secretarial and other services to several Liberian companies.

**HFT Corporation** - A United States company that is one of the partners of 374 Broadway Associates, the owner of the Mandarin Plaza in New York.

**HKVW Holdings Limited** ("HKVW Holdings") - A Delaware company that is the registered and beneficial holder of all issued and outstanding shares in the capital of HKVW 1, HKVW 2 and HKVW 3.

**HKVW No 1 Limited** ("HKVW 1") - A Delaware company that owned unit C1 in the Mandarin Plaza, New York.

**HKVW No 2 Limited** ("HKVW 2") - A Delaware company that owned unit PH2 in the Mandarin Plaza, New York.

**HKVW No 3 Limited** ("HKVW 3") - A Delaware company that owned unit PH1 in the Mandarin Plaza, New York.

**Ho, Chi Hon Dickson** ("Mr Dickson Ho") - A director of Chintung.

**Ho, Hung Sun Stanley** ("Dr Stanley Ho") - A former director and Chairman of Tomson Pacific and WTCG. Chairman of Shun Tak and Managing Director of STDM.

**Ho, Ming Tak John** ("Mr John Ho") - A Taiwanese national associated with Rosen Pacific, and one of the members of the Chiu Ming Hung syndicate.

**Ho, Tse Mei Irene** ("Madam Irene Ho") - An employee of Fulldiamond.

**Ho, Wing On Christopher** ("Mr Christopher Ho") - Deputy Chairman and Group Chief Executive officer of Grande Holdings Limited.

**Ho, Wing Yi Magdalene** ("Madam Magdalene Ho") - Company Secretary to the Far East Group.

**Ho, Yuen Ki Winnie** ("Madam Winnie Ho") - Sister of Dr Stanley Ho and wife of Dr William To.

**Hong Kong & Macau Holdings Limited** - A publicly listed company in Hong Kong.

**Hongkong Land Company Limited, The** ("Hongkong Land") - A publicly listed company in Hong Kong from whom WTCG acquired the World Trade Centre Building.

**Hongkong & Shanghai Banking Corporation Limited, The** ("Hongkong Bank") - A bank that held security over BCIHL's shareholding in WTCG.

**Hongkong & Shanghai Banking Corporation (Nominees) Limited** ("Hongkong Bank Nominees") - A company which frequently acted as a nominee shareholder of WTCG shares.

**Hsieh, Hui Ching** ("Madam Hsieh Hui Ching") - A Taiwanese national who was a director of Hauxton.

**Hsu, Bin** ("Mr Hsu Bin") - Brother-in-law of Mr David Tong. Director of Grand Ocean.

**Hsu, Feng** ("Madam Hsu Feng") - Wife of Mr David Tong. Director of Tomson Pacific and WTCG.

**Hsu, Jye** ("Madam Hsu Jye") - Sister-in-law of Mr David Tong. Director of Grand Ocean and employee of Tomson Pacific.

**Hsu, Sun Michael** ("Mr Hsu Sun") - Brother-in-law of Mr David Tong.

**Huang, Iang-Chi** ("Mr Iang-Chi Huang") - A Taiwanese national who was a placee of Rivera shares.

**Huang, Jen Chung** ("Mr Huang Jen Chung") - A Taiwanese national who is a member of The Chiu Ming Hung Syndicate.

**Huang, Wen Hui David** ("Mr Huang Wen Hui") - A Taiwanese national who was involved in the purchase of large blocks of WTCG shares and a former director of Killenny.

**Huen, Wing Ming Patrick** ("Mr Patrick Huen") - Director of Shun Tak.

**Hui, Sau Ling Stella** ("Madam Stella Hui") - Director of Fulldiamond.

**Hui, Yin Fun Eva** ("Madam Eva Hui") - Director of Spinus and a former employee of the Far East Group.

**Humphreys Estate (Strawberry Houses) Limited** ("HESH") - A wholly owned subsidiary of WTCG.

**Hung Cheong Limited** ("Hung Cheong") - A wholly owned subsidiary of Great Eagle.

**Hung, Ching-Pen** ("Mr Ching-Pen Hung") - A placee of Rivera shares.

**Hung, F C Edmund** ("Mr Edmund Hung") - Senior Vice President and Group Compliance Officer of Standard Chartered Securities (Chitung).

**Hwang, P** ("Mr P Hwang") - A person who had some of his share purchases concurrently settled with those of Mr Ng Kin Wah and Mr Roy Loffill.

**Integro Corporate Services (BVI) Limited** - A secretarial company previously known as Royal Trust BVI Limited.

**Ip, Arnold** ("Mr Arnold Ip") - An employee at Standard Chartered Asia.

**Ip, Wing Cheong** ("Mr Ip Wing Cheong") - A director of Shiu Wah Enterprises.

**James Capell** - A firm of stockbrokers.

**Jardine Fleming Taiwan Securities Limited** ("Jardine Fleming Taiwan") - A company that prepared a security analysis report on the 9.9% interest in Charoong Thai Wire & Cable Company Limited.

**Jardine Matheson Holdings Limited** ("Jardine Matheson") - A major investment and trading company closely involved in the sale of the World Trade Centre Building by Hongkong Land.

**Johnson Stokes & Master** - A firm of solicitors.

**Joint Sincerity Limited** ("Joint Sincerity") - A company to which Mr Roy Loffill was a consultant and whose office is located in the Hong Kong & Macau Building.

**Jones Lang Wootton** ("JLW") - International Valuers and Real Estate Agents.

**Kalesbridge Limited** ("Kalesbridge") - A wholly owned subsidiary of Tomson Pacific.

**Kalgon Investment Limited** ("Kalgon") - A company of which Mr Felix Wong is a director.

**Kam, Kin Yat** ("Mr Kam Kin Yat") - A former employee of the Far East Group and a former director of Hammul.

**Kan, Che Kin Billy Albert** ("Mr Billy Kan") - A former consultant to the Tse Sui Luen Jewellery Group.

**Kan, F Y** ("Mr F Y Kan") - The Senior Partner of Knight Frank Kan & Baillieu who gave informal advice in the acquisition of the World Trade Centre Building.

**Kao, Keng Hua David** ("Mr David Kao") - A director of Aldus and Widelines. Mr George Tan's brother-in-law.

**Kao, Keng Pin Peter** ("Mr Peter Kao") - A director of Widelines, Mr George Tan's brother-in-law.

**Kao, Keng Wan Helen** ("Madam Helen Kao") - A director of Aldus and wife of Mr George Tan.

**Kao, Wei Tseng** ("Mr Kao Wei Tseng") - The father of Mr Peter Kao, Mr David Kao and Madam Helen Kao who allegedly set up Widelines.

**Karl Thomson Securities Co** ("Karl Thomson Securities") - A firm of stockbrokers who received funds from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Ka Wah Bank Limited** ("Ka Wah Bank") - A bank who held accounts for Tomson Investments and David Tong Company.

**Keen Investments Limited** ("Keen Investments") - A Liberian company allegedly controlled by Madam Stella Hui.

**Khong Guan Biscuit & Confectionary** ("Khong Guan Biscuit") - A company which held an interest in the issued share capital of Far East Biscuit (HK).

**Khong Guan Can (Shenzhen) Co Ltd** ("Khong Guan Shenzhen") - A company in which Far East Biscuit (HK) held a 15% interest.

**Khong Guan Overseas Investment Limited** ("Khong Guan Overseas") - A company that held an interest in the issued share capital of Far East Biscuit (HK).

**Killenny Limited** ("Killenny") - A British Virgin Islands company that held a large block of WTCG shares that formed a part of the placement.

**King & Co** - A firm of solicitors.

**Knight Frank Kan & Baillieu** - Real Estate Agents and Valuers.

**Ko & Co** - A firm of solicitors.

**Koeppel Tener Riguardi Inc** - A company that prepared a report on the development of Mandarin Plaza.

**Koo & Company** ("Koo & Co") - A firm of stockbrokers who received monies from Cheung On's 12/F Cash Client account to settle it's clients' share purchases.

**Koo, S K** ("Mr S K Koo") - Money from Cheung On's 12/F Cash Client account was used to settle his share purchases.

**Koo, Tai Ne Danny** ("Mr Danny Koo") - Director of Martra and Tomson Pacific.

**Koo, Yen-Hwa Louise** ("Madam Louise Yen-Hwa Koo") - A placee of Rivera shares.

**Kuanyun Trading Co Limited** ("Kuanyun Trading") - A company which purchased WTCG shares from Grand Ocean.

**Kwan, Freddie** ("Mr Freddie Kwan") - A salesman who worked for Mr Peter Mou at Chintung.

**Kwan, Robin** ("Mr Robin Kwan") - An associate of Mr Jackson Chang.

**Kwan, Wai Man Mandy** ("Madam Mandy Kwan") - Employee of Merrigold Laundry & Valet Services Limited.

**Kwok, Robert** ("Mr Bobby Kwok") - Director of Jardine Matheson.

**Kwong Fung Textile** - A Taiwanese company of which Rosenthal Inc is allegedly a member of.

**La Fayette Limited** ("La Fayette") - A British Virgin Islands company that held WTCG shares which formed part of the placement to Pierson Asia.

**Lai, Cheuk Fan Raymond** ("Mr Raymond Lai") - The older brother of Mr Arthur Lai. Former Managing Director of Chintung.

**Lai, Cheuk Kwan Arthur** ("Mr Arthur Lai") - Chairman and founder of the Chintung Group of companies and a former director of MKI Corporation. Younger brother of Mr Raymond Lai.

**Lai, Po Chu Hermia** ("Madam Hermia Lai") - An assistant to Mr Peter Fung at Sun Hung Kai.

**Lai, Shih-Chang** ("Mr Shih-Chang Lai") - A placee of Rivera shares.

**Lam, Din Cheong Edward** ("Mr Edward Lam") - An employee of the Far East Group.

**Lam, Pui Tsing Alice** ("Madam Alice Lam") - A director of Fulldiamond. The wife of Mr Eddie Lo and a placee of Regal shares.

**Lau, Che Kong Spancer** ("Mr Spancer Lau") - An accountant at Tomson Pacific and David Tong Company.

**Lau, Cheung Man** ("Mr Lau Cheung Man") - Deputy Manager of Cheung On.

**Lau, Chun Wai Patrick** ("Mr Patrick Lau") - Financial Controller of WTCG.

**Lau, Francis** ("Mr Francis Lau") - Executive Chairman of Raine, Horne & Lau.

**Lau, Yan** ("Mr Yan Lau") - An employee of Price Waterhouse who gave advice relating to the New York Properties transaction.

**Lau, Y M Edmund** ("Mr Edmund Lau") - Chartered Surveyor of E Y Lau Co Inc.

**Lau, Yu Man** ("Mr Lau Yu Man") - The Chairman of the Samaha Group who signed the forms for Lei Sheng in the WTCG placement.

**Law, Fung Ling Viola** ("Madam Viola Law") - A treasury accountant at Chintung.

**Lee, Alex** ("Mr Alex Lee") - The Manager of Seng Hang Bank in Macau.

**Lee, James** ("Mr James Lee") - An employee of 374 Broadway Associates in New York.

**Lee, Kevin** ("Mr Kevin Lee") - An employee of BPYA.

**Lee, K M Edmund** ("Mr Edmund K M Lee") - The Managing Director of Pierson Asia in Singapore.

**Lee, Peter** ("Mr Peter Lee") - An employee of Wardleys.

**Lee Tat & Company** ("Lee Tat & Co") - A firm of stockbrokers.

**Lee, Ying Yan Joyce** ("Madam Joyce Lee") - An employee at Sun Hung Kai.

**Lee, Yu Tien** ("Mr Lee Yu Tien") - Director of Tomson Pacific, Pacific Cable and Walsin Lihwa and a shareholder of the latter two companies.

**Lei Sheng Company Limited** ("Lei Sheng") - A placee of WTCG shares.

**Leung, Jack** ("Mr Jack Leung") - Managing Director of Southern Harvester.

**Leung Kim Fun** ("Mr Leung Kim Fun") - Recipient of cash from Fulldiamond.

**Leung, L C Roger** ("Mr Roger Leung") - An employee of the Far East Group.



**Leung Wing Ling** ("Mr Leung Wing Ling") - A horse trainer who held a beneficial interest in Killenny.

**Li, Chi Keung** ("Mr Li Chi Keung") - Former director of Killenny who operated the Golden Room at the Lisboa Casino in Macau.

**Lim, S W** ("Mr Lim S W") - Recipient of money from Cheung On's 12/F Cash Client account.

**Lin, Ta-Jen** ("Mr Lin Ta-Jen") - A placee of Rivera shares.

**Ling, Ming Kee Raymond** ("Mr Raymond Ling") - Former Managing Director of Arral Associates and a former director Commercial Success.

**Ling Tat Tong** ("Mr Ling Tat Tong") - The father of Mr Raymond Ling.

**Lisboa Casino** - A casino controlled by STDM in Macau.

**Liu, Paul** ("Mr Paul Liu") - An executive director in the Tse Sui Luen Jewellery Group.

**Liu, Pik Yun Peggie** ("Madam Peggie Liu") - A former partner of Stephenson Wong & Co.

**Livasiri & Co** - A firm of solicitors.

**Lo, Man Ching David** ("Mr David Lo") - Brother of Mr Eddie Lo.

**Lo, Ka-Shui Dr** ("Dr K S Lo") - The Managing Director of Great Eagle.

**Lo, Man Pung Eddie** ("Mr Eddie Lo") - Consultant to Fulldiamond. Husband of Madam Alice Lam.

**Lo, Nim Yan** ("Mr Lo Nim Yan") - Securities clerk at Tomson Pacific.

**Lo, Nerissa** ("Madam Nerissa Lo") - Daughter of Mr Eddie Lo and Madam Alice Lam.

**Loffill, Roy** ("Mr Roy Loffill") - Nominee of Mr Tan Kiem Tiau, friend of Mr George Tan and a director and consultant to Joint Sincerity.

**Loo, Kwee Huay** ("Madam Loo Kwee Huay") - Singaporean national whose share purchases were settled by funds from Cheung On's 12/F Cash Client account.

**Loywick Development Limited** ("Loywick") - A wholly owned subsidiary of WTCG.

**Lucas, Peter** ("Mr Peter Lucas") - An Australian national and former Director of BCIHL.

**Liu Chong Hing Bank Limited** ("Liu Chong Hing Bank") - A bank used by the Onshine Group of companies.

**Liu Chong Hing (Nominees) Limited** ("Liu Chong Hing Nominees") - A nominee company who was the registered holder of WTCG shares for Killenny.

**Lui Chi Keung, Daniel** ("Mr Daniel Lui") - Former director of Tomson Pacific, and former General Manager of Rivera.

**Ma, De-Ling** ("Mr Ma De-Ling") - Former director of Tomson Pacific and a member of the Chiu Ming Hung Syndicate.

**Ma, Violet** ("Madam Violet Ma") - Secretary to Mr Raymond Lai at Chintung.

**Macau Entertainment Co Limited** ("Macau Entertainment Co") - A company controlled by Dr Stanley Ho.

**Maddis Co Limited** ("Maddis") - A company which received a commission in respect of WTCG's purchase of 335 Nathan Road.

**Mak, Chi Wah Thomas** ("Mr Thomas Mak") - Senior Settlement Manager at Chintung.

**Manchar Holdings Pty Limited** - A company to whom BCIDL's shareholding in WTCG was charged.

**Mandarin Development Limited** ("Mandarin Development") - A Liberian company in which Mr Arthur Lai and Mr Patrick Poon had an interest and which received a commission from Tomson Pacific.

**Man Lung & Co** - A firm of stockbrokers where some of the Chiu Ming Hung Syndicate shares were delivered.

**Mansion House Securities (FE) Limited** ("Mansion House") - A firm of stockbrokers used by Spinus.

**Mardela Limited** ("Mardela") - A subsidiary of Widelines of which the Directors were Mr David Kao, Mr Peter Kao and Madam Vicki Tan.

**Martra Inc** ("Martra") - A Liberian company of which Mr Danny Koo is a director and is managed by Madam Hsu Jye.

**McGuigan, John** ("Mr John McGuigan") - A former Director of WTCG.

**McIntyre, Michael** ("Mr Michael McIntyre") - An employee of Hongkong Bank.

**Megafield Limited** ("Megafield") - A wholly owned subsidiary of Tomson Pacific.

**Melville Limited** ("Melville") - A subsidiary of WTCG.

**Merrigold Laundry & Valet Services Limited** - A company controlled by Mr Christopher Ho.

**Metrotown Agency Limited** ("Metrotown") - A subsidiary of Fulldiamond.

**Ming, Xiao Guang** ("Mr Ming Xiao Guang") - Chairman and Director of Rivera.

**Mok Ying Kie Limited** ("Mok Ying Kie") - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Morrison, Alasdair** ("Mr Alasdair Morrison") - Former Managing Director of Hongkong Land.

**Mou, Chi Luen Peter** ("Mr Peter Mou") - Former director of Chintung.

**N T Butterfield Trustee (Bermuda) Limited** ("N T Butterfield") - A placee of WTCG shares.

**Newcase Holdings Limited** - A company involved in the New York Properties transaction.

**Ng, A Moy** ("Mr Ng A Moy") - Mr Jackson Chang's brother-in-law.

**Ng, Chi-Ka Rita** ("Madam Rita Ng") - Former shareholder of Hammul.

**Ng, Kin Wah** ("Mr Ng Kin Wah") - Former employee of Widelines for whom share purchases were settled by funds from Cheung On's 12/F Cash Client account and who also received cheques from the 12/F Cash Client account.

**Ng, W S** ("Mr W S Ng") - Member of Madam Loo Kwee Huay's syndicate.

**Ng, Wing Yu** ("Mr Ng Wing Yu") - Vendor of WTCG shares to Grand Ocean.

**Oei, Hong Leong Peter** ("Mr Peter Oei") - Former director, President and Chief Executive Officer of Tomson Pacific.

**Offshore Incorporations Limited** ("Offshore Incorporations") - A secretarial company that sold Killenny to Pierson Corporate Services.

**Ong, Ban Chye** ("Mr Ong Ban Chye") - Sole proprietor of Ban Hin Securities.

**Onshine Finance Limited** ("Onshine Finance") - A company to which Mr Li Chi Keung was a director.

**Onshine Holdings Limited** ("Onshine Holdings") - A company to which Mr Li Chi Keung was a director.

**Onshine Investment Limited** ("Onshine") - A placee of WTCG shares.

**Onshine Securities Limited** ("Onshine Securities") - A firm of stockbrokers of which Mr Li Chi Keung was a director.

**On Wah United Securities Co Ltd** ("On Wah") - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Overseas Trust Bank Limited** ("Overseas Trust Bank Ltd") - The bank where Mr Seow Woon Ping's cheque was cleared.

**P T Soda Sumatera** - An Indonesian organisation whose allotment for 67,000,000 WTCG placement shares was replaced by Hauxton.

**Pacific BMW (USA)** - A company that received money from Fulldiamond.

**Pacific Electric Wire & Cable Limited** ("Pacific Cable") - A Taiwanese company that is a major shareholder of Tomson Pacific.

**Padbury Limited** ("Padbury") - A wholly owned subsidiary of WTCG.

**Pannell Kerr Forster** - A firm of accountants that were engaged by 374 Broadway Associates.

**Paralegal Services Ltd** - A secretarial company associated with Stephenson Wong & Co.

**Parisco International Limited** - A publicly listed company in which WTCG had acquired shares.

**Parma Investment Limited** ("Parma") - An overseas company controlled by the Chiu family.

**Pascutto, Ermanno** ("Mr Ermanno Pascutto") - Director of the SFC and former Chairman of the Takeovers Committee.

**Peace Forest Limited** ("Peace Forest") - A company controlled by Mr David Tong and Mr Jackson Chang which, in turn, controlled Rivera.

**Pearl Treasure Limited** ("Pearl Treasure") - A subsidiary of WTCG.

**Pierson Asia Limited** ("Pierson Asia") - A placee of WTCG shares.

**Pierson Corporate Services Limited** ("Pierson Corporate Services") - A company employed by Commercial Success which is now known as "MeesPierson Corporate Services (HK) Limited."

**Poon, Harry** ("Mr Harry Poon") - An employee of Chintung.

**Poon, King Kei** ("Mr Poon King Kei") - A person whose share purchases were settled by funds from Cheung On's 12/F Cash Client account.

**Poon, Patrick** ("Mr Patrick Poon") - A Taiwanese national who allegedly owns Mandarin Development.

**Price Waterhouse** - A firm of accountants who had some involvement in the acquisition of the three New York Properties.

**Protech Company Limited** ("Protech") - A Hong Kong company, being a subsidiary of STDM, whose directors were Mr Ambrose So and Mr Patrick Huen.

**Prudential Securities Company** - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Puising Investment Limited** - An investment company that purchased 335 Nathan Road from WTCG.

**Purves, William** ("Sir William Purves") - The Chairman and former Chief Executive of Hongkong Bank.

**Rabobank Asia Limited** ("Rabobank") - A bank in Singapore where South View held an account.

**Raine, Horne & Lau** - International property consultants valuers and real estate agents.

**Raycarr Corporate Services Limited** ("Raycarr") - A company which purchased La Fayette from Royal Trust BVI Limited.

**Raymond J Paulsen Associates Inc** - Real Estate Appraisers that prepared an Appraisal Report of the Mandarin Plaza, upon the instruction of 374 Broadway Associates.

**Realnet Properties Limited** ("Realnet") - A British Virgin Islands company that was to have purchased an interest in the Guangzhou Land.

**Regal Hotels International (Holdings) Limited** ("Regal") - A publicly listed company of which Mr David Tong was a director.

**Regent Leader Limited** ("Regent Leader") - A company whose directors were Madam Stella Hui and Madam Alice Lam.

**Rich Talent Limited** ("Rich Talent") - A British Virgin Islands company of which Mr Li Chi Keung was the beneficial owner and sole director.

**Richards Butler** ("Richards Butler") - A firm of solicitors.

**Robertson, Brian** ("Mr Brian Robertson") - Manager of specialised lending at the Hongkong Bank.

**Rohrer, William** ("Mr William Rohrer") - Solicitor at Baker & McKenzie in New York who gave advice relating to the acquisition of the three New York properties.

**Rorola Company** - A firm of stockbrokers.

**Rosenthal Inc** ("Rosenthal") - A Taiwanese company who was allegedly the beneficial owner of WTCG shares taken up by Hauxton.

**Royal Trust Bank of Austria** - A bank where Frenes cleared a cheque.

**Royal Trust BVI Limited** - A British Virgin Islands company who sold La Fayette to Raycarr.

**Samaha Group** - A group of companies whose chairman is Mr Lau Yu Man whose signature appeared on Lei Sheng's document.

**Sanborn Securities Co** - A firm of stockbrokers.

**Santiago, Aurelio Loo** ("Mr Santiago Aurelio Loo") - Director of Shui Wah.

**Satasia Limited** - A wholly owned subsidiary of WTCG.

**Sawbridge Limited** ("Sawbridge") - A company involved in the placing of the WTCG shares.

**Saxton Corporation Limited** ("Saxton") - A placee of WTCG shares.

**Seapower Securities Limited** ("Seapower Securities") - A firm of stockbrokers used by Martra, Grand Ocean and Mr Hsu Sun.

**Secnomcon Limited** ("Secnomcon") - A shareholder of Aldus.

**Securities & Futures Commission** ("SFC") - Regulatory body in Hong Kong dealing with the securities and futures industry.

**Security Pacific Asian Bank Limited** ("SPAB") - A bank where David Tong Company, South View, Martra, Grand Ocean and several Taiwanese nationals held accounts.

**Selway-Swift, Paul** ("Mr Paul Selway-Swift") - Senior Manager at Hongkong Bank.

**Seng Heng Bank Limited** ("Seng Heng Bank") - A bank where Commercial Success held one of its accounts.

**Seow Woon Ping** ("Mr Seow Woon Ping") - A recipient of part of the commission for the acquisition of 335 Nathan Road.

**Shanghai Commercial Bank** - A bank where Fulldiamond held one of its accounts.

**Shearn Delamore & Co** - A Malaysian company who received the payment in respect of the acquisition of the Malaysian property.

**Shih, Hsiao Kuei** ("Madam Shih Hsiao Kuei") - Director of Hauxton.

**Shiu Wah Enterprises Limited** ("Shiu Wah") - A company that received monies from Spinus upon the instruction of Mr David Chiu.

**Shum, Pui Kay Johnny** ("Mr Johnny Shum") - Director of Don't Fight.

**Shun Tak Holdings Limited** ("Shun Tak") - A publicly listed company.

**Sin, Stephen** ("Mr Stephen Sin") - Business partner of Mr Lau Yu Man.

**Sit, Chi Keung** ("Mr Sit Chi Keung") - An employee of the Far East Group.

**Sky Rich Investment Limited** - A company of which one of its shareholders is Madam Alice Lam.

**Smith New Court Far East Limited** ("Smith New Court") - A firm of stockbrokers who were the recipients of money from Cheung On's 12/F Cash Client account.

**So, Shu Fai Ambrose** ("Mr Ambrose So") - Director of Shun Tak.

**So, Yu Keung** ("Mr Y K So") - Employee at Shun Tak.

**Sociedade De Turismo E Diversoes De Macau, SARL** ("STDM") - A Macanese company of which Dr Stanley Ho is the Managing Director.

**Soelamah** ("Madam Soelamah") - An Indonesian national who traded heavily in WTCG shares through Wader.

**Somemore Co Limited** ("Somemore") - A subsidiary of STDM that was involved in the acquisition of the three New York properties.

**South View Properties Limited** ("South View") - A Liberian company which is managed in Hong Kong by Mr Hsu Sun.

**Southern Harvester Finance Limited** ("Southern Harvester") - A placee of WTCG shares.

**Spinus Limited** ("Spinus") - A Liberian company allegedly owned by Madam Eva Hui.

**Standard Chartered Asia Limited** ("Standard Chartered Asia") - A member of Standard Chartered Asia Pacific Merchant Bank Group - financial advisers to Tomson Pacific.

**Standard Chartered Securities Limited** ("Standard Chartered Securities") - Previously known as Chintung.

**Stephenson, Wong & Co** - A firm of solicitors.

**Stileman, David** ("Mr David Stileman") - Chief Executive of Standard Chartered Asia.

**Sun, Huei Chuan** ("Madam Sun Huei Chuan") - Director of Martra.

**Sun Hung Kai International Limited** ("Sun Hung Kai") - A listed company who received money from Cheung On's 12/F Cash Client account to settle its clients' share purchases.

**Sun, Tao Tsun** ("Mr Sun Tao Tsun") - Director of Tomson Pacific.

**Sun Yu Chi** ("Madam Sun Yu Chi") - A placee of Rivera shares.

**Sunrise Garden Company Limited** ("Sunrise Garden Company") - A wholly owned subsidiary of Yu Hing.

**Super Fortana Company Limited** ("Super Fortana") - A wholly owned subsidiary of TSL Jewellery.

**Supreme Enterprises Limited** ("Supreme Enterprises") - A company that purchased 3,000,000,000 First Pacific Bancshares from Parma.

**Ta Yuan Securities Company** ("Ta Yuan") - Taiwanese brokerage house controlled by Mr Ma De-Ling and/or his wife who referred the Rivera placees to Cresvale Hong Kong.

**Tack Hsin Holdings** - A company whose chairman held a beneficial interest in Killenny.

**Tam Cham Kai** ("Mr Tam Cham Kai") - Proprietor of Cheung On and Cheung On Fat.

**Tam, Chan Sing Joseph** ("Mr Joseph Tam") - Employee of Shun Tak.

**Tan Kiem Tiau** ("Mr Tan Kiem Tiau") - A person who allegedly used Mr Roy Loffill as his nominee. He died in September/October 1992.

**Tan, Soon Gin George** ("Mr George Tan") - Former Chairman of the Carrion Group of companies.

**Tan, Wan Ling Vicki** ("Madam Vicki Tan") - Daughter of Mr George Tan. Director of Mardela.



**Tan Yakobus Suryopranoto** ("Mr Tan Yakobus Suryopranoto") - An Indonesian who had some of his share purchases settled by money from Cheung On's 12/F Cash Client account.

**Tang, Ang Chiu** ("Mr A C Tang") - Money from Cheung On's 12/F Cash Client account was used to settle his WTCG share purchase.

**Tangpakorn, Norratat** ("Mr Norratat Tangpakorn") - Alleged to be a joint beneficial owner of La Fayette.

**Target Development Corporation** - One of the two partners of 374 Broadway Associates.

**Teng, Tan Jong Vinny** ("Madam Teng Tan Jong") - The niece of Mr Jackson Chang.

**Terry, Greg** ("Mr Greg Terry") - Hongkong Land's legal counsel.

**The Best Securities Co** - A firm of stockbrokers who received funds from Cheung On's 12/F Cash Client account.

**The Regent Fund Limited** ("The Regent Fund") - A placee of WTCG shares.

**Tian Teck Land Limited** ("Tian Teck") - A listed investment holding company.

**To, Shui Ning William** ("Dr William To") - Dr Stanley Ho's brother-in-law. Involved in the New York properties transaction.

**Tomson Asia Development Incorporation** ("Tomson Asia Development") - A Taiwanese property development company of which Mr David Tong, Mr Sun Tao Tsun and Mr Danny Koo are major shareholders.

**Tomson Investments Limited** ("Tomson Investments") - A wholly owned subsidiary of Tomson Pacific.

**Tomson Pacific Limited** ("Tomson Pacific") - A publicly listed company.

**Tong, Cun Lin David** ("Mr David Tong") - Director of WTCG, Tomson Pacific, Rivera, and David Tong Company.

**Tong, Anthony** ("Mr Anthony Tong") - A partner in the US Tax department of Price Waterhouse who gave advice relating to the New York Properties transaction.

**Transcrown Industries Limited** - Shareholder of Sky Rich Investment Limited where Madam Alice Lam is a director.

**Triple A & Company** ("Triple A & Co") - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Tsai Yuet Er** ("Madam Tsai Yuet Er") - A Taiwanese national who was a Director of South View.

**Tsai Hui Min** ("Madam Tsai Hui Min") - Nominee Director of Commercial Success.

**Tsang Ngai Keung** ("Mr Tsang Ngai Keung") - Director of Onshine Securities.

**Tsang, Patrick** ("Mr Patrick Tsang") - Licensed valuer. Formerly employed by Chestertons.

**Tse, Andrew Edward** ("Mr Andrew Tse") - Director of Shun Tak.

**Tse, Kwong Tak Peter** ("Mr Peter Tse") - Father-in-law of Mr Tam Cham Kai.

**Tse Sui Luen** ("Mr Tse Sui Luen") - Chairman of TSL Jewellery Group.

**Tse Sui Luen Jewellery (Holdings) Limited** ("TSL Jewellery") - A publicly listed company.

**Tsoi, Chun Lee** ("Mr Tsoi Chun Lee") - One of the ultimate beneficiaries of the WTCG placement shares taken up by Saxton.

**Tsoi, Mow Hung** ("Mr Tsoi Mow Hung") - A friend of Madam Eva Hui who allegedly gave instructions to purchase 145,000,000 Tian Teck shares.

**Tsoi, Yu** ("Mr Tsoi Yu") - A driver employed by Widelines.

**Tung, Ming Hsun** ("Mr Tung Ming Hsun") - A Taiwanese national for whom Madam Hsu Jye operated bank accounts in Hong Kong.

**Tung, Yu Jeh** ("Mr Tung Yu Jeh") - Director of WTCG, Tomson Pacific and Walsin Lihwa.

**Union Bank of Switzerland** - A bank where Mandarin Development held an account.

**Vast World Investment Company Limited** - Shareholder of Spinus.

**Wader Investment Company** ("Wader Investment") - A firm of stockbrokers who received money from Cheung On's 12/F Cash Client account to settle its client's share purchases.

**Walsin Lihwa Electric Wire & Cable Corp** ("Walsin Lihwa") - A Taiwanese company that sold its interest in Charoong Thai to WTCG.

**Wan, Yin Fong Sandy** ("Madam Sandy Wan") - Director of Chiltern.

**Wang, Ke Jing** ("Mr Wang Ke Jing") - A member of the Chiu Ming Hung Syndicate.

**Wardley Australia Limited** - A company which, at one stage, held WTCG shares as security for facilities provided to WTCG.

**Wardley Corporate Finance Limited** ("Wardleys") - A company that was to have been involved in Tomson Pacific's acquisition of shares in WTCG.

**Wealthcorp Investment Limited** ("Wealthcorp") - A company which is controlled by Mr Arthur Lai and a placee of Regal shares.

**Wei-Chun Food/Beverage Company** - A Taiwanese company of which Mr Chiu Ming Hung is a Director.

**Weisman, Richard** ("Mr Richard Weisman") - Solicitor at Baker & McKenzie.

**Westley, Kevin** ("Mr Kevin Westley") - Employee of Wardleys.

**Westpile Construction Company Limited** ("Westpile") - A company in which Mr Roy Loffill and Mr George Tan came to know each other.

**Widelines Investment Limited** ("Widelines") - The family trust company of Mr George Tan's father-in-law.

**Wigan, Christopher** ("Mr Christopher Wigan") - Director of Chintung.

**Wing Hang Bank** - A bank where Cheung On, Mr Roy Loffill and Mr Ng Kin Wah held accounts.

**Wisma Perkasa Sdn Bhd** - A Malaysian company which owned the Geran property in Malaysia.

**Wong, Alfred** ("Mr Alfred Wong") - Employee of Tomson Pacific who reported to Madam Hsu Jye.

**Wong, Augustine** ("Mr Augustine Wong") - Employee at Chestertons.

**Wong, Cheung Kwan Stanley** ("Mr Stanley Wong") - Former director of Spinus and an employee of the Far East Group.

**Wong, Felix** ("Mr Felix Wong") - Director of Kalgon.

**Wong, Ho Yuen Gary** ("Mr Gary Wong") - Director of Chintung.

**Wong, Hoi Ping Rita** ("Madam Rita Wong") - Wife of Mr Li Chi Keung.

**Wong, Man Ling** ("Madam Wong Man Ling") - Director of Commercial Success and friend of Madam Hsu Jye.

**Wong, Sai Ping** ("Mr Wong Sai Ping") - Brother-in-law of Mr Li Chi Keung. Holder of a beneficial interest in Killenny.

**Wong, Shirley** ("Madam Shirley Wong") - Addressee of a cancelled WTCG placing letter for Commercial Success.

**Wong, Wai** ("Mr Wong Wai") - Nephew of Mr Jackson Chang.

**Woodford Investment Limited** ("Woodford") - A British Virgin Islands company which was used as a vehicle for shareholders to invest in the Golden Room.

**World Trade Centre Group Limited** ("WTCG") - Previously known as "Bond Corporation International Limited". Now known as "Top Glory International Limited".

**Wormald Pacific Limited** - A company from which Tomson Pacific acquired 232,000,000 Regal shares.

**Wu, Hung Chao** ("Mr Wu Hung Chao") - Deputy General Manager of Pacific Cable.

**Yan, Kai Chi** ("Mr Yan Kai Chi") - Accepted delivery of 1,008,300,000 First Pacific Bancshares on behalf of Saxton.

**Yang, Victor** ("Mr Victor Yang") - A partner of BPYA who was involved in the New York Properties transaction.

**Yeung, Benny** ("Mr Benny Yeung") - Solicitor at Cheng Yeung & Co.

**Yeung, Chun Pong** ("Mr Yeung Chun Pong") - Manager of Onshine Securities.

**Yeung, Kai Cheung Patrick** ("Mr Patrick Yeung") - Director of Chintung.

**Yeung, Kam Hoi** ("Mr K H Yeung") - Company Secretary of WTCG and Tomson Pacific.

**Yu, S T** ("Mr S T Yu") - Assistant to Mr Mico Chung at WTCG.

**Yu On Securities Co Limited** ("Yu On") - A firm of stockbrokers used by Spinus.

**Yu Hing Holdings Limited** ("Yu Hing") - A company that acquired a 40% interest in Hammul from WTCG.

**Zhou, Huaming** ("Mr Zhou Huaming") - Director of Rivera and Director and shareholder of Peace Forest.

Note: I have tried to reflect as accurately as possible the information concerning the above individuals and companies. However, some persons may now no longer be employed by the companies mentioned, and the relationship between some companies may have changed.

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<u>Appendix Number</u>	<u>Date</u>	<u>Paragraph Ref.</u>	<u>Description</u>
1.	28/8/92	1.5 2.1	Notice of Appointment over Tomson Pacific and WTCG and the terms of reference
2.	23/10/92 13/1/93	1.8	Notices of Appointments over other companies and terms of reference
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26.	Undated	6.239	Handwritten note filed with Madam Bertha Tam's notepaper about Pierson Asia
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31.	Undated	6.401	Handwritten note in Madam Violet Ma's file regarding Cleverlife and Mandarin Development
32.	25/7/90	6.402	Chintung's withdrawal and security deposit slips for Mandarin Development's 8,050,490 WTCG shares
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35.	18/7/90	6.453	Provisional placing schedule of 419,950,494 WTCG shares
36.	20/4/90	6.533	Letter from BCIHL to Wealthcorp confirming payment of a negotiation and success fee of AUD2,000,000
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38.	15/5/90	6.537	Letter from Tomson Pacific to BCIHL regarding the awareness of an introduction fee to Wealthcorp
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40.	31/5/90	6.550	Tomson Pacific directors' minutes dated 20/6/90 approving the payment of the commission and letter from Tomson Pacific to Mandarin Development dated 31/5/90 regarding the payment of a commission of \$26,400,000
41.	30/5/90	7.25	Loan Agreement between FEHIL and South View
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59.	9/8/90	9.109	Letter from WTTCG to Hongkong Bank uplifting a US\$50,000,000 overnight deposit
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64.	19/12/92	9.133	Record of title search on Geran 11,460
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132.	5/3/90	21.92	Chintung's sold note for 50,000,000 Tomson Pacific shares, Chintung's payment voucher for \$41,248,925 dated 7/3/90 and a cheque drawn on Chintung for \$37,224,725
133.	Undated	21.119	Cresvale Hong Kong's list of the placees of 100,000,000 Rivera shares
134.	20/2/90	22.19	Letter from Tomson Pacific to SPAB introducing Grand Ocean, Martra and South View to open new accounts
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141.	11/8/90	23.36	Cheque of \$31,066,666 drawn on Spinus in favour of Mr Roy Loffill
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# CHAPTER 1

## INTRODUCTION TO APPOINTMENT AND ADMINISTRATIVE MATTERS

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# 1 APPOINTMENT AND TERMS OF REFERENCE

1.1 On 28 August 1992 the Acting Financial Secretary appointed me to investigate the affairs of Tomson Pacific Limited ("Tomson Pacific") and World Trade Centre Group Limited ("WTCG") pursuant to Section 143(1)(c) of the Companies Ordinance and to report thereon as directed.

1.2 Section 143(1)(c) of the Companies Ordinance provides that the Financial Secretary may appoint an inspector to investigate the affairs of a company and to report thereon in such manner as the Financial Secretary may direct:

*". . . if it appears to the Financial Secretary that there are circumstances suggesting:*

- (i) that the business of the company has been or is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purposes; or*
- (ii) that persons concerned with its formation or the management of its affairs have in connexion therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or*
- (iii) that its members have not been given all the information with respect to its affairs that they might reasonably expect"*

- 1.3 The Acting Financial Secretary directed me to investigate and report on the following matters (hereinafter referred to as the terms of reference):

*"The events leading to the placement announced on 28 June 1990, of 419,950,494 shares of WTCG to 14 placees and the relationship, if any, between the directors or shareholders of WTCG and those placees which may have resulted in inadequate or inaccurate information being provided to the WTCG shareholders;*

*The events surrounding the acquisition by WTCG of a property known as 'World Trade Centre' from Hong Kong Land (World Trade Centre) Holdings Limited, and whether there were any irregularities in the payment by WTCG of commissions in connection with that acquisition;*

*The acquisition by WTCG on 24 August 1990 of land at Dongji Industrial District in Huangpu, Guangzhou, the People's Republic of China;*

*The acquisition by WTCG on 13 February 1991 of Astbury International Ltd;*

*The acquisition by Tomson Pacific Ltd on 14 August 1990 of a 50% interest in Far East Biscuit Factory (HK) Ltd; and*

*The acquisition by Humphrey's Estate (Strawberry) Houses Ltd, an indirect subsidiary of WTCG, of 145 million shares of Tian Teck Land Ltd, including the involvement of Spinus Ltd and Hauxton Ltd and their relationship with the directors and shareholders of WTCG. "*

- 1.4 The terms of reference directed that I investigate and report on whether these transactions were bona fide, at arms' length and in the normal course of business.

- 1.5 A copy of the notice of my appointment and the terms of reference are shown at Appendix 1.
- 1.6 The transactions included in the terms of reference occurred in 1990 and 1991, and my investigation has primarily focused on the activities of Tomson Pacific, WTCG and those other companies involved in these transactions during that time.
- 1.7 During the course of my investigation it became apparent that at least one Hong Kong company and a number of companies incorporated overseas but operating in Hong Kong would also need to be included in the investigation to complete my enquiries under the original terms of reference. Following applications made by me, the Financial Secretary appointed me as Inspector to the following companies:

<u>Companies incorporated in Hong Kong</u>	<u>Date Appointed</u>
Fulldiamond Limited	23 October 1992
Maddis Company Limited	13 January 1993
 <u>Foreign Companies which have or have had a place of business in Hong Kong</u>	
Cortney Enterprises Limited	23 October 1992
Hauxton Limited	23 October 1992
Mandarin Development Limited	23 October 1992
Martra Inc	23 October 1992
Spinus Limited	23 October 1992
South View Properties Limited	13 January 1993
Grand Ocean Corporation	13 January 1993

1.8 My appointment as Inspector of these companies was for the purpose of investigating their affairs insofar as may be necessary in furtherance of the investigation into the affairs of WTCG and Tomson Pacific as set out in the terms of reference, and copies of the notices of my appointments, and the terms of reference are included in Appendix 2.

1.9 As a result of an application made by me on 2 June 1993, the Financial Secretary appointed me Inspector pursuant to Section 33 of the Securities (Disclosure of Interests) Ordinance to investigate and report on the membership of WTCG for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of WTCG to be able to control or materially to influence its policy since 11 July 1990. In particular, I was directed to consider three blocks of shares which had originally been placed in July 1990 as part of the placement of WTCG shares discussed in Chapter 6. The notice pursuant to Section 33 of the Securities (Disclosure of Interests) Ordinance is included at Appendix 3. I have reported separately to the Financial Secretary in this regard.

### **SUMMARY OF THE INVESTIGATION PROCESS**

1.10 Throughout this investigation, I have endeavoured to expedite the process of investigation whenever possible, mindful of the need to report to the Financial Secretary as soon as possible. However, the actual production of the report has taken me longer than originally envisaged. There are many reasons for this, principally:

- the lack of available documentary evidence of many transactions;
- the need to conduct a thorough process of oral examinations to compensate for the scarcity of source documents;
- the unavailability of several key witnesses for oral examination when required;
- the disappearance of several witnesses, most significantly Mr Jackson Chang;
- the refusal of several overseas witnesses to give evidence;
- conflicts in evidence arising from oral examinations resulting in the need for re-examination of many witnesses;

- an application made for Judicial Review but subsequently withdrawn;
- the long delays by some witnesses before responding to my provisional criticisms; and
- the requirement to give careful consideration to all submissions received.

1.11 I summarise below the principal stages of the investigation.

Initial examination of books, records, documents and other information

1.12 Immediately upon serving notice of my appointment upon Tomson Pacific and WTCG ("the principal companies"), I began my investigation by endeavouring to obtain from these companies as much documentary evidence as possible relating to their activities at the time of the transactions specified in my terms of reference. This was achieved by examining and copying books, records and other documents held at the premises of the principal companies.

1.13 Initially some delays were encountered in accessing this information while the principal companies clarified their legal obligations in respect of the information requested. In addition, as an Inspector I am not empowered to search or seize documents or other evidence, except in limited circumstances. Accordingly, all documents requested by me were first located by the staff of the principal companies, reviewed by them, then produced to me. This is not a criticism of the principal companies or their staff but, rather a deficiency in the provision relating to the powers of Inspectors in the Companies Ordinance.

1.14 Upon receipt of primary source documentation, it was then necessary to request further supporting documentation by way of the same process.

- 1.15 During this period I also began the process of requesting access to records held by agents acting for the principal companies and their holding companies and subsidiaries pursuant to Section 145(1) of the Companies Ordinance. Agents included banks, stockbrokers, valuers, auditors and accountants. There were also other companies who acted as agents earning commissions in respect of transactions completed by the principal companies and I sought access to some of their records.
- 1.16 It was during this phase that it became apparent that access to the banking and statutory records of several overseas and one Hong Kong company would also be required. I therefore sought appointments to investigate these companies pursuant to Section 143 of the Companies Ordinance.
- 1.17 As stated earlier, my appointment to Fulldiamond Limited, Cortney Enterprises Limited, Hauxton Limited, Mandarin Development Limited, Martra Inc and Spinus Limited ("the first group of affiliated companies") was made on 23 October 1992.
- 1.18 Following the appointment to investigate the first group of affiliated companies, notices of appointment were served on several locations concurrently and copies of information obtained. Also, requests were made of the respective companies' bankers for copies of account opening documents, bank statements and correspondence. Likewise, requests to agents used by the first group of affiliated companies were also made, in particular to stockbrokers used by those companies.

#### Interim Report

- 1.19 I was, in addition, required to complete an interim report to the Financial Secretary. This report was forwarded on 28 October 1992. The interim report summarised the then current status of the matters under investigation. Its preparation required the allocation of significant staff resources and to an extent halted ongoing enquiries.

### Oral examinations

- 1.20 Following lodgement of the interim report, the investigation moved to the oral examination of witnesses. Throughout November and December 1992, time was spent preparing documentation and briefing counsel whilst other staff continued the collection of documentation which, by this point, was primarily from banks and stockbrokers.
- 1.21 It had become apparent that many of the oversea companies did not maintain books and records that were accessible by me and, accordingly, a significant amount of time was spent reconstructing the receipts and payments of these companies in order to better understand transactions which affected Tomson Pacific and WTCG.
- 1.22 The first witness was examined on 8 October 1992, however, oral examinations got underway in earnest during January 1993.
- 1.23 Also during January 1993, I was appointed to investigate the affairs of South View Properties Limited, Grand Ocean Corporation and Maddis Company Limited ("the second group of affiliated companies"). As with the first group of affiliated companies, it was necessary to serve notices of appointment and seek copies of banking and sharetrading records.
- 1.24 Throughout the oral examinations, further documents and information came to light. This led to more witnesses being called and in some cases re-examination of others. In February 1993, leading counsel was briefed for the examination of several key witnesses.
- 1.25 This process was again time consuming but assisted greatly in defining the areas of concern. These key witnesses were all senior executives whose time, and that of their counsel, was not readily available. This occasioned some delay in arranging examination times.

- 1.26 Following the majority of oral examinations, a transcript of evidence was produced. Upon receipt of this by me I forwarded a copy of the transcript to all witnesses who gave undertakings of confidentiality.
- 1.27 The analysis of these transcripts in March, April and May 1993 was interspersed with further oral examinations of additional witnesses and collection of additional documentation.
- 1.28 During May and June 1993, it became necessary to arrange a second round of oral examinations to endeavour to settle a large number of contradictory statements made by witnesses. There had also arisen still more documentary evidence which had not been previously available or disclosed to me.
- 1.29 In early March 1993 I was in the process of arranging oral examinations with Mr George Tan when he decided to request a judicial review of a decision I had made relating to the use of his name in my report. His application was filed in the High Court on 8 May 1993. The matter was initially set down for hearing on 24 May 1993. Certain interim undertakings were given by me so that Mr George Tan's oral examination could proceed, which it did on 17 May 1993. In addition to my own time and involvement, leading counsel, junior counsel and solicitors were instructed, and one of my staff was allocated to deal with this matter. On 21 May 1993, Mr George Tan withdrew his application for judicial review. Ultimately costs were awarded in my favour. I am not critical of Mr George Tan in this respect although I should mention that the application did further consume staff resources and ultimately increase the cost of the investigation.
- 1.30 For varying reasons, several of the witnesses I wished to examine a second time were unavailable. Mr David Tong, Managing Director of WTCG, for example was unable to attend until 11 August 1993.



- 1.31 In the interim, I visited Taipei, Tokyo and London where I conducted informal examinations. My authority to conduct examinations only exists within Hong Kong and, accordingly, I had some difficulty arranging to meet people resident overseas. I engaged a Taiwanese law firm which assisted in making appointments for me in Taiwan, however only three people ultimately consented to be interviewed in Taiwan and one of those did not turn up for interview. It was quite obvious from the responses the Taiwanese law firm and I received, that there was considerable reluctance on the part of those individuals resident in Taiwan to speak to me.
- 1.32 I completed the second major round of examinations in August 1993.
- 1.33 Subsequently, I did arrange some further examinations in instances where there remained issues unaddressed earlier. A listing of all those who attended formal and informal oral examinations is shown as Appendix 4.

#### Drafting of report and provisional conclusions

- 1.34 After completion of the examination process, some three months were spent drafting the 25 chapters which make up the main body of the report. Following the ruling set by the English case *Re Pergamon Press Limited* [1970] 3 All ER 535, I forwarded copies of the relevant parts of my draft report to all those I considered were criticised in my report or who I felt would also be able to assist in advising me of any factual discrepancies therein. A schedule of the parties to whom copies of such drafts were sent and a table of those who made submissions, is set out in Appendix 5.
- 1.35 Immediately prior to my draft report being sent out, the Commercial Crimes Bureau of The Royal Hong Kong Police conducted a series of raids to seize documents from several of the companies and individuals concerned with this investigation. An unfortunate result of these raids was that several of the parties who received a copy of my draft report were unable to immediately consider the matters set out in those drafts as in many instances, documents necessary for their proper consideration and assessment of my draft chapters, had been seized and were not immediately available to them.

1.36 The majority of the draft reports were sent out for comment on 20 December 1993 with the balance being forwarded shortly thereafter. Initially, I gave witnesses three weeks to consider my drafts. However, with the Christmas and New Year holidays and the unavailability of many source documents, extensions of time were requested by many parties. I did, in almost all instances, grant requests for extensions of time. Most requests were reasonable given the importance of my conclusions to the parties concerned, the length of the drafts to be considered and the time frame requested.

1.37 The final submission was received on 21 March 1994.

#### Consideration of submissions

1.38 Following receipt of the submissions I had to consider the submissions in detail and to address which changes were required to my report in the light of these submissions. In many instances, amendments were made. In some cases, extracts of submissions were in turn forwarded to other witnesses for their comment. My objective in adopting this time consuming process and indeed my concern throughout my investigation has been to treat all those concerned fairly. I have endeavoured wherever possible to give witnesses an opportunity of commenting upon any adverse finding or remark relating to them. This process has, in effect, added five months to the length of this inquiry.

#### Structure of the report

1.39 This report comprises 26 Chapters and has been divided into two volumes. In addition to this introductory chapter, this report contains the following chapters:

(1) Chapter 2 Summary of Findings

This chapter briefly sets out the matters considered in the investigation and provides a summary of my findings. I emphasise that this chapter is only a summary, and reference should be made to the appropriate chapter to gain a full understanding of the transaction.

(2) Chapter 3 Legal and Regulatory Matters

This chapter has been included to provide a brief summary of those offences, civil claims or regulatory matters which have been considered relevant to the transactions investigated by me.

(3) Chapter 4 Introduction to the Principal Individuals and Companies involved in the Investigation

(4) Chapters 5-26 Investigation Matters

These chapters describe in detail my findings for those matters set out in the terms of reference and some additional matters considered by me and include individual chapters covering some of the companies over which the Financial Secretary extended my appointment.

The order of these chapters has been arranged such that the acquisition of an interest in WTCG by Tomson Pacific is dealt with first. Other transactions are then dealt with in an approximate chronological sequence. Chapters 18 - 26 inclusive do not deal with matters chronologically; rather they are secondary or background chapters designed to give the reader more detail relating to some of the events, companies and individuals involved in the earlier chapters.

1.40 Within all chapters the common structure is as follows:

- An introduction;
- Details of my analysis of the transaction;
- My conclusions from the investigation of these matters; and

- My recommendation as to the legal and regulatory matters to be considered as a result of my findings.

### Evidence

- 1.41 I am aware that an investigatory procedure such as this Inspection is very different in its nature from adversarial proceedings in Court, whether civil or criminal. I have had to consider therefore whether the technical rules of evidence applicable to litigation are binding upon me. I have concluded, after considering advice, that they are not.
- 1.42 I have, throughout this report, approached my task of making findings on the basis that it would be improper to make any finding unless it was based upon material tending logically to show the existence of facts consistent with and supporting such finding. I have sought where possible to obtain and rely upon direct primary contemporary documents, or upon the oral statements of the persons involved. But in an Inspection such as this primary evidence is not always available; for instance, as explained in Chapter 4, I was unable to examine Mr Jackson Chang. I have therefore, for instance, on occasions relied upon hearsay evidence of what was said to witnesses at the material times by persons who would be expected by reason, for instance, of their involvement or their position at the time to have knowledge of the matters in question. But in assessing whether such evidence is trustworthy I have borne in mind that it is, by its nature as secondary evidence, more fallible than primary evidence, containing, for instance, the risk that what was alleged to have been said may have been misremembered, or even deliberately misquoted, and, furthermore, that I have not been able directly to assess the credibility, in some cases, of the primary witness. Nevertheless, taking all into account, I have on occasions concluded that such evidence is trustworthy in the particular circumstances, and may form part of the foundation for some of the findings made by me.

1.43 It will be seen by readers of my report that from time to time I have inferred matters and conclusions as arising from facts I have found. I have in this connection borne in mind that it would not be fair to adopt and use such inferences where on the facts an "innocent" inference contrary to that I have made might equally easily be made. But in deciding whether one inference or another might equally easily be made I have in reaching my conclusion on that issue, looked at the contending inferences in the light of all the relevant pointers and evidence available to me.

1.44 I have, in the course of my Inspections, obtained many thousands of pages of documents, taken oral evidence that covers some 5,500 pages of transcript, and read some 600 pages of submission. I have in what follows in this report sought to refer not to all but only to the more important evidence relating to the various matters I have examined, and which form the foundation for my conclusions. I shall provide to the Financial Secretary, copies of all the evidence and documents which I have obtained and upon the totality of which I have reached my conclusions. It must not be taken therefore necessarily that what is related is the only evidence available to me in reaching my conclusions.

#### Burden of proof and standard of evidence

1.45 I have, throughout my Inspection, been acutely aware of the implications that any findings or criticisms I may make can have for the companies or individuals involved. This is especially the case given the serious nature of some of my findings. I have therefore scrutinised very carefully the evidence and inferences underpinning the findings I have made, and my criticisms. My concern throughout my Inspection has been at all times to treat all concerned in a consistent and fair manner.

1.46 I have adopted as my approach to the burden of proof and to the degree and standard of evidence necessary to justify my findings that the more serious the consequences to others, the more sure must I be of the sufficiency and reliability of the evidence and inferences leading to my findings. I have adopted in relation to what I may call uncontentious "narrative" matters the standard of whether my finding is more likely than not, namely the civil standard. But where, at the other extreme, my findings and inferences form the basis for serious criticisms, even the possibility of suggestions or criminality, I have applied a higher standard of probability appropriate to the gravity of the implication or criticism arising from the findings, and commensurate with the seriousness of the particular matter.

1.47 The above are two approaches I have adopted and applied throughout the chapters that follow, and I shall not therefore repeat in them what I have said above. I have for instance, in my report, used the word "evidence"; but this is used not in any special technical legal sense, but in the sense I describe above of logically probative. So too, where I have, for instance, said "my conclusion is" or "I believe that" or the like, I have in reaching such conclusion or belief, done so in the manner I have sought to describe above.

## **ABBREVIATIONS AND GLOSSARY OF TERMS USED IN THIS REPORT**

### Abbreviations

1.48 A schedule of the abbreviations of individuals and companies I have used is as shown at page xviii of this report under the heading "List of Parties named in Report and Abbreviations used where applicable".

## Control

- 1.49 In this report the "control" of companies or over holdings of shares is of some importance and is referred to on a large number of occasions. Accordingly I consider that is useful for me to provide some indication of what I consider to constitute "control".
- 1.50 When I have in mind an existing definition of "control", such as that contained in the Code on Takeovers and Mergers of Hong Kong, I have specifically said so. In other cases I have endeavoured to establish whether there exists control in the ordinary meaning of the word. Does an individual or company, or a group of individuals or companies, in general or in relation to a particular transaction, have control over a particular company or a particular holding of shares?
- 1.51 In considering this question my starting point has been "controlled" as envisaged by the subsidiary and holding company relationship. This is most succinctly referred to as "majority" control or "voting" control, so that a company ("the Company") can be said to be controlled by an individual or another company, or by a group of individuals or companies, if they:-
- (a) control the composition of the board of directors of the Company; or
  - (b) control more than half of the voting power attaching to shares in the Company; or
  - (c) hold more than half of the issued share capital of the Company (excluding any shares which do not participate beyond specified amounts in a distribution of either profits or capital).

1.52 However, to adhere strictly to this definition of "control" ignores commercial reality and fails to take account of the fact that at any time a person or persons may have control of a company notwithstanding that they do not hold over half of the voting power or have power to appoint the majority of the board of directors. This might be best termed "effective" control and can arise in several ways such as:-

- (a) having de facto control of the board of directors at any particular time so that the person or persons in that position have the means to determine the policy and direction of the Company's business; or
- (b) having control at the time in question of some or all of the assets of the Company which may be obtained, for example, by having control of the Company's bank accounts; or
- (c) having control of a holding of shares registered in the name of a person who undertakes to act as, or in practice acts as, (or whose name is used as) a nominee; or
- (d) having control of a large proportion of the share capital of the company which, having regard to the distribution of the remaining shares among a large number of shareholders, enables control effectively to be maintained by a substantial number of representatives on the board of directors. (This equates to control as defined by the Code on Takeovers and Mergers which sets such control at the level of 35 per cent of the share capital of the company).

1.53 It is apparent throughout this report that the control of certain companies and of their shares, or of the shares held by them, is not always clear. However, the way in which those companies are operated and all the attendant circumstances have, in general, enabled me to reach conclusions as to their control at any relevant time.



1.54 I have recognised that effective control may vary with the nature of the transaction the company is undertaking. I consider that this is particularly true of a number of companies which I have been told were established for the benefit of certain Taiwanese investors with the power of operating the company's bank accounts being vested in an individual or individuals in Hong Kong. In the case of certain types of transactions, such as investments, which are not referred to in this report or were made outside of Hong Kong, these companies may have been under the effective control of the Taiwanese investors who directed what investments were to be made. In the case of other transactions, however, these companies may have been controlled by the individuals in Hong Kong who had control over the assets and bank accounts of those companies and who may have used such assets and bank accounts for their own purposes.

#### Qualified Privilege

1.55 Section 145(3A) of the Companies Ordinance states:

*"A person is not excused from answering a question put to him under this section by an inspector on the ground that the answer might tend to incriminate him but, where such person claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings in relation to a charge of perjury in respect of the answer."*

1.56 Where an examinee has sought the protection of Section 145(3A) in relation to a statement made I have termed this "qualified privilege".

#### Submissions

1.57 Where the phrase *"in a submission to me"* is used within this report it refers to written submissions by witnesses following consideration of my provisional findings contained in my draft report.

## Currency

- 1.58 Unless otherwise stated, all dollar amounts represented either in words or by the "\$" sign refer to Hong Kong Dollars.

## **THE REPORT**

- 1.59 The investigation and the preparation of this report is the result of the dedicated assistance and hard work of up to 30 members of my staff, who, with me, spent in total more than 25,000 hours on this task. Those principally involved were Mr Alex Duperouzel, Ms Bronwyn Ross-Jones, Mr Morgan Chubb, Ms Carmen Li, Ms Kirstin Man, Ms Hilda Tse, Ms Jessica Leung, Mr Mark Bowra and Mr Grant Jamieson.
- 1.60 Mr John Griffiths QC and Mr Daniel Marash, Barrister, provided advice and also took evidence on my behalf.
- 1.61 Messrs Colin Leaver, Phillip John and Simon Morgan and Ms Glenys Day of Simmons & Simmons, Solicitors, also assisted me with advice, as did Mr David Fitzpatrick, Barrister and Mr Peter Graham, Barrister.
- 1.62 In addition to professional assistance, I have also made extensive use of interpreters and transcribers during the oral examinations.
- 1.63 However, all the decisions and all the findings and conclusions I have reached during the inspection and in this report are entirely my own, including in particular my assessment of the evidence and of the witnesses.

## CHAPTER 2

### SUMMARY OF FINDINGS

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## 2 INTRODUCTION AND OVERVIEW

2.1 Under the terms of reference contained in my Letter of Appointment issued by the Financial Secretary, I was required to investigate and report on the events leading up to and surrounding the acquisition of control of WTCG by Tomson Pacific, which effectively occurred on 28 June 1990, and on certain transactions entered into shortly afterwards by WTCG, its subsidiaries or Tomson Pacific. A copy of my Letter of Appointment is set out in Appendix 1.

2.2 The principal transactions which WTCG or its subsidiaries entered into, under the newly acquired control of Tomson Pacific, which I have investigated, were the acquisition of the World Trade Centre Building (Chapter 8), the acquisition of land in Guangzhou, China (Chapter 11), the acquisition of 145,000,000 shares in Tian Teck Land Limited (Chapter 9), the acquisition of three properties in the Mandarin Plaza, New York (Chapter 15) and the acquisition of a 50% interest in Far East Biscuit (Hong Kong) Limited (Chapter 12). It is noteworthy that, with the exception of the acquisition of the properties in New York, all of these acquisitions occurred in August, 1990, less than eight weeks after Tomson Pacific gained effective control of WTCG. For the purposes of this summary, I classify the six transactions covered by the terms of reference as "transactions" and, of these, the five acquisitions which occurred following the gaining of control by Tomson Pacific of WTCG, are classified as "acquisitions".

2.3 In addition to the fact that substantially all of the acquisitions investigated by me occurred over a short period of time, I noticed during the course of my investigation certain other similarities between the acquisitions investigated. Notably, it appears that three of the five acquisitions were acquisitions where WTCG paid more than it apparently needed to for the shares or property acquired. Four of the five acquisitions involved payments of commissions in suspicious circumstances, either because the size of commission was significantly larger than was normal market practice (as with the acquisition of the World Trade Centre Building) or where the payment was made for seemingly little or no involvement in the particular acquisition (as with the acquisition of the Guangzhou Land) or, most prominently, because the commission monies were routed through seemingly unrelated parties and no adequate explanation has been given as to who the ultimate recipient or recipients of these monies were. Five of the six transactions investigated were, I believe, transactions where the directors of WTCG had direct or indirect interests which were not disclosed to either the board of directors of WTCG or its shareholders.

- 2.4 It is significant that only two individuals from Tomson Pacific or WTCG, Mr David Tong and Mr Jackson Chang, played principal roles in each of the six transactions investigated. Determining the involvement of these two key individuals in each of the six transactions has been central to my investigation. My appraisal of the evidence concerning their involvement has been significantly hampered by Mr Jackson Chang's failure to provide me with evidence. I comment later in this chapter on the quality of the evidence I have received. In addition Dr Stanley Ho, Chairman of WTCG following its acquisition by Tomson Pacific, was involved in two of the six transactions.
- 2.5 Further, during the course of my investigation, it became apparent that certain individuals and corporations not directly related to WTCG or Tomson Pacific, regularly played significant roles in a number of the transactions. Of the individuals, Mr David Chiu, Mr George Tan and Mr Eddie Lo emerge most notably. Details of these individuals can be found in Chapter 4.
- 2.6 Mr David Chiu, I believe, was directly or indirectly involved in five of the six transactions. I do not regard his involvement in four of the five acquisitions, all of which occurred within a matter of weeks, as circumstantial. I believe that Mr George Tan is likely to have been involved in two of the six transactions through his association with Widelines Limited and the 12/F Cash Client account at Cheung On. Widelines and the 12/F Cash Client account have featured prominently in my investigation and are discussed in detail in Chapter 10. Lastly, Mr Eddie Lo played a role in four of the six transactions particularly through Fulldiamond Limited, further details of which are set out in Chapter 24.
- 2.7 Of the entities not directly related to Tomson Pacific or WTCG which have persistently appeared during my investigation, Cheung On, Widelines, Spinus, Martra and Fulldiamond emerge most notably. Details in respect of these corporations can be found in Chapters 10 (Cheung On and Widelines), 23 (Spinus), 19 (Martra) and 24 (Fulldiamond). Cheung On, especially through its 12/F Cash Client account, emerges in two of the six transactions. Monies derived from acquisitions were regularly routed through the 12/F Cash Client account which, I have concluded, was substantially under

the control of Mr George Tan. Spinus, a Liberian corporation which I believe to have been controlled by Mr David Chiu, appears in two of the five acquisitions. Martra, another Liberian corporation which I believe to have been controlled by Mr David Tong and Mr Jackson Chang, features in two of the five acquisitions. Fulldiamond, a company closely associated with Mr Eddie Lo, appears in two of the five acquisitions.

#### Quality of the Evidence Received

2.8 It became apparent during my investigation that there was substantially insufficient documentary evidence surrounding the matters covered by this investigation for me to determine conclusively the facts of, and circumstances surrounding, each transaction. Accordingly, I have had to rely on the oral evidence of parties involved in these transactions to determine the truth surrounding the events and transactions investigated. In many instances I have found the oral evidence to be inadequate. A number of key individuals have claimed that their roles in the transactions, and therefore their knowledge of them, was significantly less than I believe to have been the case. I have heard a considerable amount of contradictory oral evidence which has been found in many instances to be untruthful. I have, consequently, had to discount a considerable amount of evidence as unreliable.

2.9 The involvement of a number of individuals resident outside Hong Kong, most notably in Taiwan, has been alleged during my investigation. The vast majority of these named individuals have failed to respond to my requests for information. I regard with suspicion the departure of Mr Jackson Chang from Hong Kong within a week of my appointment as an Inspector and the sale of substantially all of his assets in Hong Kong. Mr Jackson Chang's refusal to respond to my repeated requests for him to give evidence concerning the very serious matters with which he was clearly intimately involved, has severely hampered my investigation.

2.10 Throughout my report I am critical of a number of individuals for the poor and, in some instances, deceptive quality of their evidence. I am especially critical of Mr Jackson Chang for his failure to provide me with evidence.

### **SUMMARY OF THE SIX PRINCIPAL TRANSACTIONS INVESTIGATED**

2.11 In the following paragraphs I summarise my main findings in respect of the six principal transactions investigated.

#### The acquisition of effective control of WTCG by Tomson Pacific

2.12 On 28 June 1990 Tomson Pacific gained effective control over WTCG by the appointment to the board of directors of WTCG of a controlling number of Tomson Pacific directors. Tomson Pacific had achieved this control through the acquisition of 34.5% of the shares in WTCG. This amount was, in effect, the maximum amount it was able to acquire without having to make a mandatory offer for all the shares in WTCG pursuant to the Hong Kong Code on Takeovers and Mergers. The 34.5% of the WTCG shares acquired by Tomson Pacific represented a portion of the 66% parcel of shares which Bond Corporation International Holdings Limited wished to dispose of. Accordingly, and as part of the arrangements leading to Tomson Pacific acquiring control, a further 31.5% of WTCG's shares were placed with placees. In order to avoid the requirement to make a general offer for all of the WTCG shares, the placees needed to be, and indeed were declared to be, independent of Tomson Pacific and its directors. The question of the independence of the placees has been of considerable importance to my investigation and is specifically covered in paragraph a(i) of my Letter of Appointment. I have, accordingly, devoted substantial time and resources to determining the extent of their independence. My findings in this respect are set out in detail in Chapters 5 and 6.

- 2.13 Dr Stanley Ho, a director of Tomson Pacific prior to its acquisition of control of WTCG and the Chairman of WTCG following Tomson Pacific's acquisition, is alleged to have introduced three of the placees, Killenny, Commercial Success and La Fayette to the placement. I have found that each of these three placees was closely associated with Dr Stanley Ho. Killenny's participation in the placement was controlled by Mr Li Chi Keung. Mr Li Chi Keung is an associate of Dr Stanley Ho and is, in connection with his activities at the Lisboa Casino in Macau, sometimes funded by STD M, a company in which Dr Stanley Ho is the Managing Director and in which he has a substantial percentage shareholding. It is my view that STD M's monies were used to fund the purchase of the placement shares by Killenny, and Dr Stanley Ho, STD M and Shun Tak were involved in the compensation arrangements whereby the beneficial owner of Killenny would not suffer a loss by taking up the shares in the placement. I have therefore concluded that Killenny was not independent of the directors of Tomson Pacific.
- 2.14 I have found that there are substantial similarities between Killenny, Commercial Success and La Fayette and the roles played by each in the placement. I have concluded that there is a strong inference that Commercial Success was not independent of the directors of Tomson Pacific and I believe that arrangements existed whereby the beneficial owner of Commercial Success would not suffer a loss by taking up the shares in the placement. I have found that these compensation arrangements were integrally linked to Dr Stanley Ho, STD M and Shun Tak.
- 2.15 I have found that it is likely that La Fayette was not independent of the directors of Tomson Pacific. I believe that arrangements existed in respect of the shares acquired by La Fayette whereby the beneficial owner of La Fayette was given a guarantee that La Fayette would not suffer a loss by taking up shares in the placement. I believe that Dr Stanley Ho, STD M and Shun Tak were integrally linked to these compensation arrangements.



2.16 I have found that the placement of 72,000,000 WTTCG shares to the Chiu Ming Hung Syndicate was not independent of the directors of Tomson Pacific and that arrangements existed whereby this syndicate was guaranteed by Mr David Tong that it would not suffer loss on the subsequent sale of the placement shares. In December 1990 Mr David Tong through a nominee purchased 30,000,000 of these placement shares at more than double the then market price. Also in December 1990 Martra purchased a further 30,000,000 of these placement shares at more than double the then market price. The purchase funds for this acquisition were drawn from a David Tong Company account. I have concluded in this report that Martra was controlled by, and used for the benefit of Mr David Tong and/or Mr Jackson Chang, and that David Tong Company is controlled by and used for the benefit of Mr David Tong. Of the remaining 12,000,000 placement shares, I believe there is a fair likelihood that Mr David Tong paid Mr Ma De-Ling, a member of the Syndicate, compensation in February 1993 based on the difference between the price at which the shares were acquired and the then market price.

2.17 I have found that although the SFC were informed that Hauxton Limited was the placee in respect of 68,050,494 WTTCG shares, in fact it only acquired 60,000,000 shares in the placement. The additional 8,050,494 shares were acquired by Mandarin Development Limited, a company controlled by Mr Arthur Lai. Mr Arthur Lai was at the time of the placement, the Chairman of Chintung Limited, the placing agent and, as such, should have been well aware of the misleading statement made to the SFC. In addition, I have found that there is a reasonable evidence that Hauxton, which acquired 60,000,000 WTTCG shares in the placement, was controlled by Mr David Tong and/or Mr Jackson Chang and that, accordingly, this placee was not independent of the directors of Tomson Pacific.

2.18 A further 67,000,000 WTCG shares were acquired in the placement by companies under the control of the Chiu family and I have heard evidence that their involvement in the placement was handled by Mr David Chiu. Mr David Chiu is seemingly unrelated to Tomson Pacific or WTCG, but has featured in most aspects of my investigation. I have been told by Mr David Chiu that he was promised that a buyer of these shares would be arranged if the price fell. I believe that Mr David Chiu's involvement in the placement is integrally linked to subsequent transactions entered into directly or indirectly between Mr David Chiu and WTCG and have inferred, accordingly, that Mr David Chiu was acting together with the directors of Tomson Pacific.

#### The acquisition of the World Trade Centre Building

2.19 Shortly after Tomson Pacific gained effective control of WTCG and after completion of the placement of the WTCG shares on 27 July 1990, WTCG agreed to purchase the World Trade Centre Building from Hongkong Land for \$1,720,000,000. I have found no evidence to suggest that the purchase price did not represent the true market value of the property at the time of the acquisition. However, a significant feature of this transaction was that a 3% commission was paid for the involvement of intermediaries in facilitating the acquisition. The size of this commission is approximately three times the normal market practice at the time. I believe that the commission was agreed between Mr Jackson Chang on behalf of WTCG with Mr David Chiu and Mr George Tan as the two intermediaries involved. The payment of this commission was subsequently ratified by a meeting of the directors at which Mr David Tong was present.

2.20 I have found that Mr George Tan's involvement in this transaction was substantially more than he has admitted to me and have concluded that it is likely that he received part of the commission paid. The routing of part of the commission to Cheung On, a stockbroking firm closely associated with a number of the transactions and individuals covered by my investigation, was not dealt with openly. My findings in this respect are consistent with my findings in respect of many of the other transactions investigated by me. A significant amount of the monies derived from transactions investigated by me has been traced to the 12/F Cash Client account of Cheung On. I believe that in the case of the World Trade Centre Building acquisition, the 12/F Cash Client Account was used to conceal the passing of monies to individuals, notably Mr George Tan, and was used to acquire WTCG shares.

The acquisition of 145,000,000 shares in Tian Teck Land Limited

2.21 On 8 August 1990, just six days after WTCG agreed to acquire the World Trade Centre Building, WTCG acquired, through a subsidiary, 145,000,000 shares in Tian Teck Limited for a gross consideration of \$377,000,000 from Spinus Limited, a company which I have concluded elsewhere in this report, was controlled by Mr David Chiu. The same shares had been acquired by Spinus earlier that day for a gross consideration of \$326,250,000. Accordingly, Spinus had made an immediate gross profit of \$50,750,000 on its trading in the Tian Teck shares. The terms of reference contained in my Letter of Appointment directed me to investigate and report on this transaction and all the events surrounding it.

- 2.22 While investigating the purchase from Spinus of the 145,000,000 Tian Teck shares by WTCG, it became apparent that this transaction was integrally linked with two other transactions. Firstly, the purchase of the same shares by Spinus from Great Eagle immediately prior to the above transaction, and secondly, the sale of 116,500,000 shares in WTCG from Hauxton to Great Eagle at the same time. In effect, Great Eagle was swapping its 145,000,000 Tian Teck shares for 116,500,000 WTCG shares. The ownership of Hauxton is unclear, although I have concluded in Chapter 6 that the sources of Hauxton's funding in relation to its acquisition of shares in the WTCG placement, suggest that the company may have been controlled by Mr David Tong and Mr Jackson Chang.
- 2.23 I have concluded that each of these three trades in shares were part of a pre-arranged scheme which had two principal purposes. Firstly, they afforded a mechanism for the disposal of a large block of WTCG shares, acquired over the time of the placement, thereby avoiding an adverse effect on the WTCG share price that the disposal of this number of WTCG shares through the market would have had. Secondly, it allowed Spinus to extract a substantial profit at the expense of WTCG.
- 2.24 Whilst it would be perfectly proper for Spinus to acquire and very shortly thereafter dispose of shares at a considerable profit, I believe from the evidence I have received that its trades in the Tian Teck shares were predetermined. The evidence of the involvement of Spinus has been notably inadequate and often inconsistent which causes considerable suspicion that the role of Spinus in this transaction was not that of a bona fide third party. Similarly, I have found no adequate explanation for WTCG's purchase of illiquid stock which could not have appeared at the time of the acquisition to, nor has it been subsequently shown to, represent good business synergy or a good investment for WTCG. The profit made by Spinus on the sale of the Tian Teck shares was also dealt with suspiciously. While I have been unable to trace the ultimate recipient or recipients of most of the profit, I have traced some of these proceeds back to Mr David Tong, a director of WTCG.

2.25 I have found that Cheung On and the 12/F Cash Client account were integrally linked to this transaction having ultimately received \$30,000,000 of the profit.

The acquisition of land in Guangzhou, China

2.26 Twenty two days after WTCG agreed to acquire the World Trade Centre Building, WTCG agreed to acquire a parcel of land at Dongji Industrial District, Guangzhou, for \$197,868,097 , an amount which allowed the vendor of the land to realise a profit of \$109,004,229. This land was, in effect, purchased from Mr David Chiu. One of the key aspects of this transaction which I have examined is whether WTCG paid Mr David Chiu more than it needed to for the land acquired. I have also examined the commissions paid in respect of this acquisition which I have found were paid in suspicious circumstances.

2.27 Prior to the acquisition of the land, two valuations had been prepared, one by Raine Horne & Lau and the other by Chesterton Petty. Both valuations were seen by WTCG prior to the acquisition and it is likely that the Chesterton Petty valuation was relied upon by WTCG in justifying the value of the consideration. I do not believe that either valuation represented the true value of the land at the time. I believe that the price for the land had been agreed some considerable time before both the valuations were prepared and have found evidence to show that the Chesterton Petty valuation was prepared for the purpose of justifying the earlier agreed price.

2.28 My suspicions were aroused during my investigation of this transaction by the involvement of a Liberian corporation, Martra Inc. I have concluded elsewhere in this report that Martra is a corporation substantially under the control of and used for the benefit of Mr David Tong and/or Mr Jackson Chang. Martra's involvement in the acquisition of the Guangzhou Land by WTCG was limited to its appearance in the Sale Agreement as the vendor of 50% of the interest in the land. This agreement was amended after execution in a most unusual manner whereby all references to Martra were deleted. I have concluded that it was desired that Martra's intended role in the transaction of representing the personal interests of Mr David Tong and Mr Jackson Chang was to be disguised. I have also concluded that the purchase of the Guangzhou Land by WTCG was not at arms' length and that an excessive profit was generated by the sale of the land to WTCG at an overvalue.

2.29 Fulldiamond Limited, a company which appears in a number of the transactions investigated by me and which I was subsequently appointed to investigate on 23 October 1992, received \$1,100,000 in commission in respect of this transaction. I have been unable to determine whether this amount was earned by Fulldiamond and believe that Fulldiamond may have been inserted into the transaction to give the impression that the acquisition was at arms' length. I am concerned at the way this money was subsequently channelled by Fulldiamond and I have received an inadequate explanation of the ultimate recipient or recipients of these funds.

### The acquisition of a 50% interest in Far East Biscuit (Hong Kong) Limited

- 2.30 On 13 August 1990, four days after WTCG acquired the 145,000,000 shares in Tian Teck and eleven days after it agreed to acquire the World Trade Centre Building, Tomson Pacific acquired, through a subsidiary, a 50% interest in Far East Biscuit (Hong Kong) Limited for an effective consideration of \$62,000,000 from Far East Consortium China Limited, a company controlled by Mr David Chiu and his family. Fulldiamond, a company which has appeared in a number of the transactions investigated by me and which is closely associated with Mr Eddie Lo, received a commission of \$1,000,000 from Tomson Pacific.
- 2.31 I have not found any evidence of impropriety in this transaction. I have noted that the price of \$62,000,000 was considered high although there may have been reasons to justify this. Whilst I have not found evidence of impropriety, I have noted and consider worthy of comment, the significant number of similarities, notably the involvement of Mr David Chiu and Mr Eddie Lo, with other transactions investigated by me where I have found evidence of considerable wrongdoing.

### The acquisition of three properties in the Mandarin Plaza, New York

- 2.32 On 13 February 1991, WTCG agreed to acquire, in effect, three properties in the Mandarin Plaza Building, New York from Mr Li Chi Keung for US\$6,355,000 (\$56,600,000). My investigation into this transaction has centred on the question of whether WTCG paid more for the properties than it should have and on the interests of, and role played by Dr Stanley Ho in the transaction. Dr Stanley Ho was at the time of this transaction the Chairman of WTCG.

- 2.33 The price of US\$6,355,000 paid for the properties was justified by a valuation report prepared by Mr Francis Lau in Hong Kong with the assistance of Mr Edmund Lau in New York. It is noteworthy that a valuation of the land at Guangzhou, which I have had cause to question, was also prepared by Mr Francis Lau. I have found evidence of suspicious circumstances surrounding the preparation of the valuation. The initial valuation of US\$4,725,000 was increased to US\$6,355,000 over a period of days. I have found no adequate explanation to justify such an increase and have concluded that the valuation was at an overvalue and that it was prepared to justify an agreed inflated price for the properties. I have found it notable that, whilst the valuation was prepared for WTCG, it was made at the instigation of Shun Tak. Shun Tak is a company closely associated with Dr Stanley Ho in that he is the Managing Director and has told me that he has "*a substantial percentage shareholding*" and "*a lot of power within the company*".
- 2.34 The three properties were originally owned by 374 Broadway Associates, a New York general partnership in which Dr Stanley Ho and members of his family held a substantial interest. In late December 1990 or early January 1991, a short period before WTCG acquired the properties for US\$6,355,000, the properties were acquired by Mr Li Chi Keung for US\$4,400,000. I have found that Mr Li Chi Keung funded this purchase through, in effect, borrowing money from STDM by cashing gambling chips from a room operated by him at STDM's Lisboa Casino. I have also found that Shun Tak was closely involved in the arrangements for the sale of the properties to Mr Li Chi Keung. I have concluded that Mr Li Chi Keung's brief involvement with the properties seems to have been limited to a role as nominee for Dr Stanley Ho and others. I believe Mr Li Chi Keung played the role of intermediary to create the illusion on paper of being a seemingly independent and bona fide vendor. Accordingly, I have concluded that Dr Stanley Ho was interested in the sale of the properties to WTCG and that this acquisition by WTCG was not from an unrelated third party. I have also concluded that Dr Stanley Ho, in addition to being interested in the sale, was far more closely involved in the transaction than he has tried to lead me to believe. No declaration of Dr Stanley Ho's interests were made to either the directors of WTCG or its shareholders.



2.35 I have concluded that the directors of WTCG were not alive to the duties they owed to WTCG and that their lack of competence and diligence led them to acquiesce in the purchase of the properties at an overvalue.

## **OTHER FINDINGS**

### Extensions of my appointment

2.36 During my investigation into the six transactions covered by my letter of appointment, I found information relating to other matters and companies, which would not have been covered by my initial terms of reference. Accordingly, the Financial Secretary extended my appointment on 23rd October 1992 and 11th January 1993. Under the extended scope of my investigation I was required to look at the affairs of amongst others, Spinus (Chapter 23), Martra (Chapter 19), Fulldiamond (Chapter 24), Grand Ocean (Chapter 22), and South View Properties Limited (Chapter 21). My investigation of these companies enabled me to gain a fuller understanding of the circumstances surrounding the principal transactions investigated.

2.37 Spinus appears in two of the six principal transactions investigated by me, the acquisition of the World Trade Centre Building and the Tian Teck share transaction. I have concluded that Mr David Chiu held control of Spinus. It is acknowledged that the use of Spinus to receive commission relating to the World Trade Centre Building transaction was at the behest of and for the benefit of Mr David Chiu. In respect of the Tian Teck share transaction, I have concluded that there are strong reasons to believe that Mr David Chiu, through Spinus, was at least involved in this transaction.

2.38 Martra appears in three of the six principal transactions investigated by me, the Tian Teck share transaction, the acquisition of the Guangzhou Land and the WTCG placement. I have also found that it was trading in substantial numbers of Tomson Pacific and WTCG shares. I have looked at Martra's activities generally so as to ascertain who exercised control over it and have found that the company was controlled by and used for the purposes of Mr David Tong and/or Mr Jackson Chang.

- 2.39 Fulldiamond appears in two of the six principal transactions investigated by me, the acquisition of the Guangzhou Land and the acquisition of a 50% interest in Far East Biscuit (Hong Kong) Limited. In both of these transactions Fulldiamond received commission which related to the activities of Mr Eddie Lo. In addition, I have found that persons or companies associated with Fulldiamond played roles in a further two of the six principal transactions, the WTCG placement and the Tian Teck share transaction. Madam Alice Lam took up shares in the WTCG placement. Madam Alice Lam is a director of Fulldiamond and the wife of Mr Eddie Lo. Keen Investments Limited, a company of which Madam Alice Lam is a director, received monies which I believe to be related to the Tian Teck share transaction. I have found suspicious circumstances surrounding Fulldiamond's role in the transactions investigated. In particular it is not clear what role Fulldiamond played in the Guangzhou Land acquisition to justify receipt of a commission of \$1,100,000. I am also concerned at the lack of credible evidence of who the commission monies paid to Fulldiamond were ultimately routed to.
- 2.40 South View appears in the WTCG placement. I have found that it was involved in funding related to the background to the WTCG placement through its indirect funding of parties that took up shares in the Rivera placement (discussed in Chapters 18). In addition South View indirectly funded Hauxton's acquisition of shares in the WTCG placement. Accordingly, I have endeavoured to ascertain who controlled South View at the time of these transactions and have concluded that the company was controlled by Mr David Tong and/or Mr Jackson Chang.

2.41 Grand Ocean appears in the Tian Teck share transaction through its trading of 118,200,000 WTTCG shares. During my investigation into this company's activities, I noted that it also engaged in a substantial amount of other trading in the shares of Tomson Pacific and WTTCG. Accordingly, I have endeavoured to ascertain who controlled Grand Ocean. I have found that the dealing in the 118,200,000 WTTCG shares was at the direction of Mr Jackson Chang with the active support of Mr David Tong and that the acquisition and sale of these WTTCG shares satisfied the purposes of both of these individuals. In respect of the other sharedealing in Tomson Pacific and WTTCG shares, I believe that this sharedealing was conducted at the direction of Madam Hsu Jye. I have been unable to ascertain the person or persons for whom this sharedealing was conducted.

#### Investigation of Ancillary Transactions and Matters

2.42 In addition to my investigation into the companies listed in the letters extending my appointment, I have investigated certain other transactions or matters where I have felt that such investigation would provide a further understanding of the principal matters investigated, or where I have noted suspicious circumstances. Consideration of these transactions and matters has not been central to my investigation and, accordingly, I have not investigated these matters in detail, nor would it have been appropriate for me to do so. Nevertheless, I set out below a summary of my principal findings in respect of these transactions.

2.43 I consider in Chapter 7, dealing in the shares of Regal Hotels Limited and First Pacific Bancshares which was conducted by companies and individuals that have appeared regularly throughout my investigation, notably companies in the Far East Group, Mr David Chiu, Mr David Tong and Mr Jackson Chang. The significance of these share dealings to my investigation is that they provided a source of funds for Rivera allowing it to take up shares in the Tomson Pacific Rights Issue (discussed in Chapter 18). At the time, Rivera held a controlling interest in Tomson Pacific. The share dealings also provided Hauxton with funds which allowed it to acquire 60,000,000 shares in the WTTCG placement. I have concluded in this report that there is strong evidence to suggest

that Mr David Tong and/or Mr Jackson Chang exercised considerable influence over Hauxton's activities in the WTCG placement and the Tian Teck share transaction. I have concluded that the sharedealing was part of a scheme prearranged by Mr David Tong and Mr Jackson Chang to provide funds to take up shares in the Rivera placement. As a consequence of the sharedealing \$60,000,000 was provided to Hauxton allowing it to take up shares in the WTCG placement.

2.44 The Rivera Placement and Tomson Pacific Rights Issue are covered in Chapter 18. In respect of the Rivera Placement I found evidence to suggest that a number of the places were closely associated with Mr Jackson Chang and Mr David Tong, both directors of Rivera at the time. It is notable that my findings in this respect are similar to certain of my findings in respect of the WTCG placement. I have found evidence to suggest that a significant number of purchases of Tomson Pacific shares at the time of the Tomson Pacific Rights Issue were made by persons who have often been found to have acted as nominees for Mr David Tong and/or Mr Jackson Chang.

2.45 I consider in Chapter 14, the acquisition by WTCG of a property located at 335 Nathan Road, Kowloon, Hong Kong. I investigated this acquisition because of the substantial size of the commissions paid. I have found that WTCG paid a 2% commission to Maddis. The payment of a 2% commission is significantly greater than the 0.5% to 1% generally paid in the market at this time. I have heard evidence that Maddis was controlled by Mr Chan Wai Hung, but believe that he may not have been the person who benefitted from this commission payment. I am also concerned about the probity of the payment of commissions by TSL Jewellery Limited totalling \$6,292,500.

- 2.46 I have similarly investigated, and reported in Chapter 16, on the circumstances surrounding the request by Mr Peter Oei for a special audit of WTCG which was intended to cover transactions entered into by WTCG during a period which would have included the times that each of the five principal acquisitions that I have investigated and reported on, occurred. Mr Peter Oei was appointed a director of Tomson Pacific in March 1991 following his acquisition of approximately 20% of its shares. He subsequently resigned his appointment in September 1991 on the sale of his Tomson Pacific shares to STDM. After the departure of Mr Peter Oei the special audit did not proceed, although I have heard from Dr Stanley Ho, who continued to be a director of Tomson Pacific following Mr Peter Oei's departure, that he was in favour of the special audit.
- 2.47 I consider in Chapter 17 the acquisition by WTCG of a 9.9% interest in Charoong Thai Wire & Cable Company Limited, a Thai company, for \$112,330,000. The majority of the shares in Charoong Thai were acquired by WTCG from Walsin Lihwa Electrical Wire and Cable Corporation. I have found that, because of the relationship between certain of the directors of WTCG and/or Tomson Pacific and/or Pacific Cable and Walsin Lihwa, notably through common directorships and holdings of shares in these companies, the acquisition by WTCG of the Charoong Thai shares was not from an unrelated third party and may not have been in the best interests of WTCG.
- 2.48 I consider in Chapter 10 the 12/F Cash Client account and connections with persons or transactions that I have investigated. The 12/F Cash Client account at Cheung On appears in two of the principal transactions investigated by me, the acquisition of the World Trade Centre Building and the acquisition of the 145,000,000 Tian Teck shares. In addition, the 12/F Cash Client account appears to have had monies routed through it which have subsequently been used to fund a significant amount of share trading in WTCG shares. Accordingly, I have investigated the role played by this account in the matters covered by this report. I have also examined the roles played by persons associated with this account in such matters in an attempt to ascertain the persons who controlled or benefited from the account.

2.49 My investigation of the 12/F Cash Client account has been hampered by the often contradictory or evasive nature of the oral evidence I received. I have heard no credible explanation of the operation or controllers of the account. I believe that the "12/F" referred to in the name of the 12/F Cash Client account relates to the 12th Floor of the Hong Kong and Macau Building. I have also found that the account was not principally used for share trading but was instead used to channel large sums of money to other stockbrokers and individuals.

2.50 I have found a significant number of connections between both the 12th Floor of the Hong Kong and Macau Building, persons associated with the 12/F Cash Client account and Mr George Tan. Accordingly, I have concluded that Mr George Tan controlled the 12/F Cash Client account and benefitted from its activities.

## **CONCLUSION**

2.51 Throughout this summary and throughout this Report I have noted certain key similarities or common factors between the transactions investigated by me or the circumstances surrounding them. Notable is the fact that four of the five acquisitions which occurred very shortly after Tomson Pacific gained control of WTCG were conducted within a period of a few weeks. These transactions were significant even for a company the size of WTCG. I do not believe that WTCG could have negotiated and executed these transactions in such a limited period. I have also obtained evidence that shows that two of the five acquisitions were discussed at a meeting in May 1990 between Mr Jackson Chang and Mr David Chiu. This meeting also discussed the intended acquisition of control of WTCG. Accordingly, I believe it reasonable to conclude that four of the five principal acquisitions which occurred within a limited period in August 1990 were arranged prior to Tomson Pacific acquiring control of WTCG.

2.52 Of the five acquisitions, I have found that four involved the acquisition by WTCG of assets at a higher price than they needed to pay or where they paid higher commissions than they needed to. At best this would indicate a degree of negligence by the directors of WTCG. However, I believe that in respect of the acquisitions by WTCG which occurred in August 1990, Mr Jackson Chang and/or Mr David Tong were aware in each instance that WTCG was not obtaining full value for what it paid. As a consequence, WTCG passed money to third parties without receiving benefit itself. In all of these cases it can be argued that this value was obtained by the third parties improperly. I have noted that Mr David Chiu was involved in three of the four acquisitions which occurred in August 1990. In all of these cases Mr David Chiu or companies controlled by him appear to have obtained value improperly. Mr David Chiu was also involved in the WTCG placement and was actively discussing certain of the WTCG acquisitions and the acquisition of control of WTCG by Tomson Pacific in May, 1990. I regard these facts as significant.

2.53 I have sought to answer the question of why directors of WTCG would allow that company to acquire assets at an overvalue or pay higher commissions than it needed to. I have found evidence that part of the monies paid by WTCG in respect of one acquisition was paid to a company controlled by Mr David Tong. This could explain in part why WTCG acted as it did. I believe another, and indeed more significant reason, relates to Tomson Pacific's acquisition of WTCG.

- 2.54 None of the acquisitions which I was appointed to investigate could have occurred unless Tomson Pacific successfully gained control of WTCG. As a listed company, one way of acquiring control over WTCG would have been to make a general offer for all of the shares. This would have cost Tomson Pacific approximately \$2,000,000,000 which would be in addition to the monies already expended on acquiring its 34.5% stake. I do not believe that Tomson Pacific had anywhere near sufficient resources to fund this. The other way was for Tomson Pacific to acquire sufficient shares to enable it to gain control of the board of directors of WTCG yet without acquiring so many as to necessitate it making a mandatory offer for the shares. To do this, Tomson Pacific needed to ensure that the placement of WTCG shares was to parties independent of itself and its directors. I have found that the requirement to place the WTCG placement shares with independent third parties, thereby avoiding the need to make a general offer, was flagrantly breached.
- 2.55 Notably, Mr David Chiu who either himself, or through companies controlled by him, benefitted from a number of the acquisitions, arranged for companies controlled by him or associated with him to take up shares in the WTCG placement. Dr Stanley Ho who I have found to have had an interest in the sale of the three properties in Mandarin Plaza, New York at an overvalue, also appears to have arranged for companies closely associated with him to take up shares in the WTCG placement. Lastly, I believe that Mr George Tan who benefitted significantly from the payment of commission paid by WTCG in respect of the acquisition of the World Trade Centre Building, was one of the parties controlling the large scale acquisition of shares in WTCG shortly after the WTCG placement. This large scale acquisition had the effect of maintaining an artificially high WTCG share price.
- 2.56 I believe it reasonable to infer that some or all of the principal transactions investigated by me were used, in part, as a method of delivering monies to parties for their assistance in the improper acquisition of control of WTCG.



## CHAPTER 3

### LEGAL AND REGULATORY MATTERS

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#### 3 INTRODUCTION

3.1 In considering the evidence that has been made available to me, I have taken account of those matters which have come to my attention which might constitute criminal misconduct, civil misconduct or breaches of regulatory provisions which are applicable to the companies under investigation.

3.2 The following paragraphs provide a brief summary of those offences, civil claims or regulatory matters that I considered might be relevant to the transactions investigated by me.

- 3.3 Section 147(1) of the Companies Ordinance (Cap. 32 of the laws of Hong Kong) envisages the possibility of criminal prosecutions arising from this Report. In addition, sub-sections (2) and (3) of Section 147 of that Ordinance enables the Financial Secretary to present a petition for the winding-up of any body corporate liable to be wound-up under the Companies Ordinance, or to present a petition for an order under section 168A of the Companies Ordinance or to bring court proceedings in the name of and on behalf of a body corporate.

## **CRIMINAL MISCONDUCT**

### Offences under the Theft Ordinance

- 3.4 Under Section 2 of the Theft Ordinance (Cap 210 of the laws of Hong Kong) a person commits theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it. It is immaterial whether the appropriation is made with a view to gain or is made for the thief's own benefit. Any person who commits theft shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for up to 10 years.
- 3.5 Section 17 of the Theft Ordinance provides that any person who by any deception (whether or not such deception is the sole or main inducement) dishonestly obtains property belonging to another, with the intention or permanently depriving the other of it, shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.
- 3.6 Section 18 of the Theft Ordinance provides that any person who by any deception (whether or not such deception was the sole or main inducement) dishonestly obtains for himself or another any pecuniary advantage shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

3.7 Section 19 of the Theft Ordinance provides that where a person dishonestly, with a view to gain for himself or another or with intent to cause loss to another:-

- (a) destroys, defaces, conceals or falsifies any account or any record or documents made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any such record or documents aforesaid, which to his knowledge is or may be misleading, false or deceptive in a material particular,

he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

3.8 Section 21 of the Theft Ordinance provides that where an officer of a body corporate (or person acting as such) with intent to deceive members or creditors of the body corporate about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, he shall be guilty of an offence and shall be liable on conviction upon indictment to imprisonment for 10 years.

#### Offences under the Prevention of Bribery Ordinance

3.9 Section 9 of the Prevention of Bribery Ordinance (Cap 201 of the laws of Hong Kong) provides that any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his:

- (a) doing or forbearing to do, having done or forborne to do, any act in relation to his principal's affairs or business; or

(b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence which on conviction on indictment carries a fine of HK\$500,000 and imprisonment for 7 years or, on summary conviction, a fine of HK\$100,000 and imprisonment for 3 years.

3.10 Under Section 9(2) of the Prevention of Bribery Ordinance any person who, without lawful authority or reasonable excuse, offers an advantage of the nature referred to above shall also be guilty of an offence rendering him liable to similar penalties.

#### Offences under the Crimes Ordinance

3.11 Under Section 31 of the Crimes Ordinance (Cap 200 of the laws of Hong Kong), if any person lawfully sworn as a witness, either generally or in a particular judicial proceeding, wilfully makes a statement in any judicial proceeding which is material in that proceeding and which he knows to be false or does not believe to be true, he shall be guilty of perjury and shall be liable on conviction upon indictment to imprisonment for 7 years and to a fine.

3.12 Judicial proceedings include a proceeding before any court, tribunal of person having by law power to hear, receive and examine evidence on oath. Accordingly, proceedings before me as a person authorised by law to examine on oath constitute judicial proceedings for the purposes of this section.

#### Offences under the Companies Ordinance

3.13 The Companies Ordinance (Cap 32 of the laws of Hong Kong) creates a large number of offences for failure to comply with its terms. In the following summary of certain of the sections of the Companies Ordinance I have described the provisions as they were in effect at the time that the matters which are the subject of this Report took place.

- 3.14 Section 48 of the Companies Ordinance (prior to its amendment in 1991) provide that it is unlawful for a company to give, whether directly or indirectly and whether by means of a loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company. If a company acted in contravention of this section the company and every officer of the company who is in default is liable to a fine of HK\$2,000.
- 3.15 Section 121 of the Companies Ordinance requires every company to keep proper books of account with respect to all sums of money received and expended by the company in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the company and the assets and liabilities of the company. Any director who fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own act been the cause of any default by the company thereunder, shall be liable to imprisonment and a fine.
- 3.16 Section 155A of the Companies Ordinance requires that a company which is, or which is a member of a group of companies which includes, a company whose shares are listed on The Stock Exchange of Hong Kong Limited ("the Stock Exchange") shall not carry into effect any proposal for the disposal of the fixed assets of the company in excess of 33 per cent of the value of the companies total fixed assets without shareholder approval. Any director of such a company who fails to take all possible steps to comply with this provision shall be liable to a fine and imprisonment.
- 3.17 Section 155B of the Companies Ordinance provides that any director who fails to give notice of a material interest in any matter to be dealt with by a resolution at a general meeting of the company or a meeting of any class of members of the company so far as the resolution affects the material interest of the director differently from the interests of other members of the company is liable to a fine.

- 3.18 Section 157H of the Companies Ordinances severely limits the circumstances in which a company may make a loan or give any guarantee or other security in connection with a loan made to, a director, his family, a trustee of a trust of which his family are beneficiaries or any company controlled by him. The company, any director of a company who wilfully authorised or permitted a transaction in breach of these provisions and any person who knowingly procured the company to enter into such transaction are liable to a fine or imprisonment.
- 3.19 Section 161C of the Companies Ordinance provides that it is the duty of any director of a company to give notice in writing to the company disclosing particulars of loans to directors so as to enable the company to comply with the requirements for disclosure of such loans in the annual accounts. Any director who fails to comply with this section shall be liable to a fine.
- 3.20 Section 162 of the Companies Ordinance requires that any director of a company who is any way directly or indirectly, interested in a contract or proposed contract with the company shall, if his interest in such contract or proposed contract is material, declare the nature of his interest to the board. Any director who fails to disclose such a material interest in a contract is liable to a fine.

#### Offences under the Securities (Disclosure of Interests) Ordinance

- 3.21 The Securities (Disclosure of Interests) Ordinance (Cap 296 of the laws of Hong Kong) includes provision for the disclosure of interest in shares of companies listed on the Stock Exchange.
- 3.22 Individuals or corporations having an interest in 10 per cent or more of the voting shares of a listed company must notify the company and the Stock Exchange of their interest within 5 days of such interest being acquired or such interest changing (either by way of an increase or a decrease) by more than one whole percentage.

3.23 In addition, directors and chief executives of companies that are listed on the Stock Exchange must disclose all their interests in the shares of the listed company and their interests in shares of its associated corporations (as defined in the Ordinance). A range of penalties are specified in the Ordinance for failure to notify interest including fines and imprisonment.

#### Offences under the Securities Ordinance

3.24 Section 135 of the Securities Ordinance (Cap 333 of the laws of Hong Kong) provides that it is an offence for a person to intentionally create or cause to be created, or to do anything with the intention of creating, a false or misleading appearance of active trading in any securities on the Stock Exchange or a false market in respect of any securities on the Stock Exchange. For this purpose a false market is created in relation to securities when the market price of those securities is raised or depressed or pegged or stabilised by means of sales and purchases transacted by persons acting in collaboration with each other for the purpose of securing a market price that is not justified or when any act is done which has the effect of preventing or inhibiting the free negotiation of market prices for the sale or purchase of securities or when there is the employment of any fictitious transaction or device or any other form of deception or contrivance. Any person who contravenes any of the provisions of Section 135 shall be liable on conviction on indictment to a fine of HK\$50,000 and to imprisonment for 2 years.

#### Offences under the Inland Revenue Ordinance

3.25 Section 82 of the Inland Revenue Ordinance (Cap 112 of the laws of Hong Kong) provides that it is an offence for a person who, wilfully with intent to evade or to assist any other person to evade tax, omits from a tax return any sum which should be included, or makes any false statement or entry in any tax return, makes any false statement in connection with a claim for any tax deduction or allowance, or signs any statement or tax return without reasonable grounds for believing the same to be true.

3.26 The section also provides that an offence is committed when a person gives any false answer whether verbally or in writing to any question or request for information asked or made in accordance with the provisions of the Inland Revenue Ordinance, or prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records, or makes use of any fraud, art, or contrivance, whatsoever or authorises the use of any such fraud, art, or contrivance.

3.27 Any person who contravenes any of the provisions of Section 82 shall be liable on summary conviction to a fine of \$5,000 and a further fine of treble the amount of tax which has been undercharged in consequence of the offence or which would have been undercharged if the offence has not been detected, and to imprisonment for 6 months, and on indictment to a fine of \$20,000 and a further fine of treble the amount of tax so undercharged or which would have been so undercharged and to imprisonment for 3 years.

#### Offences at Common Law

3.28 In addition to the various offences under the statute outlined above, it is an offence for a person to agree with any other person or persons by dishonesty:

- (1) to deprive a person of something which is his or something to which he would or might be entitled; or
- (2) to injure some proprietary right of a person.

#### **CIVIL MISCONDUCT**

3.29 Based on my review of the information available to me during the course of the preparation of this Report, I am of the view that the main category of prospective action under this heading relates to the rights of the companies under investigation to take action against their directors for breaches of duty.



3.30 The general duties imposed upon directors reflect the fact that a director occupies a fiduciary position towards the company of which he is a director and this fiduciary relationship has given rise to the imposition of duties upon directors at common law. As companies are creatures of legal fiction, the law has established a framework in which they operate and if a director causes a company to operate outside this framework and loss results to the company, the company may have a right against the director. Areas in which such an action might arise would include circumstances in which a director has caused the company to engage in an activity which is outside the scope of its objects or which violates any provision of its Articles of Association. Similarly a director will be in breach of his duty were he to cause the company to violate any obligation imposed upon it by the law such as obligations imposed by the Companies Ordinance or cause the company to be in breach of any regulatory regime which it has chosen to operate under such as the rules of the Stock Exchange.

3.31 Apart from a duty to ensure that the company operates in accordance with the law and regulatory regime to which its business is subject, directors are subject to a number of general duties which reflect their fiduciary relationship with the company and the fact that, by being given power to control the assets of the company, they act to some extent as trustees. Accordingly the common law has imposed upon directors duties of good faith and of care, diligence and skill. The primary fiduciary duty of a director is to act in good faith in the interests of the company of which he is a director (and not the group of companies of which that company may be a member). The other general duties imposed upon directors can be seen as a direct reflection of this primary duty. These duties include:-

- (a) the duty to act for proper purposes. Directors are under a duty to exercise powers conferred upon them only for the purpose for which those powers were conferred.
- (b) the duty to avoid conflicts of interest. This duty reflects a broad principle that affects all persons that are subject to fiduciary duties.

- (c) the duty to disclose interests in contracts to which the company is or will be a party.
- (d) the duty not to misapply the companies property or to acquiesce in any such misapplication.
- (e) the duty not to make secret profits through the use of the property of the company or its corporate information.
- (f) the duty to exercise his functions with the appropriate standard of skill and care.

## **REGULATORY MATTERS**

- 3.32 As certain of the companies that are the subject of my investigation are public companies the shares of which are listed on the Stock Exchange of Hong Kong, such companies are subject to the regulatory framework established by the Rules Governing the Listing of Securities on the Stock Exchange ("the Listing Rules") and the Listing Agreement entered into pursuant thereto as well as the Hong Kong Code on Takeovers and Mergers ("the Code").
- 3.33 During the course of my investigation I have considered the following provisions of the Listing Rules and the Code (the October 1987 edition of the Code being the edition governing the transactions that I have considered).

3.34 Chapter 14 of the Listing Rules (which listed companies agree to abide by through their execution of the Listing Agreement) sets out the circumstances in which listed companies are required to disclose details of transactions, send circulars to shareholders giving information about transactions and, in the case of certain material transactions or transactions with connected persons, obtain shareholders prior consent to transactions. In addition, the Listing Rules impose upon a listed company a general obligation to keep the market informed of all price sensitive information (this obligation being set out in the Listing Agreement) and, accordingly, under this provision a transaction may require disclosure even if disclosure is not specifically required by the provisions of Chapter 14.

3.35 During the investigation I have paid particular attention to "connected" transactions. Under the Listing Rules, a "connected" transaction is:-

- (a) any transaction between a listed company or any of its subsidiaries and a connected person; and
- (b) an acquisition or realisation by a listed company or any of its subsidiaries of an interest in a company, a substantial shareholder of which is, or is proposed to be, a director, chief executive or controlling shareholder of the listed acquiring or realising company or any of its subsidiaries or an associate of such director, chief executive or controlling shareholder of the listed company or any of its subsidiaries.

3.36 For this purpose a "connected" person in relation to a company means a director, chief executive or substantial shareholder of the company or any of its subsidiaries or an associate of any of them. An associate includes in relation to an individual his spouse, children, trustees acting as the trustees of any trust in which he or his family interests is a beneficiary and any company in the equity capital of which he or his family interest together have a direct or indirect interest so as to exercise or control the exercise of 35 per cent thereof. In relation to a substantial shareholder of a company, an "associate" means any other company which is a subsidiary or holding company or is a fellow subsidiary of any such holding company or any other company in the equity capital of which it and such

other companies taken together are directly or indirectly interested so as to exercise or control the exercise of 35 per cent or more of the voting power at general meetings, or to control the composition of the majority of the board of directors. In certain circumstances the definition of "connected person" is expanded to include other family members and other persons with whom a director, chief executive or substantial shareholder has entered into an arrangement or understanding in relation to the transaction in question. Subject to certain exceptions, a "connected" transaction will generally require to be disclosed and may in certain circumstances require a circular to shareholders and an independent shareholder vote to approve the same. One of the main principles of Chapter 14 is that if there is any question as to whether or not a "connected" transaction may arise, the Stock Exchange should be consulted at the earliest opportunity.

3.37 Rule 33 of the relevant edition of the Code provides that except with the consent of the Committee on Takeovers and Mergers, where:-

- (a) any person acquires, by a series of transactions whether over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with it) carry 35 per cent or more of the voting rights of a company; or
- (b) any person who, together with persons acting in concert with it, holds not less than 35 per cent but not more than 50 per cent of the voting rights and such person, or any person acting in concert with it, acquires in any period of 12 months additional shares carrying more than 5 per cent of the voting rights, such person shall extend an offer (at not less than the highest price paid by the person making the offer for shares of the relevant class in the preceding six months) to the holders of any class of shares which carries votes which such person or persons acting in concert with it holds.

3.38 For the purposes of interpreting this mandatory offer requirement, the relevant edition of the Code contains the following definition of "acting in concert":-

*"persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively cooperate through the acquisition by any of them of securities in the company, to obtain or consolidate control (which is defined to mean a holding or aggregate holding of shares carrying 35 per cent or more of the voting rights of the company) of that company".*

- 3.39 The definition then gives the following non-exclusive example of persons who will be generally regarded as acting in concert with each other:-

*"a company, its parent, subsidiary and further subsidiaries and other associated companies, and companies of which such companies are associated companies, all with each other".*

- 3.40 In view of the fact that this example is non-exclusive, a subsequent revised edition of the Code has provided a considerably more detailed definition of "acting in concert" which is also likely to be regarded as providing other examples of "acting in concert" that would have applied under the previous edition of the Code. The amended code confirms that a company will generally be regarded as acting in concert with any of its directors (together with any close relatives, related trusts and companies controlled by any of the directors, close relatives or related trusts). For this purpose control would be deemed to exist in the event that the relevant persons hold 35 per cent or more of the voting power of the company in question.

## CHAPTER 4

### INTRODUCTION TO THE PRINCIPAL INDIVIDUALS AND COMPANIES INVOLVED IN THE INVESTIGATION

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## 4 INTRODUCTION TO PRINCIPAL COMPANIES

### TOMSON PACIFIC LIMITED

- 4.1 Tomson Pacific was incorporated with limited liability in the Cayman Islands in August 1989 under the name Tomson International Limited. It was subsequently renamed Tomson Pacific in October 1989.

4.2 Pursuant to a scheme of arrangement which became effective in November 1989, Tomson Pacific issued its shares to the shareholders of Tomson Investment Limited, a company incorporated in Hong Kong, in exchange for the entire share capital of Tomson Investment Limited. As a result of this reorganisation, Tomson Investment Limited became a wholly owned subsidiary of Tomson Pacific. Tomson Pacific was listed on the Hong Kong Stock Exchange in place of Tomson Investment Limited on 15 November 1989.

#### Principal Activities

4.3 Tomson Pacific's principal activities, as reported in its annual accounts for the 1989/1990 and 1990/1991 financial years, included property development and investment, securities trading and investment holding. Tomson Pacific's annual accounts for those years noted the Group's principal places of operation as Hong Kong and Macau. Tomson Pacific acquired a 10% interest in STDM, a company associated with Dr Stanley Ho in the 1990/1991 financial year. STDM also had joint ventures with Tomson Pacific and was a major shareholder of Tomson Pacific.

4.4 Tomson Pacific reported net assets of \$2,144,054,000, turnover of \$291,030,000 and a loss of \$144,256,000 for the year ended 31 March 1991.

4.5 Tomson Pacific's Annual Report for the year ended 31 March 1990 listed the following significant activities:

1. Disposal of 90,000,000 shares in Allied Properties (H.K.) Limited;
2. Joint venture for a Macau Hotel Development with STDM; and
3. Agreement to dispose of 230,000,000 shares in Regal Hotels International Holdings Limited.

4.6 The disposal of the Regal Hotel International Holdings Limited shares is discussed in Chapter 7.



4.7 The company's Annual Report for the year ended 31 March 1991 listed the following significant activities:

1. The Acquisition of 34.5% of WTCG;
2. Disposal of Sunny House (a commercial property);
3. Acquisition of a 10% interest in The Macau Golf and Country Club Project;
4. Acquisition and disposal of seven residential blocks in the Macau International Centre;
5. Acquisition of 50% interest in ZAPE Lot 9 in Macau; and
6. Acquisition of 50% interest in Far East Biscuit Factory.

4.8 Of the above only items 1 and 6 are discussed within my report.

#### Directors

4.9 Tomson Pacific's Annual Reports show the directors of the Company during period covered by my investigation were as follows:

NAMES	DATE OF APPOINTMENT	DATE RESIGNED
Dr Stanley Ho	13/3/90	1/4/93
Mr Peter Oei	4/3/91	2/9/91
Mr David Tong	17/8/89	*
Mr Jackson Chang	17/8/89	30/9/91
Madam Hsu Feng	2/1/90	*
Mr Sun Tao Tsun	17/8/89	*
Mr Tung Yu Jen	17/8/89	*
Mr Lee Yu Tien	17/8/89	*
Mr Daniel Lui**	30/1/90	13/10/92
Mr Ambrose So	24/7/91	*
Mr Sunny Ng Shiu Shing	17/8/89	9/5/90
Mr Ma De Ling	17/8/89	8/5/90
Mr Che Cheong Cheoi	17/8/89	30/1/90
Mr Lee Seng Chay	17/8/89	5/2/90
Mr Hsu Hung Chiu	5/12/91	*
Mr Patrick Huen	3/9/91	*

\* Director as at 31 December 1992.

\*\* Mr Daniel Lui was not a director of Tomson Pacific during the period 9/2/90 to 26/9/90.

4.10 Mr David Tong has been the Executive Chairman of Tomson Pacific, and a director since the date of incorporation.

4.11 Madam Hsu Feng (Mr David Tong's wife) and Mr Jackson Chang were also directors of Tomson Pacific during the 1989/1990 and 1990/1991 financial years. Mr Jackson Chang resigned as a director of Tomson Pacific on 30 September 1991.

4.12 Dr Stanley Ho was appointed Chairman of the Board of Directors of Tomson Pacific in March 1990.

4.13 I understand that Dr Stanley Ho resigned as a director of Tomson Pacific on 1 April 1993.

#### Shareholders

4.14 Rivera, a company listed on the Hong Kong Stock Exchange was Tomson Pacific's largest single shareholder in the 1989/1990 and 1990/1991 financial years. Rivera held a 39.9% interest in Tomson Pacific on 31 March 1990 and a 24% interest at 31 March 1991.

4.15 On 20 April 1990, at the time of the negotiations for the acquisition of an interest in WTCG, the shareholders of Tomson Pacific were:

	%
Various minority shareholders	35.9
Rivera (Holdings) Limited ("Rivera")	35.3
Sociedade De Turismo E Diversoes De Macau S.A.R.L ("STDM")	20.0
Pacific Electric Wire & Cable Company Limited ("Pacific Cable")	<u>8.8</u>
	<u>100.0%</u>

4.16 During June 1990 Tomson Pacific set out to raise approximately \$1,000,000,000 by a one for one rights issue in order to fund the acquisition of a controlling interest in WTCG. The rights issue was over-subscribed and each of the major shareholders took up shares in accordance with their existing percentages thus preserving the ownership structure that existed at April 1990.

- 4.17 Approximately 20% of the issued share capital of Tomson Pacific was placed to Mr Oei Hong Leong ("Mr Peter Oei"), a prominent Singapore businessman in February 1991.
- 4.18 In March 1991 Mr Peter Oei was appointed President and Chief Executive Officer of Tomson Pacific.
- 4.19 Mr Peter Oei's shares were purchased by STDM in August 1991 and on 2 September 1991 he resigned from the board. His involvement in Tomson Pacific is discussed in greater detail in Chapter 16.
- 4.20 As at 31 March 1992 only two shareholders held more than 10% of Tomson Pacific according to the Register of Substantial Shareholders Interests. These were Rivera (26.4%) and Pacific Cable (24.58%)

#### Auditors

- 4.21 Deloitte Touche Tohmatsu, formerly known as Deloitte Ross Tohmatsu, ("Deloittes") have been the auditors of Tomson Pacific since 1989. Mr Cheng Shee Sing, Patrick ("Mr Patrick Cheng") was the partner responsible for the audits during the period covered by my report, and Mr Siu Paul Yu Hay ("Mr Paul Siu") was the Audit Manager.
- 4.22 The audit reports covering the accounts made up to 31 March 1991 and 31 March 1992 for Tomson Pacific did not contain any qualification, and stated:

*"We have audited the financial statements . . . in accordance with Auditing Standards in Hong Kong.*

*In our opinion the financial statements give a true and fair view of the state of affairs of the Company and the Group . . . and of the loss and changes in financial position of the Group for the year then ended and have been properly prepared in accordance with the disclosure requirements of the Hong Kong Companies Ordinance. "*

**WORLD TRADE CENTRE GROUP LIMITED**  
**(formerly Bond Corporation International Limited)**

- 4.23 WTCG was incorporated as a limited company in Hong Kong in January 1973 under the name Town and City International Co Ltd ("Town and City") and its shares were listed on the Hong Kong Stock Exchange.
- 4.24 Bond Corporation Holdings Limited ("BCH"), a company incorporated in Australia acquired Town and City in November 1986 and changed its name to Bond Corporation International Limited.
- 4.25 BCH beneficially owned approximately 66% of the issued share capital of Bond Corporation International Limited until June 1990 when Tomson Pacific acquired 34.5% of the issued capital of Bond Corporation International Limited from BCH. Tomson Pacific also agreed to underwrite the placement of the remaining 31.5% of the Bond Corporation International Limited shares. Tomson Pacific's acquisition of the shares and its involvement in the placement are included in the terms of reference the Acting Financial Secretary instructed me to investigate and report on.
- 4.26 In 1991 the company changed its name from Bond Corporation International Limited to World Trade Centre Group.

## Principal Activities

- 4.27 WTCG's annual accounts at 31 March 1991 listed its principal activities as property investment and development, securities trading and brewing. WTCG's principal places of operation for the 1990/1991 year were Hong Kong and China.
- 4.28 WTCG reported net assets of \$3,627,529,000, turnover of \$398,725,000 and a loss of \$186,140,000 for the nine months ended 31 March 1991.
- 4.29 The principal activities of WTCG after the takeover by Tomson Pacific were property investment, strategic investment, brewing and securities trading.
- 4.30 The Annual Report for the nine months ended 31 March 1991 listed the following significant activities:
1. The acquisition of the remaining 50% interest in and the subsequent disposal of the entire 100% of a property in Rome, Italy;
  2. The acquisition of a 100% interest in land situated at Huangpu, Guangzhou, People's Republic of China, and the subsequent disposal of 40% of that interest (Chapter 11);
  3. The acquisition of the World Trade Centre Building in Causeway Bay, Hong Kong (Chapter 8);
  4. The acquisition of the First City Building in Central, Hong Kong;
  5. The acquisition of a building situated at 335 Nathan Road, Kowloon, Hong Kong (Chapter 14);
  6. The acquisition of the Amtel Building in Central, Hong Kong;
  7. The acquisition and disposal of an 18% interest in Chung Wah Shipbuilding & Engineering (Holdings) Company Limited;
  8. The acquisition of an indirect 10% interest in the Macau Horse Racing Company Limited; and
  9. The acquisition of an interest in a Portuguese Construction Company.

4.31 Of these transactions, items 2, 3 and 5 are discussed in this report.

4.32 In the company's Annual Report to the year ended 31 March 1992 a major investment was shown as being the acquisition of a 9.9% interest in Charoong Thai Wire and Cable Company Limited. This is discussed in Chapter 17 of this report.

#### Directors

4.33 The directors of the company during the period covered by my investigation were as follows:

Name	Date Appointed	Date Resigned
Mr Alan Bond	**	15/8/90
Mr Peter Lucas	**	15/8/90
Mr D.R. Aspinall	**	27/4/90
Mr P.G. Beckwith	**	19/6/90
Mr G.A. Blott	**	15/8/90
Mr D.S. Davies	**	15/8/90
Mr J.V. McGuigan	**	15/8/90
Mr P.A. Mitchell	**	15/8/90
Mr R.C. Stevenson	1/2/90	24/7/90
Mr Jackson Chang	28/6/90	30/9/91
Dr Stanley Ho	28/6/90	1/4/93
Madam Hsu Feng	28/6/90	*
Mr Sun Tao Tsun	28/6/90	*
Mr David Tong	28/6/90	*
Mr Mico Chung	28/8/90	31/12/91
Mr Tsai Chen Nan	6/12/90	5/12/91
Mr Peter Oei	4/3/91	2/9/91
Mr Tung Yu Jeh	5/12/91	*

Mr Hu Hung Chiu	5/12/91	*
Mr Ambrose So	24/7/91	*
Mr Patrick Huen	3/9/91	*
Madam Sukmawati Widjaja	3/6/91	2/9/91

\* Director as at 31 December 1992

\*\* Director appointed prior to 1 January 1990

4.34 Messrs Jackson Chang, David Tong and Sun Tao Sun, Madam Hsu Feng and Dr Stanley Ho were appointed directors of WTCG in June 1990 following Tomson Pacific's acquisition of the WTCG shares.

4.35 I understand that Dr Stanley Ho resigned as a director of WTCG on 1 April 1993.

#### Change of Ownership of WTCG

4.36 During the course of my enquiries into WTCG, Tomson Pacific entered into negotiations to dispose of its 34.5% interest in WTCG.

4.37 Pursuant to an agreement dated 2 June 1993 which was completed on 18 November 1993, Rovtec Investments Limited, ("Rovtec"), a wholly owned subsidiary of Top Spring Development Limited acquired control of WTCG. On 18 November 1993, all the then directors of WTCG resigned and were replaced by directors nominated by Rovtec.

4.38 WTCG have advised that these new directors were not involved in the affairs of WTCG prior to 2 June 1993.

#### Change of company name

4.39 On 21 January 1994, the shareholders of WTCG passed a special resolution at an extraordinary general meeting to change WTCG's name to Top Glory International Holdings Limited.



## Auditors

- 4.40 Deloitte were appointed auditors of WTCCG at the 1990 Annual General Meeting of that company and audited the accounts of WTCCG for the nine months ended 31 March 1991 and the twelve months ended 31 March 1992. Mr Patrick Cheng was the partner responsible for the audits during the period covered by my report and Mr Paul Siu was the Audit Manager.
- 4.41 The audit reports covering the accounts made up to 31 March 1991 and 31 March 1992 for WTCCG did not contain any qualifications, and stated:

*"We have audited the financial statements . . . in accordance with Auditing Standards.*

*In our opinion the financial statements give a true and fair view of the state of affairs of the Company and the Group . . . and of the profit [or loss] and changes in financial position of the Group for the year then ended and have been properly prepared in accordance with the Companies Ordinance."*

## **RIVERA (HOLDINGS) LIMITED**

- 4.42 Rivera (Holdings) Limited ("Rivera") was incorporated in Hong Kong on 4 May 1964. It is listed on the Hong Kong Stock Exchange.
- 4.43 According to its annual report the company's principal activity is investment holding. Its subsidiaries are engaged in property investment and development, securities trading and investment holding.

## Directors

4.44 The directors of the company during the period covered by my investigation were as follows:

Name	Date Appointed	Date Resigned
Mr Ming Xiao Guang	**	*
Mr David Tong	1/4/89	*
Mr Jackson Chang	**	30/9/91
Madam Hsu Feng	2/1/90	*
Mr Daniel Lui	30/1/90	9/2/90
Mr Che Cheong Cheoi	**	30/1/90
Mr Zhuo Hua Ming	**	24/10/91
Mr Li Ju Sheng	**	12/10/90
Mr Mi Guo Jun	**	12/10/90
Mr Hsu Sun	1/10/91	*
Mr Danny Koo	1/10/91	*

\* Director as at 31 December 1992

\*\* Director appointed prior to 1 April 1989

### Major Assets

- 4.45 The company's major asset is its shareholding in Tomson Pacific. The audited accounts of Rivera for the year ended 31 March 1992 show that 24.6 per cent of Tomson Pacific's shares were held indirectly by Rivera, and that the financial results of Rivera were directly affected by the performance of Tomson Pacific.

### Shareholders

- 4.46 In May of 1990 (just prior to Tomson Pacific's acquisition of an interest in WTCG) Peace Forest was Rivera's largest single shareholder. According to Mr David Tong it held 31.36% of the issued capital of Rivera. Mr David Tong himself held 8.36% directly in Rivera.

- 4.47 In May 1990 the shareholders of Peace Forest were :

Mr Ming Xiao Guang	24.2%
Mr Zhou Hua Ming	1%
Mr Jackson Chang	26.5%
Mr David Tong	<u>48.3%</u>
	<u>100%</u>

- 4.48 I understand Mr David Tong has subsequently increased his holding in Peace Forest and increased his direct holding in Rivera.
- 4.49 Deloitte have been auditors of Rivera for sometime. During the period covered by my report, Mr Patrick Cheng was the partner responsible for the audits, and Mr Paul Siu was the Audit Manager.

### Investigation into the affairs of Rivera

- 4.50 My appointments to investigate the affairs of companies did not specifically include the affairs of Rivera. However, it became obvious that there were some transactions which were the subject of my inquiry, required me to consider Rivera and the way it reflected those transactions in its accounts.
- 4.51 At the commencement of my enquiry I was given access to some of Rivera's records by the staff of that company.
- 4.52 However, in mid 1993, my enquiries into Rivera were becoming more specific and were touching upon issues sensitive to the interests of the directors of Rivera. In particular I sought to clarify the nature of various loans between Tomson Pacific, Martra Inc, Cortney Enterprises Limited, Mr David Tong and Rivera as I was concerned there may have been impropriety involved.
- 4.53 On 1 November 1993 I wrote to the solicitors for Rivera, setting out that I believed I was empowered to investigate the affairs of Rivera by virtue of Section 144(d) of the Companies Ordinance which provides that I shall have power to investigate the affairs of any body corporate "*substantially under the control of the same person as*" a company I have been appointed to investigate. I argued that Tomson Pacific, in 1990, was substantially under the control of Mr David Tong and Mr Jackson Chang, as was Rivera.
- 4.54 Rivera disagreed saying that upon Counsel's advise, Section 144(d) was not applicable.
- 4.55 In the interests of completing this investigation as expeditiously as possible and in particular given the long delays already encountered in finalising this enquiry I elected not to pursue this issue which would have entailed taking time consuming and costly legal proceedings.

4.56 I remain concerned that within Rivera there are matters that require investigation by the relevant authorities and I recommend action is taken to pursue these matters to ensure that the minority shareholders of Rivera can be satisfied that its directors were, in fact, acting in the best interests of that company.

#### **SHUN TAK HOLDINGS LIMITED**

4.57 Shun Tak Holdings Limited ("Shun Tak") was incorporated in Hong Kong in 1972. It is listed on the Hong Kong Stock Exchange.

4.58 The activities of Shun Tak include shipping, investments in property and restaurants, air transportation and the operation of hotels.

#### Directors

4.59 The directors of Shun Tak for the period from 1 January 1990 to 31 March 1992 were:

Dr Stanley Ho (Executive Chairman)	Mr Patrick Huen
Mr Cheng Yu Tung	Mr Andrew Tse
Madam Winnie Ho	Mr Anthony Chan
Mr Tsoi Yuen Lam	Mr David Hill
Mr Ambrose So	Mr Teddy Yip

4.60 Shun Tak's Annual Reports note that Dr Stanley Ho, Mr Cheng Yu Tung, Mr Tsoi Yuen Lam and Madam Winnie Ho were all directors of Sociedade de Turismo e Diversoes de Macau, S.A.R.L ("STDM"), the franchise holder for all gambling in Macau. STDM had a very close relationship with Shun Tak and had frequent large commercial transactions with them. I understand that Dr Stanley Ho is the Managing Director of STDM.

- 4.61 In early 1990, the Chairman of Rivera, Mr Ming Xiao Guang, introduced Mr David Tong to Dr Stanley Ho, and during March 1990, Tomson Pacific and STD M entered into a joint venture to develop a hotel, casino and commercial complex in Macau, with a development cost of \$269,448,000. The 50% capital contribution to the joint venture by Tomson Pacific was satisfied by its allotment to STD M of 250,000,000 of its own shares at an allotment price of \$0.71 cents and cash of \$91,948,000.
- 4.62 Dr Stanley Ho was appointed a director of Tomson Pacific on 13 March 1990 and resigned on 1 April 1993.
- 4.63 Mr Ambrose So and Mr Patrick Huen were appointed directors of Tomson Pacific and WTCG on 24 July 1991 and 3 September 1991 respectively.
- 4.64 Directors and employees of Shun Tak were involved with 3 of the places in the placement of 31.5% of WTCG (Chapters 5 and 6) and in the New York property transaction (Chapter 15).

## **INTRODUCTION TO PRINCIPAL INDIVIDUALS**

### **MR DAVID TONG**

- 4.65 Mr David Tong returned to Hong Kong from Taiwan in 1988. I understand that he had already been successful in Taiwan; his company, Tomson Development Corporation being one of the biggest construction and development companies in Taiwan. He had also amassed considerable wealth through share trading and property development on his own account. He had formed the view that the Hong Kong economy would be "*bullish*" for some time and had elected to invest more heavily here. It was for this and other reasons that he returned to Hong Kong.

- 4.66 Also at this time, Mr David Tong's Taiwanese wife, Madam Hsu Feng, purchased the Belgian Bank Building in Nathan Road from Rivera (Holdings) Limited ("Rivera"). Mr Chang Jen Chiang ("Mr Jackson Chang"), a major shareholder of Rivera, then asked Mr David Tong to join him in making investments in Hong Kong.
- 4.67 Mr David Tong acquired an interest in Sun's Finance Company Limited in November 1988, that company having been listed on the Stock Exchange six years earlier. The company's name was changed to Tomson Investment Limited ("Tomson Investment").
- 4.68 In September 1989 Tomson Investment moved its domicile to the Cayman Islands where a new holding company called Tomson Pacific was formed. On 15 November 1989 trading in the shares of Tomson Pacific commenced on the Stock Exchange and trading in the shares of Tomson Investment ceased.
- 4.69 The major shareholder in Tomson Pacific, in 1990, was Rivera. Rivera was in turn controlled by Peace Forest, a company which was controlled by Mr David Tong and Mr Jackson Chang.

#### Directorships

- 4.70 Mr David Tong was appointed a director of Rivera on 1 April 1989.
- 4.71 Mr David Tong was appointed Executive Chairman of Tomson Pacific on 17 August 1989.
- 4.72 On 28 June 1990, Tomson Pacific completed the purchase of 34.5% of the issued share capital of WTCG. Also on this date Mr David Tong was appointed to the board of WTCG together with Dr Stanley Ho, Mr Jackson Chang, Mr Sun Tao Tsun and Madam Hsu Feng.

Mr David Tong's relationship with Dr Stanley Ho

- 4.73 As stated earlier, Mr Ming Xiao Guang introduced Mr David Tong to Dr Stanley Ho in early 1990. In March 1990, Dr Stanley Ho became involved in Tomson Pacific with STDM's investment into that company.
- 4.74 Following the acquisition of the Tomson Pacific shares by STDM, Dr Stanley Ho was appointed a Director and the Chairman of Tomson Pacific on 17 March 1990 and joined the board of WTCCG concurrently with Mr David Tong on 28 June 1990. According to Mr David Tong however, it was Mr Jackson Chang who dealt on a regular basis with Dr Stanley Ho and STDM as he was infrequently in Hong Kong due to illness and business interests in Taiwan.
- 4.75 Dr Stanley Ho stated that he was told by Mr Ming Xiao Guang that Mr David Tong *"has got a lot of money and he likes to invest in Macau and [Mr Ming Xiao Guang asked] will you give him some opportunities so that he can have some joint ventures with you?"*
- 4.76 Dr Stanley Ho said:

*"So I was quite open, I am in the casino business, I always encourage people investing in Macau, so I got to know Mr David Tong and I said, 'Yes Mr Tong, very good, if you like to invest in Macau you are most welcome, so if I come across some projects you would be interested in then let me know. '*



*So then after the meeting, two days later he [Mr David Tong] wrote me a letter - I still have the letter - he said, 'Mr Ho, I have always read a lot about you in the papers, I am very impressed and I would like to join you; I have idle cash of about one billion Hong Kong Dollars, will you give me an opportunity?' So I think, OK, why not? Then I think he then told me that he was the top man of Tomson Pacific, then I think Ambrose So and Patrick Huen started the first deal with him in a piece of property STDM have in the Outer Harbour. "*

4.77 Dr Stanley Ho was important to Mr David Tong as Dr Stanley Ho had far greater business contacts and an established business reputation in Hong Kong. For example, in relation to Mr David Tong's desire to acquire WTCG, Dr Stanley Ho stated:

*"So he said, 'Well, again Dr Ho, if I succeed I will get a lot of cash out of this World Trade and maybe you can put in a good word for me with The Hongkong & Shanghai Bank,' which I did. I said, 'Well, I think these people really have money and if they are interested to come and invest in Hong Kong and Macau, why not give them a chance?' "*

4.78 Also in relation to the acquisition of WTCG Dr Stanley Ho stated:

*"I put in a good word [with Hongkong Bank] and then finally he [Mr David Tong] got it. So I thought, well maybe he would really channel this two billion to Macau and we will be able to do more business. Then I think he also invited me to be the Chairman also, you know: 'You have such a strong name, please if you are the Chairman we will be in a better position,' [Mr David Tong said] something like that. "*

4.79 Mr David Tong explained that his introduction to Dr Stanley Ho took place as follows:

*"I came to know Dr Ho through Mr Jackson Chang and also through another partner of Rivera, known as Macau China Construction Company. I decided to cooperate with Dr Ho because Dr Ho had gone to Taiwan to study my business and he hoped that I could, he wanted me to invest in properties in Macau. So my cooperation with Dr Ho began with the development of a piece of land opposite the Oriental Hotel in Macau.*

*. . . it was Mr Jackson Chang who proposed that we should issue some new shares to pay for that piece of land in Macau. After Dr Ho had obtained those shares, we invited him to become our Honorary Chairman. "*

#### Mr David Tong's role during 1990/1991

4.80 At the time of Mr David Tong's first interviews in February 1993, I was sent a medical report by his psychiatrist, Dr Irene Yue-Kit Kwok. The report stated that Mr David Tong had been diagnosed in September 1989 as suffering from an *"Affective Disorder"*.

4.81 I understand from Dr Kwok's advice that this disorder manifested itself in depression, lack of energy, sleep and motivation, being socially withdrawn and constantly tired. This medical opinion was put to me as setting out evidence of Mr David Tong's unfitness to attend and give evidence. I have no reason to doubt Dr Kwok's opinion although I have heard evidence of Mr David Tong's active involvement in business affairs in 1993. This appears inconsistent with many of the symptoms listed in Dr Kwok's advice. However, Mr David Tong did make himself available to be interviewed, inspite of the advice of Dr Kwok.

4.82 At his first examination in February 1993, Mr David Tong's Senior Counsel explained Mr David Tong's involvement in 1990:

*"Mr Tong was under severe medication. He was not in Hong Kong very much, about a week in every month. His main business interests being in Taiwan. And as he will tell you, Sir, if you will ask him on this subject, he was not aware of the details of what was being done in relation to many of these companies.*

*So far as the public companies were concerned that was mainly left to the Managing Director, a Mr Jackson Chang, and the General Manager, Mr Michael [Mico] Chung. Mr Chang was relieved of his post in March of last year but in the period prior to that, details were carried out by Mr Jackson Chang and this is not going to be a question of selected amnesia that often arises in these investigations, Mr Tong simply does not recall the details and indeed, my instructing solicitor and I have been unable to ascertain some of the details from Mr Tong."*

4.83 During those interviews in February 1993, he was cooperative although at times appeared to be confused. Numerous matters arose from those interviews which were relevant to the continuation of my investigation. When requested to produce further material to support the evidence given I encountered excessive delays of up to 8 weeks before I received the information requested. In addition, I had considerable difficulty making arrangements for Mr David Tong's second round of interviews in May 1993. Due to a myriad of reasons given through his solicitors including business trips, unavailability of Senior Counsel and illness, he did not attend for further interview until 11 August 1993. These delays inevitably hindered the progress of my investigation.

4.84 I found throughout Mr David Tong's interviews that he consistently sought to attribute the blame for most of the matters under review to Mr Jackson Chang. In addition, at the beginning of his August 1993 interview, Mr David Tong provided me with a note (set out in Appendix 6) in which he professes ignorance of the matters investigated by me and seeks to accuse Mr Jackson Chang. In part he stated:

*"I have repeated many times that before April 1992, most of the time I were in Taiwan (my passport can verify this). All Hong Kong business was under the responsibilities of the Managing Director of that period, Jackson Chang. The only mistake I committed was that I had over-confidence in Jackson Chang, and he took advantage of this and committed dishonesty to the Company. I did not know all these until they were disclosed in the investigation. When I suspected his dishonesty and retrieved back my authority and control over the Company, it was already April 1992, and both Chang and his wife had disappeared once the investigation is started."*

4.85 I accept the fact that he may not have been present during all meetings and negotiations but I have difficulty accepting that he did not question Mr Jackson Chang's conduct which he admits to having been *"wrong"*.

4.86 From the evidence provided by Mr David Tong I believe that he was made aware of most transactions by Mr Jackson Chang and in fact endorsed them without questioning their probity.

4.87 Although, Mr David Tong has told me that Mr Jackson Chang did inform him and Dr Stanley Ho of important matters. Mr David Tong added:

*"Subsequently he [Mr Jackson Chang] would only ask Dr Ho and myself to sign or endorse, say, major important decisions or actions being taken by him because I was very often out of Hong Kong."*

### Mr David Tong's fitness to be a company director

- 4.88 Mr David Tong claims to have severe health problems. Problems which according to the opinion received affect his mental capacity, temperament and ability to cope with pressure situations. I am not qualified to comment on the medical effects of his alleged condition although it appears to me that if he was, as he claims, so seriously debilitated during 1990 and beyond, then I would question his fitness to remain a director of publicly listed companies at the time.

### Mr David Tong's submission

- 4.89 The following extracts are from a submission made to me by solicitors for Mr David Tong on his behalf:

*"We are very conscious of some of the difficulties that you have had to face in this investigation, particularly the disappearance of Mr Jackson Chang, who has undoubtedly played a key role in the transactions which you have been appointed to investigate. It is also a particular disadvantage to Mr Tong that Mr Jackson Chang should have disappeared, as that gentleman could have satisfied you as to Mr Tong's non-participation in the detail of the various transactions, albeit that he may have known of some of them in outline. Unlike Mr Jackson Chang, Mr Tong has remained in Hong Kong and since the former's departure from Tomson Pacific and WTCG, together with Mr Mico Chung, to join Mr Peter Oei, Mr Tong has been working tirelessly in the interests of Tomson Pacific and WTCG, despite the advice of his Doctors to slow down, in an attempt to improve the results of Tomson Pacific and WTCG. As a result of Mr Tong's efforts, particularly in the PRC, the performance of the group/companies has significantly improved to the very great advantage of all shareholders. The directors of Tomson Pacific recently announced that its forecast consolidated profits for the year ending 31 March 1994 would not be less than \$660 million compared to a*

*consolidated loss of \$188 million for the year ended 31 March 1993. We submit that in fairness to Mr Tong this should be specifically referred to in your report.*

*Mr Tong has sought to co-operate with you and he has apologised for any delay caused by his being unavailable for interviews, the reasons for which have been explained in our previous letters. We are also aware that Mr Tong's evidence was sometimes confused, as you yourself have found, but this was not due to any deliberate intention on his part to mislead you. It must have been very apparent to you, particularly towards the end of your interviews, that Mr Tong tired very quickly and became confused, particularly as to what may or may not have taken place at specific meetings or when presented with complicated transactions and complex documents which he had not seen before.*

*. . . Mr Tong in fact told the board of Tomson Pacific in November 1993 that he wished to resign as managing director primarily due to reasons of bad health. He was also concerned that your investigation and the publicity attendant on it might be perceived as reflecting adversely on the conduct of the group's business. As managing director, therefore, he considered it his duty to offer his resignation to the board. The board, however, was unwilling to accept his resignation and requested him to remain in office, which with some reluctance he agreed to do.*

*. . . Mr Tong, albeit in bad health, has spear-headed the improvement in the group's performance and financial recovery. The success of the group's recent developments in the PRC have been largely due to his high profile in the PRC and his contacts with influential officials in the planning departments in the various places that the group has its interests. . .*

*From the early 1970s to 1988 Mr Tong built up one of the biggest and most successful property investment and development businesses in Taiwan and also one of the biggest furnishing fabric suppliers in Taiwan: he had also amassed considerable wealth through share investment and property development on his own account. Late in 1988 he decided to invest more heavily in Hong Kong. It was then that he met Mr Jackson Chang, a major shareholder and director in Rivera. Mr Tong, who was unknown and inexperienced in Hong Kong financial circles, was very impressed by Mr Jackson Chang, who appeared to him to be a very successful and well connected businessman with a financial flair for spotting investment opportunities. Mr Tong's main interests remained in Taiwan and, with hindsight, we suspect that Mr Jackson Chang realized that if he could persuade Mr Tong to join him in his enterprises, he would obtain substantial financial backing from and through Mr Tong and his influential and wealthy Taiwanese connections and that, at the same time, it was unlikely that Mr Tong would interfere with the day to day management of any business in Hong Kong. This, indeed, turned out to be the case until Mr Jackson Chang left the group to join Mr Peter Oei in late 1991, after which Mr Tong took on overall control of the group and became far more involved in its management.*

*Mr Tong was completely taken in and joined Mr Jackson Chang who introduced him to, amongst others Dr Ho, by whom Mr Tong was also impressed as he knew of his reputation in Hong Kong and Macau. After Dr Ho was introduced to Mr Tong he (Dr Ho) visited Taiwan and was very impressed when he saw the projects undertaken by Tomson Development Corporation, a Taiwanese Company in which Mr Tong is a majority shareholder. In early 1990, by which time Tomson Pacific was established in Hong Kong, Mr Jackson Chang persuaded Dr Ho through STDM to invest in Tomson Pacific. In January 1990 STDM subscribed for a 20 per cent share in Tomson Pacific and Dr Ho became its director and chairman. Mr Tong was also impressed by Mr Mico Chung, Mr Jackson Chang's assistant,*

*and felt that he could rely on both of them completely to implement any transactions without any impropriety. In this it seems that he was sadly mistaken.*

*As you are aware Mr Tong's English is not good and he was not in the habit of reading board minutes or documents if they were in English, as this would involve either a secretary or other executive translating them for him. He simply relied on Mr Jackson Chang to summarise to him what was contained in any minute or document he was asked to sign. More usually he would simply accept that what had taken place had (if minuted at all as formal meetings were relatively few) been correctly minuted. Mr Jackson Chang and Mr Mico Chung were in the habit of asking Mr Tong to sign documents or minutes just as he was leaving Hong Kong, usually to return to Taiwan, and he rarely questioned what he was signing, given his misplaced trust in both of them. As a result Mr Tong may have unwittingly signed many documents or minutes, which might cause you to be critical of Mr Tong's conduct, but which, if seen in the context in which they were signed, could be explained to your satisfaction. Once again Mr Tong is prejudiced by not being able to cross-examine witnesses or to have discovery of documents, so that we would urge you to exercise very great caution before relying to criticize Mr Tong on anything that may be contained in minutes or documents of which Mr Tong has little or no recollection.*

*In many instances you are critical of Mr Tong suggesting that he may have been a party to conspiracies to defraud or have acted prejudicially to the interests of the shareholders of Tomson Pacific and/or WTCG. Mr Tong vehemently denies such suggestions and one must ask as to whom he might have been conspiring to defraud. Presumably those self same shareholders whose interest his "actions" may have prejudicially affected. With respect, such suggestions do not stand up. Why, we ask rhetorically, would Mr Tong - or for that matter Mr Sun - both of whom were directly or indirectly major*



*shareholders in Tomson Pacific and WTCCG, seek to defraud or act to the prejudice of themselves as major shareholders? One can see why Mr Jackson Chang, who has conveniently fled the jurisdiction, or certain others without substantial shareholdings might appear to have defrauded or acted otherwise than in the interests of the shareholders as a whole, but we respectfully submit that this simply does not apply to Mr Tong - or Mr Sun. . . .*

*We would also ask you to bear in mind that, unlike Mr Jackson Chang, neither Mr Tong nor Madam Hsu Jye has sought to flee the jurisdiction. This is because they do not consider they have done anything wrong. If they felt they were in some way guilty of offences in Hong Kong, they could easily have returned to a very comfortable existence in Taiwan, where the major part of their wealth is situated. Instead, they have chosen to remain part of the time in Hong Kong, and Mr Tong, with some assistance from Madam Hsu Jye, has dedicated himself to repairing the damage done to Tomson Pacific and WTCCG and their respective shareholders as a result of the Financial Secretary's instigation of your investigation despite his Doctor's pleas to slow down. Whilst he accepts that he may be open to criticism with the benefit of hindsight for his somewhat naive and misplaced trust in Mr Jackson Chang, we submit that in fairness to Mr Tong your report should reflect his remaining in Hong Kong and give credit to his significant input to the present success of both Tomson Pacific and WTCCG. "*

- 4.90 These points have been argued very eloquently but do not explain why Mr David Tong's sister-in-law, Madam Hsu Jye, who has played a pivotal role in most of the transactions, and who would appear to be dependant on Mr David Tong for her place in the company, has not been forthcoming with evidence to explain these transactions, but instead adopting a defensive role, not disclosing facts to me which are clearly within her knowledge, and making untruthful and misleading statements to me.

## **MR JACKSON CHANG**

- 4.91 Mr Jackson Chang was appointed a director of Tomson Pacific on the same day as Mr David Tong, 17 August 1989 and following the acquisition of 34.5% of WTTCG by Tomson Pacific on 28 June 1990, he was appointed a director of WTTCG. He resigned from both appointments on 30 September 1991.
- 4.92 Mr Jackson Chang was appointed a director of Rivera prior to June 1989 and also resigned from that appointment on 30 September 1991.
- 4.93 I understand that a few days after my appointment as Inspector on 28 August 1992, Mr Jackson Chang and his wife, Madam Wang Shu Shi, left Hong Kong.
- 4.94 On 11 March 1993 I obtained a search warrant to inspect the offices of First South Ocean (Holdings) Limited, Mr Jackson Chang's company, and his residence in Hong Kong for documentation. His nephew, Mr Wong Wai, a former employee of Tomson Pacific, was the Manager of the offices. Mr Wong Wai told me that he had not seen Mr Jackson Chang since August 1992.
- 4.95 I subsequently received information that Mr Jackson Chang had purchased a residential property on the Gold Coast, Queensland, Australia, on 24 May 1993. I have telephoned this residence on numerous occasions and been told that Mr Jackson Chang does not live there. All written correspondence has been returned to me marked "left address". I also understand that Mr Jackson Chang acquired two motor vehicles in Australia which are registered in his name and that of his wife.
- 4.96 I have been unable to obtain any evidence from Mr Jackson Chang about his involvement or the role of others in the transactions and companies under investigation.

4.97 I was advised by Mr Wong Wai in August 1993 that, on the instructions of Mr Jackson Chang's brother, Mr Wong Shu Hoi, he sold Mr Jackson Chang's residence in Hong Kong. The proceeds of the sale were transferred to Singapore. I have endeavoured to contact Mr Wong Shu Hoi who I understand resides in Washington DC, USA, however all correspondence has been returned to me. I believe that Mr Wong Shu Hoi is Mr Jackson Chang's brother in law.

4.98 I understand that all furniture from the residence was shipped to Australia.

4.99 I was told by Mr Jackson Chang's sister, Madam Chan Siu Ling, in November 1993 that she met Mr Jackson Chang in China during October 1993 whilst he was conducting business there although she has claimed to have not had any contact with him since that time.

Mr David Tong's view of Mr Jackson Chang's role

4.100 According to Mr David Tong, as he spent so little time in Hong Kong he left the day to day operations of the WTCG to Mr Jackson Chang. He told me:

*"Since I trusted him [Mr Jackson Chang] very much so I would simply contribute the money whenever he asked me to make investments."*

4.101 Mr David Tong told me that Mr Jackson Chang conducted all share trading on behalf of WTCG and Tomson Pacific. In this regard I believe that Mr Jackson Chang had considerable influence over the activities of Madam Hsu Jye (Mr David Tong's sister-in-law) and Mr Hsu Sun (Mr David Tong's brother-in-law). Both Madam Hsu Jye and Mr Hsu Sun conducted extensive sharetrading in WTCG, Tomson Pacific and Rivera shares through companies under their control, particularly Martra Inc, Grand Ocean Corporation and South View Properties Limited.

4.102 Mr Jackson Chang also appears to have had a very close relationship with Mr David Chiu, the Managing Director of Far East Consortium and director of Far East Holdings Limited. Mr David Chiu recalled having been introduced to Mr Jackson Chang by Mr Eddie Lo Man Pung ("Mr Eddie Lo"). In Chapter 13 of this report I analyse the involvement of Mr David Chiu and the companies with which he and his family are associated in transactions with WTCG and Tomson Pacific.

Mr Jackson Chang's failure to give evidence

4.103 Without Mr Jackson Chang's version of the events examined by me it is very difficult to assess his direct involvement in the transactions. It is evident, however, from documentation sighted that from an executory point of view his authorisation was required in respect of many of the key aspects of transactions that I have reviewed.

4.104 Persons independent of Tomson Pacific and WTCG's directors have given me the impression that during 1990 Mr David Tong and Mr Jackson Chang set policy whilst Mr Jackson Chang handled the detail and the execution of that policy, reporting back to Mr David Tong and, to some extent, Dr Stanley Ho.

4.105 I cannot accept that given my extensive attempts to locate and contact Mr Jackson Chang he is not well aware of my desire to speak with him. I therefore conclude that his absence is deliberate and that he is in hiding.

**DR STANLEY HO**

4.106 Dr Stanley Ho Hung Sun ("Dr Stanley Ho") is the Group Executive Chairman of Shun Tak Holdings Limited ("Shun Tak"); Managing Director of STD M, President of the Real Estate Developers Association of Hong Kong, Chairman of Semi-Tech Group, Air Hong Kong Limited and Aberdeen Restaurant Enterprises Limited and a director of Grande International Holdings limited.

- 4.107 Dr Stanley Ho is one of Hong Kong's better known businessmen. He has been central to the development of Macau and the transport links between it and Hong Kong. He has investments in many parts of the world. Two of his most notable investments are holdings in STDM, the holder of the licence to operate casinos and other gaming in Macau, and in Shun Tak, the operator of the jet foil service to Macau and a Hong Kong property developer.
- 4.108 Following Tomson Pacific's acquisition of a 50% interest in a joint venture development in Macau with STDM and the resulting acquisition by STDM of 250,000,000 Tomson Pacific shares, Dr Stanley Ho was appointed a director of Tomson Pacific on 13 March 1990. He was also appointed a director and Chairman of WTCG on 28 June 1990.
- 4.109 Dr Stanley Ho attended interviews on 22 February 1993 and 28 September 1993. During those interviews although forthright, he was unable to recall details of the transactions in which he had clearly played a role namely:
1. The acquisition of WTCG by Tomson Pacific (Chapter 5);
  2. The sale of the placement shares by three of the placees (Chapter 6);
  3. The acquisition of 3 units in the Mandarin Plaza, New York (Chapter 15);
  4. Mr Peter Oei's special audit request (Chapter 16); and
  5. Various loans made by STDM to Mr David Tong or to companies under his control (Chapter 20).
- 4.110 Dr Stanley Ho endeavoured throughout his interviews to distance himself from Mr David Tong and Mr Jackson Chang insisting that he was a non-executive director of both Tomson Pacific and WTCG. In so doing he told me that his two right hand men, Mr Huen Wing Ming ("Mr Patrick Huen") and Mr So Shui Fai ("Mr Ambrose So"), were principally involved in discussing and arranging the details of transactions with WTCG as he was too busy.

4.111 I asked Mr David Tong to explain Dr Stanley Ho's role as non-executive chairman in relation to WTCG and in particular whether Dr Stanley Ho attended board meetings. Mr David Tong stated:

*"I normally would go to his [Dr Stanley Ho's] office to inform him of all the important matters, so it was either myself or Jackson Chang who'd go to Dr Ho's office to brief him on all the important matters affecting the company.*

*At that time Jackson Chang was the Managing Director. The situation varies from time to time because the system within our company is quite chaotic in my opinion. Initially whenever there were any important matters, then Jackson Chang would inform both myself and Dr Ho. Subsequently he would only ask Dr Ho and myself to sign or endorse say major important decisions or actions being taken by him because I was very often out of Hong Kong."*

4.112 I accept that Dr Stanley Ho is likely to have delegated much of the detail of such matters. However, I have little doubt that a person in Dr Stanley Ho's position would also be aware of the significant terms of these transactions, the general principals behind these and, would have exercised considerable influence over the transactions.

4.113 Further, when my inquiry touched on matters relating to the involvement of STDM and in particular requests made by me for relevant information and documentation I was advised by Shun Tak's solicitor that:

*"I have been informed by my clients that a formal request has been made to STDM for the provision of the internal documents of STDM requested by you. I am instructed, however, that this request was considered at a meeting of the Board of Directors of STDM at which Dr Ho attended but did not vote in view of the fact that he had a personal interest in the subject matter of the debate. I am further instructed that the Board of STDM resolved unanimously that it would be contrary to its existing policy to provide copies of its internal documents to the regulatory authorities of foreign companies . . ."*

4.114 Subsequently, after putting my objections to Dr Stanley Ho, Mr Ambrose So and Mr Patrick Huen, those three acceded to my request and agreed to answer questions about STDM's role in various transactions.

4.115 However, in a submission to me by solicitors representing Dr Stanley Ho, Mr Ambrose So and Mr Patrick Huen I was informed that as Inspector I did not have any power to pursue this information. In part the submission stated:

*"STDM is a Macau company, incorporated in that jurisdiction. It does not have a place of business in Hong Kong and has never had the same.*

*Sections 143 to 149 and Section 150 of the Ordinance apply to companies registered under the Ordinance. However, in addition the Inspector is given an extended jurisdiction over "bodies corporate incorporated outside Hong Kong which have a place of business in Hong Kong or have at any time had a place of business therein" (see Section 146A). This section defines exhaustively the jurisdiction of the Inspector. Accordingly an Inspector has no jurisdiction over foreign companies which do not fall within Section 146A.*

*It follows that the Inspector has no power to require persons to divulge information concerning a foreign company which does not fall within Section 146A and to attempt to do so would constitute an attempted invasion of the jurisdiction of the relevant foreign country and would be an excess of jurisdiction on the part of the Inspector.*

*The above propositions are elementary and obvious and do not require support from case law but a similar situation arose in R. v. Grossman 73 Cr. App. R.302.*

*It follows that the Inspector does not have the power to require STDM to deliver up documents in Hong Kong which belong to the company.*

*A director of STDM owes fiduciary duties to the company. Unless the company expressly agrees, he would be in breach of those duties if he delivered up to a court or authority in another jurisdiction documents belonging to the company or divulged confidential information relating to the company's business affairs. Any attempt by a court or authority in Hong Kong to obtain documents or information in this way would be rightly perceived as an unlawful intrusion into the jurisdiction of Macau.*

*Furthermore, in this regard, Dr Ho has received advice on Macanese law to the effect that should he answer these questions he will be exposing himself to civil liability in Macau and, possibly, criminal liability.*

*Any criticism for not supplying information concerning a foreign company which does not fall within Section 146A is misconceived and wrong in law.*



*Although it is fair to say that our clients did indicate that they would answer the Inspector's enquiries relating to the affairs of STDM, having received the advice that the questions are outside the Inspector's jurisdiction and, moreover, that answering them may infringe Macanese law, they do not feel able to respond."*

4.116 As this submission was only received on 21 March 1994 and I have been concerned to limit delay of the completion of this report any longer, I have not sought to challenge this submission. It is my view that the point is arguable.

4.117 I also note that STDM letterhead from 1988 shows a Hong Kong Correspondence Office at the Penthouse, 39th Floor, Shun Tak Centre, 200 Connaught Road, Hong Kong and gives both a telephone and facsimile number at that address.

4.118 Apart from this hinderance, I also encountered considerable delays in obtaining written responses from Shun Tak to matters which were not related to STDM and when making arrangements for Dr Stanley Ho's second examination. Although requested to attend in early August 1993 he was unavailable due primarily to personal reasons until 28 September 1993. These delays have, inevitably, hindered the progress of my report.

#### **MR DAVID CHIU**

4.119 Mr David Chiu Tat Cheong ("Mr David Chiu") is the Managing Director of Far East Holdings International Limited ("FEHIL") and Far East Consortium International Limited ("Far East Consortium"). His father, Mr Deacon Te-Ken Chiu J P ("Mr Deacon Chiu") is the Chairman of both these companies.

4.120 According to Mr David Chiu he was introduced to Mr Jackson Chang by Mr Eddie Lo in 1989. He met Mr David Tong subsequently. During the six month period leading up to the acquisition of WTCG by Tomson Pacific on 28 June 1990, it is evident that Mr Jackson Chang and Mr David Tong were involved in acquiring large numbers of shares in Far East Consortium. Mr David Chiu has told me in evidence that he and Mr Jackson Chang became very close *"talking four to five times a week by phone."* During this *"honeymoon"* period, the following transactions were entered into by WTCG and Tomson Pacific which were connected to Mr David Chiu and companies within the Far East Group:

1. Dealings in the shares of Regal Hotels International Holdings Limited and First Pacific Bancshares Holdings Limited, May/June 1990 (Chapter 7);
2. The allotment of 20.7% of the WTCG share placement, July 1990 (Chapter 6);
3. Acquisition of the World Trade Centre Building, August 1990 (Chapter 8);
4. Acquisition of 145,000,000 Tian Teck shares, August 1990 (Chapter 9);
5. Acquisition of land in Guangzhou, August 1990 (Chapter 11); and
6. Acquisition of 50% interest in Far East Biscuit (HK) Limited (Chapter 12).

4.121 I have summarised the involvement of Mr David Chiu and his family in these transactions in Chapter 13.

4.122 I found Mr David Chiu cooperative in most respects, although his memory for detail was selective. As an example, Mr David Chiu was able to remember in some considerable detail, the negotiations with the Chinese authorities for the acquisition of the land use rights over the Guangzhou Land (discussed in Chapter 11). He was, however, unable to provide me with any meaningful details of his alleged negotiations with a Taiwanese joint venture party to develop this land.

4.123 Accordingly, at times, I accept his evidence whilst at other times I discount statements he has made to me.

## **MR GEORGE TAN**

- 4.124 Mr George Tan Soon Gin ("Mr George Tan") was the Chairman of the Carrian Group and claims that since the liquidation of the company in 1982 he has been unemployed.
- 4.125 He was involved with the commission received from the sale of the World Trade Centre Building and appears to be linked to the Tian Teck share acquisition and certain share price support dealings during the share placement.
- 4.126 When I first wrote to Mr George Tan to arrange an examination in January 1993, he was in hospital recovering from a stroke. Further delays were caused by his involvement in various criminal trials and civil litigation and a challenge against the delegation of my powers to examine him in favour of John Griffiths QC, under Section 145A(1) of the Companies Ordinance. While I was confident that Mr George Tan was in fact an agent of WTCG in that he acted on behalf of WTCG in the purchase of the World Trade Centre, I did not want to cause further delay and cost by seeking Judicial confirmation, so I examined him myself, under Oath.
- 4.127 Including the days lost when I had to re-examine Mr George Tan, he attended examinations on 10 May, 17-22 May, 24 May and 8 July 1993. At the request of the solicitor acting for him, all examinations were conducted early in the morning and, for only an hour or so, to avoid causing him any distress.
- 4.128 Mr George Tan expressed a strong desire to assist my inquiry. I have found, however, that the evidence presented by him has been, in several instances, wholly unreliable and contradictory to that given by others associated with the matters under investigation.
- 4.129 In particular his complete denial of receipt of a commission in respect of the World Trade Centre Building acquisition (discussed in Chapter 8) is entirely at odds with the understanding of many witnesses examined including his good friend, Mr David Chiu.
- 4.130 Accordingly, I have discounted much of the evidence he has provided to me.

## **MR ARTHUR LAI**

- 4.131 Mr Arthur Lai Cheuk Kwan ("Mr Arthur Lai") was until February 1993 Chairman of MKI Corporation Limited. Previously he was the Chairman of Chintung (currently Standard Chartered Securities Limited) and was the person at Chintung responsible for arranging the sale of WTCG shares to Tomson Pacific and was involved in the WTCG share placement (Chapters 5 and 6).
- 4.132 Mr Arthur Lai has received through two of his controlled companies, Wealthcorp Investment Limited and Mandarin Development Limited, commissions of AUD2,000,000 and HK\$26,400,000 for the WTCG share sale and placement.
- 4.133 He has been cooperative in attending examinations scheduled by me on 8 February 1993, 21 July 1993 and 23 July 1993.
- 4.134 Mr Arthur Lai is undoubtedly a man of considerable expertise in the stockbroking industry in Hong Kong. I understand he founded Chintung and developed that firm into being the largest brokerage in Hong Kong prior to the 1987 stock market crash.
- 4.135 As a consequence of that crash, Standard Chartered Bank, who were the major creditor of Chintung, took control of Chintung through its subsidiary, Standard Chartered Asia Limited. Mr Arthur Lai was retained as Chairman and Mr Raymond Lai, his brother, as Managing Director.
- 4.136 Through a network of contacts in Taiwan, I understand Mr Arthur Lai bought in considerable business to the new Chintung. However, during 1990 the relationship between the Standard Chartered appointees at Chintung and Mr Arthur Lai deteriorated. Not long after the share placement discussed in Chapter 6 was completed, Mr Arthur Lai left Chintung to pursue his own business interests.

- 4.137 During the course of my investigation and, in particular, the analysis of the evidence presented to me by Mr Arthur Lai and the members of the current management of Standard Chartered Securities, I have taken account of the fact that the relationship between Mr Arthur Lai and Standard Chartered Securities now appears to be particularly litigious. I have been particularly aware of this in considering the evidence I received from both of these parties.
- 4.138 Whilst I believe much of Mr Arthur Lai's evidence is truthful, I also believe he has understated his involvement in key elements of his role in the events leading to the placement of WTCG shares in July 1990 (Chapters 5, 6 and 7).

**MADAM HSU JYE**

- 4.139 Madam Hsu Jye, also known as Jade Hsu or Tsoi Kit, is the younger sister of Madam Hsu Feng and sister-in-law of Mr David Tong.
- 4.140 She is the General Manager of Tomson (Hong Kong) Films Co Limited and a Manager at Tomson Pacific heading the share settlement and custodian departments of the Tomson Group.
- 4.141 Madam Hsu Jye's involvement with companies I was appointed to investigate is substantial. She is a director of, and beneficially interested in, Grand Ocean. She is a sole bank signatory of Grand Ocean, South View Properties, Martra Inc, Hauxton, Cortney Enterprises and David Tong Company. In addition, Madam Hsu Jye also operates several other bank accounts in Hong Kong held in the name of various Taiwanese nationals. I have found that she is also authorised to operate twenty-one separate share dealing accounts, many with margin facilities on behalf of these foreign companies and Taiwanese nationals.

- 4.142 Madam Hsu Jye has been found to have direct involvement in the following transactions:
1. WTCG share placement (Chapter 6);
  2. Dealings in shares in Regal and First Pacific Bancshares (Chapter 7);
  3. Acquisition of 145,000,000 Tian Teck shares (Chapter 9); and
  4. Acquisition of the Guangzhou Land (Chapter 11).
- 4.143 She attended examinations, scheduled by me on 2-5 February 1993, 19-20 February 1993, 29 March 1993, 7 August 1993 and 9 August 1993.
- 4.144 Madam Hsu Jye has been particularly uncooperative, frequently delaying responses to requests for information or additional examinations. The evasive answers she gave during her examinations and the slow response to my letters requesting information, have hindered the progress of my investigation.
- 4.145 She has frequently been unable to recall any details of the material transactions without being first shown documentation specifically stating her involvement.
- 4.146 I am very critical of the quality of the evidence she has given, sometimes under oath.
- 4.147 Her verbal evidence has at times directly contradicted evidence I have found from an examination of documents.
- 4.148 In some instances I believe she has deliberately understated her knowledge of the underlying transactions whilst in some other instances she has overstated her role in order to protect and reinforce the position adopted by her brother-in-law, Mr David Tong.
- 4.149 Accordingly, I have discounted much of her evidence as being false and untruthful.

## **MR PETER MOU**

- 4.150 Mr Peter Mou Chi Luen ("Mr Peter Mou") was, during 1990, an Executive Director of the Client Services Department and of the Taiwan office of Chintung, reporting to Mr Raymond Lai and Mr Arthur Lai.
- 4.151 He was involved with the WTCG share placement and associated transactions and acted upon the instruction of Mr Arthur Lai in administering some of Mr Arthur Lai's personal matters and companies including Wealthcorp Investment Limited and Mandarin Development Limited.
- 4.152 In particular he, along with Mr Arthur Lai, handled the Taiwanese clients of Chintung who I understand were a major part of the client base of Chintung during 1990. Effectively this put him in charge of maintaining share dealing facilities for Tomson Pacific and Rivera and the many interests Madam Hsu Jye allegedly represented in Hong Kong.
- 4.153 In particular I have found that Mr Peter Mou is involved with Hauxton (Chapter 6) and Supreme Enterprises (Chapter 7). His role is discussed within these chapters.
- 4.154 He attended examinations on 6 and 17 February 1993, 17 July 1993 and 9 October 1993.
- 4.155 Notwithstanding my findings and documentary evidence in support of those findings Mr Peter Mou has consistently denied detailed knowledge of the background to certain transactions I have attributed to him.
- 4.156 I am of the view that Mr Peter Mou is an unreliable witness.

- 4.157 Documentation recovered throughout the investigation into the WTCG share placement consistently points to Mr Peter Mou having a greater participation than he has acknowledged. This documentation is supported in many instances by the direct testimony of his former colleagues.
- 4.158 As stated earlier in relation to Mr Arthur Lai, it is obvious that there now exists a degree of animosity between the current management of Standard Chartered Securities Limited and Mr Arthur Lai. Such animosity, I believe, extends to Mr Peter Mou and I have weighted any adverse comments they may have made accordingly. However the evidence of relatively junior former colleagues and that of Mr Arthur Lai and Mr Raymond Lai is more persuasive and, as stated above, is supported by documentation.
- 4.159 Accordingly, much of Mr Peter Mou's evidence has been discounted as untruthful.

#### **MR RAYMOND LAI**

- 4.160 Mr Raymond Lai Chik Fan ("Mr Raymond Lai") is the elder brother of Mr Arthur Lai and during 1990 was the Managing Director of Chintung.
- 4.161 As Managing Director, Mr Raymond Lai, was closely involved with Chintung's operations and I have found that he was actively involved in this WTCG share placement discussed in Chapter 6.
- 4.162 He was also an authorised signatory for Mr Arthur Lai's personal companies, Wealthcorp Investment Limited and Mandarin Development Limited.
- 4.163 He attended examinations on 14 January 1993, 26 January 1993, 16 July 1993, 6 and 16 October 1993.



4.164 Whilst he appeared cooperative during his examinations, I do not believe he has been entirely frank in the evidence he has presented to me about the WTTCG share placement. I believe he understated his role in this transaction compared to that which is evident from examination of the documentation recovered.

4.165 I am not convinced that he has been a reliable witness in this investigation. In particular, I only recovered a large number of draft documents relating to the share placement in mid-1993. In his initial interviews much of the subject matter of these drafts was touched upon, but the important information provided by recovery of those drafts was not in any way advanced by Mr Raymond Lai during these initial interviews.

#### **MR PATRICK HUEN**

4.166 Mr Huen Wing Ming, Patrick ("Mr Patrick Huen") is a Director of Shun Tak Holdings Limited, a director of Seng Heng Bank in Macau, and an Executive Director of Sociedade De Aeroporto Internacional De Macau, S.A.R.L. He acts as a personal assistant to Dr Stanley Ho.

4.167 I have received evidence that he was involved in the WTTCG placement in July 1990 (discussed in Chapter 6) and the acquisition of three units in the Mandarin Plaza, New York (discussed in Chapter 15).

4.168 I examined Mr Patrick Huen on 10 February 1993, and 9 June 1993.

4.169 Whilst he has appeared cooperative during his examinations, I am critical of some of the evidence he has given as I believe he has a greater knowledge of the events discussed than he has disclosed.

## **MR AMBROSE SO**

4.170 Mr Ambrose So Shu Fai ("Mr Ambrose So") is a director of Shun Tak Holdings Limited and acts as a personal assistant to Dr Stanley Ho. Mr Ambrose So described his role within Shun Tak as:

*"I myself am, sort of, working in the chairman's office, of which Dr Stanley Ho is the chairman, so basically I process the documents or letters that come into his office and I have also participated in some of the casino operation in Macau, to the extent that because I am more familiar with the casino operations, since I was posted to Manila Casino before, therefore I have certain casino operation knowledge."*

4.171 I believe that he was involved in the WTCG share placement (discussed in Chapter 6) and the acquisition of three units in the Mandarin Plaza, New York (discussed in Chapter 15).

4.172 Mr Ambrose So has said that he is well acquainted with Mr Li Chi Keung of Onshine Investments Limited who was also involved in the transactions discussed in Chapters 6 and 15. He has sought to convince me however, that his role in these two transactions was minimal.

4.173 Whilst Mr Ambrose So appeared to be a cooperative witness, I have found that several of his answers were ambiguous and I do not consider him an entirely truthful witness.

## **MR SUN TAO TSUN**

4.174 Mr Sun Tao Tsun is President of Pacific Electric Wire and Cable Company Limited ("Pacific Cable") a company incorporated in the Republic of China. Pacific Cable is known in Hong Kong as having a substantial interest in Hong Kong's Conrad Hotel.

- 4.175 In 1988 when Pacific Cable purchased shares in Tomson Pacific, Mr David Tong invited Mr Sun Tao Tsun to join the Board of Directors of that company. Mr Sun Tao Tsun was also a director of WTCG from 1990. Pacific Cable has a close relationship with Mr David Tong through participation in joint ventures with Tomson Development Corporation in Taiwan prior to 1990.
- 4.176 Pacific Cable's interest in Tomson Pacific has increased since 1990.
- 4.177 In his capacity as a member of the Executive Committee of Directors of WTCG Mr Sun Tao Tsun authorised the purchase by WTCG of 9.9% of a Thai company, Charoong Thai Wire and Cable Company ("Charoong Thai"). According to Mr David Tong, Mr Sun Tao Tsun owned 20% of Charoong Thai at this time. This transaction is discussed in Chapter 17.
- 4.178 Since my first interview with Mr Sun Tao Tsun a considerable amount of evidence concerning his involvement in the purchase of a large parcel of WTCG shares as has come to light. This is discussed in Chapter 6. My numerous attempts to organise a telephone conference with him on this matter have not been successful. Whilst I do not have power to compel Mr Sun Tao Tsun to provide me with evidence, I believed that he has further information which would have assisted my investigation. Accordingly, I am critical of his failure to provide me with further evidence.

#### **MR SPANCER LAU**

- 4.179 Mr Lau Che Kong, Spancer ("Mr Spancer Lau") is an accountant working for Tomson Investment and David Tong Company. I understand he also works for Tomson (HK) Films Limited and Peace Forest Limited. He reports directly to Madam Hsu Jye and on an occasional basis also reports to Mr David Tong and Madam Hsu Feng.

- 4.180 Mr Spencer Lau's involvement in the area I am investigating is extensive. Correspondence addressed to Commercial Success Limited at a Secretarial Office was delivered to him. The role of Commercial Success in the WTCG share placement is discussed in Chapter 6. He arranged the purchase of Hauxton and assisted in its administration (discussed in Chapter 6). He witnessed signatures on a number of documents including Madam Hsu Jye's guarantee for South View's margin account with Chitung, Mr David Tong's guarantee for Grand Ocean's margin account with Chitung, Grand Ocean's account opening form, The Memorandum of Deposit for share trading conducted by Martra and Cortney, Mr Huang Wen Hui's share trading account opening form and was also the contact for Commercial Success's current account with Hongkong Bank of which Madam Wong Man Ling was the sole signatory.
- 4.181 I have examined Mr Spencer Lau on a total of three occasions. I have found him to be a most uncooperative and untruthful witness. Frequently the evidence he has given has been contradicted by other witnesses and by documents.
- 4.182 He was the accountant for the personal affairs of Mr David Tong and maintained the books of David Tong Company. In this important position, I believe he would have been apprised of a substantial amount of information concerning several of the transactions which have been the subject of my inquiry. The books of David Tong Company for the relevant period have disappeared under suspicious circumstances. His failure to answer my enquiries frankly and truthfully has added considerably to the time and the cost of my investigation.

**MR EDDIE LO**

- 4.183 Mr Eddie Lo appears as a business broker in many of the transactions investigated by me. I understand he has been an undischarged bankrupt for approximately nine years.

4.184 During 1990 he was a consultant to Fulldiamond Limited ("Fulldiamond") a company allegedly controlled by his wife Madam Alice Lam, and his wife's cousin Madam Stella Hui. Fulldiamond acts as an agent in the sale of properties and shares receiving commission for its role as agent. Its operations are discussed in Chapter 24. According to Madam Alice Lam, Mr Eddie Lo receives remuneration of \$5,000 per month, although he is the company's main income producer.

Relationship with Tomson Pacific / WTCG and associated companies.

4.185 Mr Eddie Lo was involved in the following transactions which are discussed in this report:

1. Dealings in the shares of Regal and First Pacific Bancshares (Chapter 7).
2. Acquisition of 145,000,000 shares in Tian Teck (Chapter 9).
3. Acquisition of the Guangzhou Land (Chapter 11).
4. Acquisition of a 50% interest in the Far East Biscuit Factory (Chapter 12).

4.186 Mr Eddie Lo appears to have had a close business relationship with Mr Jackson Chang, Mr David Chiu and Mr Arthur Lai.

4.187 I have found that evidence concerning his role in the various transactions has been, at times, contradicted by documentary evidence and in this respect I do not consider him an entirely reliable and truthful witness.

**MR HSU SUN**

4.188 Mr Hsu Sun (also known as Mr Michael Hsu) is a younger brother of Madam Hsu Feng and Madam Hsu Jye and brother-in-law of Mr David Tong. He now works with Tomson Pacific and is currently a director of Rivera.

4.189 Like Madam Hsu Jye, Mr Hsu Sun was involved in several of the transactions or companies which are the subject of my report:

1. The WTCG share placement (Chapter 6).
2. The dealings in shares in Regal and First Pacific Bancshares (Chapter 7).
3. The Rivera placement and the Tomson Pacific Rights Issue (Chapter 18).
4. Martra Inc (Chapter 19).
5. Cortney Enterprises Limited (Chapter 20).
6. South View Properties Limited (Chapter 21).
7. Grand Ocean Corporation (Chapter 22).
8. David Tong Company Limited (Chapter 25).
9. Dealing in the shares of World Trade Centre Group Limited (Chapter 26).

4.190 Of particular note is his role as a nominee of Mr David Tong in the WTCG share placement discussed in Chapter 6, his stewardship of South View Properties Limited's operations in Hong Kong and his substantial dealings in WTCG, Tomson Pacific and Rivera shares both on his own account and on behalf of alleged Taiwanese friends.

4.191 During 1990 he was not, to my knowledge, an employee of Tomson Pacific. However, he was actively engaged in many dealings with his sister-in-law, Madam Hsu Jye, to the extent that some witnesses have provided evidence that they believed he was an employee or agent of Tomson Pacific and/or Rivera in that year.

4.192 He also operated share accounts for Mr Huang Wen Hui, Madam Chang Yueh Chun (a director of South View Properties) and Madam Wong Man Ling.

4.193 I have examined Mr Hsu Sun on four occasions. I have found him an unhelpful witness. He was frequently unable to recall even the most general nature of large transactions without having the aid of supporting documentation.

4.194 At times during his examination, he refused to answer questions put to him by me claiming that he did not believe they were relevant to the inquiry.

- 4.195 In one particular exchange with Mr Hsu Sun he claimed to be unable to remember what he had done with 30,000,000 WTCCG shares having a value in excess of \$50,000,000. When I reminded him that the answer he gave was on oath he responded "*so what*".
- 4.196 I consider much of his evidence deliberately vague and misleading. I believe that he has intentionally withheld information relevant to the main areas of my inquiry particularly concerning his role in the purchase of large quantities of shares in WTCCG.
- 4.197 His evidence, given under oath, has been directly contradicted by an independent witness in one notable instance.
- 4.198 I do not consider him a truthful witness and his evidence has been discounted accordingly

#### **MADAM EVA HUI**

- 4.199 Madam Hui Yin Fun, Eva ("Madam Eva Hui") was during 1990 employed as the Marketing Manager for Far East Consortium Limited ("Far East Consortium").
- 4.200 Madam Eva Hui claims that she controls both Spinus Limited ("Spinus") and Saxton Corporation ("Saxton"). These companies are discussed in Chapters 8 and 9 (Spinus) and 6 and 12 (Saxton).
- 4.201 Mr Kam Kin Yat, a colleague of Madam Eva Hui during 1990, said that she was Mr David Chiu's personal assistant.
- 4.202 Madam Eva Hui had a crucial role in the Tian Teck share transaction discussed in Chapter 9 and much of the evidence I have taken from her concerns this transaction. For the reasons set out in Chapter 9 I have found her to be an untruthful witness and her evidence is discounted accordingly.

## **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"



## CHAPTER 5

### THE SALE OF 66% OF THE ISSUED SHARE CAPITAL OF WORLD TRADE CENTRE GROUP LIMITED

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#### 5 INTRODUCTION

5.1 Pursuant to my appointment as Inspector of WTCG and Tomson Pacific I was directed by the Financial Secretary of Hong Kong to investigate and report on:

*"the events leading to the placement announced on 28 June 1990 of 419,950,494 shares of WTCG to 14 placees and the relationship, if any, between the directors or share holders of WTCG and those placees which may have resulted in inadequate or inaccurate information being provided to the WTCG shareholders."*

5.2 This transaction involved the disposal by Bond Corporation International Holdings Limited ("BCIHL") of its 66% shareholding in WTCG (then known as Bond Corporation International Limited). In order to avoid any requirement for Tomson Pacific to make a general offer for the entire issued share capital of WTCG under Rule 33 of the Hong Kong Code on Takeovers and Mergers ("the Code", the transaction being governed by the October 1987 edition of the Code) the transaction was structured as follows:-

- (1) the purchase by Tomson Pacific of 34.5% of the issued share capital of WTCG from BCIHL. Tomson Pacific's obligations were guaranteed by Mr David Tong and Dr Stanley Ho; and
- (2) a placing by Sawbridge Limited ("Sawbridge") (an independent company established by Bermuda Trust) of the balance of 31.5% of the issued share capital of WTCG owned by BCIHL to independent third parties. This placing was to be arranged through Chintung Limited ("Chintung") (now known as Standard Chartered Securities Limited) and the performance of these arrangements was effectively guaranteed by Megafield Limited ("Megafield") (a company related to Tomson Pacific) which acted as a subscriber to the share capital of Sawbridge. In addition Tomson Pacific underwrote the placing in order to ensure that BCIHL would receive its cash and the obligations of Sawbridge were further guaranteed by Mr David Tong and Dr Stanley Ho.

5.3 The placing was completed without the need for Megafield, Tomson Pacific, Mr David Tong or Dr Stanley Ho to perform any of their respective obligations.

5.4 In view of the possible requirements for a general offer under the Code, the arrangements were discussed at length with the Securities and Futures Commission ("the SFC") which granted the relevant waivers to enable the transaction to proceed on the basis of conditions designed to ensure the independence of the placees of 31.5% of the issued share capital of WTCG.

5.5 Chintung's Chairman, Mr Arthur Lai, played a key role in negotiating and structuring the two transactions. For his involvement, he was to receive two commissions which are discussed in Chapter 6. These fees were in addition to those received by Chintung.

5.6 Although on the face of it, the placement was "*successfully*" completed by Chintung before the 27 July 1990 deadline, I have found that some of the placees were not independent of Tomson Pacific, WTCG, or any party related to those companies or their directors. The placees are discussed in detail in Chapter 6.

- 5.7 The SFC was anxious to ensure the independence of each placee. To satisfy itself in this regard, considerable material was requested from Chintung relating to the background of each placee. It was upon this material that the SFC relied in concluding that as each placee was independent it was not necessary for Tomson Pacific to make a mandatory general offer.
- 5.8 Messrs Arthur Lai, Raymond Lai and Peter Mou as former directors and Mr Gary Wong as a director of Chintung were actively involved in the placement.
- 5.9 Although Chintung later changed its name to Standard Chartered Securities Limited I have referred to it as "Chintung" throughout this report.

## **THE PROPOSAL**

- 5.10 In or about March 1990, Mr Arthur Lai approached Mr Peter Lucas, a former director of BCIHL and Managing Director of WTCG to discuss Tomson Pacific's interest in purchasing a portion of BCIHL's 66% holding in WTCG.
- 5.11 At this time, BCIHL's shareholding in WTCG was charged to each of The Hong Kong & Shanghai Banking Corporation ("Hongkong Bank"), Wardley Australia Limited and Manchar Holdings Pty Limited as security for separate debts owing to each of those companies. The charges given were first, second and third ranking charges respectively. The debts in aggregate greatly exceeded the market value of the shareholding.
- 5.12 BCIHL was a wholly owned subsidiary of Bond Corporation Holdings Limited, a listed public company in Australia which was experiencing severe financial problems.
- 5.13 I understand that from about March 1990, Hongkong Bank was actively seeking to procure the disposal of BCIHL's interest in WTCG.

5.14 On 22 March 1990, Messrs Arthur Lai, David Tong and Jackson Chang attended a meeting with Sir William Purves, Chairman and Chief Executive of Hongkong Bank, and Mr Paul Selway-Swift, also of Hongkong Bank at Sir William's offices.

5.15 A file note prepared by Mr Paul Selway-Swift of that meeting stated in part:

*"This meeting was arranged at the request of Mr Arthur Lai. He wished to introduce the Tomson Group to HSBC.*

*. . . His principal project in Taiwan at present is known as "Golden Town" a project he describes as being not unlike Tai Koo Shing.*

*In Hong Kong Tong controls about 75% of a public company called Rivera (Holdings) Ltd which in turn controls about 50% of Tomson Pacific Ltd in which Dr Stanley Ho now has a 20% shareholding and Pacific Cables of Taiwan about 9%.*

*Arthur Lai feels that to do business in Hong Kong on the scale envisaged, he really needs relationship with the Hongkong Bank and possibly the benefit of our Group's advice . . . He would like to have a public company with a larger capital base and is looking at BCIL [WTCG] where he estimates he could buy the Bond Group shareholding for about \$2.2 billion of which he could seek to borrow about \$1 billion."*

5.16 A further meeting on 22 March 1990 took place in Wardley Corporate Finance Limited's ("Wardleys") offices and was attended by Messrs David Tong and Jackson Chang and Kevin Westley and Peter Lee of Wardleys, and Michael McIntyre representing Hongkong Bank. A file note prepared by Mr Michael McIntyre stated in part:

*"Tong and Chang gave us a brief rundown of their corporate history and intimated that their companies in Taiwan were rich in assets and strong in cash-flow. They explained their wish to purchase a controlling interest (of around 65%) in Bond Corporation International Ltd (BCIL) [WTCG]. This was to be achieved by a placement of Tomson shares at \$1.20 per share and borrowing of HKD1,000 to HKD1,200 million from HSBC. Although there was a vague understanding by Chang that they would be required to make a general offer to all shareholders, it was his view that such an offer would never be taken up as their numerous "friends" would ramp the BCIL share price so as to ensure that the offer price would appear unattractive.*

*Their plans for BCIL were again vague but basically come down to injecting assets - 50% of the Conrad Hotel and other properties held by "friends" and taking out BCIL's cash.*

*Repayment of the bank debt would be by a sale or placement of part of BCIL's shares to "friends".*

*. . . we tried to advise them of where the pitfalls might lie and I understand that the meeting ended (I had to leave) with our agreeing to consider a concrete proposal once the ideas were further advanced, such a proposal to be both financially and technically feasible."*

- 5.17 According to Mr Arthur Lai, between 22 March 1990 and 20 April 1990 Wardleys endeavoured to formulate a structure to enable Tomson Pacific to purchase WTCG, but were unsuccessful. In light of this, he said that Mr Michael McIntyre eventually contacted him again and requested his assistance. Mr Arthur Lai has told me that he agreed to assist Hongkong Bank only on the basis that Chintung be involved as the broker and Standard Chartered Asia Limited ("Standard Chartered Asia") as Tomson Pacific's adviser. Mr Michael McIntyre can recall speaking to Mr Arthur Lai but cannot recall asking him for his assistance.

- 5.18 Mr Michael McIntyre has told me that he was concerned that Tomson Pacific and its management did not have the financial resources to complete the transaction. Hongkong Bank however received comfort from the fact that Dr Stanley Ho was taking such a *"visible stand"* to support Tomson Pacific. Mr Michael McIntyre commented in a file note dated 7 May 1990 to Mr Brian Robertson, Manager, Specialised Lending, that *"I feel that the chances of this deal not going ahead are now slight"*.
- 5.19 Mr Arthur Lai, acting as the middleman for both BCIHL and Tomson Pacific arranged a meeting with Mr David Tong and Mr Peter Lucas on or about 20 April 1990. As stated above, to purchase the entire 66% holding in WTCG held by BCIHL, Tomson Pacific would have required almost \$2,000,000,000, an amount which according to Mr David Tong, Tomson Pacific considered excessive. Had such a purchase proceeded it would have triggered the mandatory general offer provisions of the Code and a general offer may have cost Tomson Pacific a further \$1,000,000,000.
- 5.20 By Tomson Pacific acquiring approximately 34.5% of the issued share capital of WTCG or 461,564,910 shares (at a cost of approximately \$1,000,000,000), it would fall short of the 35% mandatory general offer provisions of the Code. Throughout this report the sale of 34.5% of the issued share capital of WTCG is referred to as "the share sale".
- 5.21 The remaining 419,950,494 WTCG shares which were held by BCIHL representing 31.5% of the issued share capital of WTCG, would then be placed to third parties independent of Tomson Pacific, BCIHL, their advisers or parties associated with them, at \$2.25 per share. Throughout this report the placement of the 31.5% interest is referred to as "the share placement".

5.22 The attractiveness of this proposal was clear. Tomson Pacific would be able to purchase approximately one third of WTCG's issued share capital, making it the largest shareholder and hence giving it effective control of that company. WTCG was cash rich at that time as it had recently sold off many of its major assets, including interests in a Chilean telephone company and media assets in Hong Kong. WTCG's audited consolidated accounts as at 30 June 1990 show that it realised \$1,271,446,000 from the sale of major subsidiaries during the preceding year and held \$2,623,945,000 in cash on deposit.

5.23 To finance the required \$1,000,000,000 for the purchase, Tomson Pacific resolved to make a one for one renounceable rights issue to its existing shareholders of not less than 1,250,000,000 shares at an issue price of 80 cents per share ("the Rights Issue"). On 20 April 1990, Tomson Pacific's three principal shareholders, agreed to take up their share of the Rights Issue in accordance with their existing shareholdings as follows:

<u>Shareholder</u>	<u>Number of Shares</u>	<u>Percentage of Total %</u>
Pacific Cable	110,000,000	8.80
STDM	250,000,000	20.00
Rivera	441,125,000	35.29
		<u>64.09%</u>

5.24 All shareholders in Tomson Pacific were provisionally allotted one right to acquire a share for every share then held.

5.25 In addition to the three principal shareholders, other related parties featured prominently in acquiring shares in the period immediately preceding the Rights Issue. This is discussed at Chapter 18.

- 5.26 Pacific Cable and STDM agreed to jointly and severally underwrite the balance of the Rights Issue which was not taken up by the minority shareholders, in consideration for an underwriting commission of 1% of the subscription price of the shares underwritten. There is no evidence that this commission was ever paid and it would appear that the Rights Issue was oversubscribed.
- 5.27 At this time, Rivera was severely short of cash reserves to meet its commitments to the Rights Issue. In or about May 1990, Mr David Tong agreed to lend Rivera up to \$200,000,000. This and other associated loans are discussed at Chapters 18 and 19.
- 5.28 In June 1990, Rivera also issued 115,000,000 shares through Cresvale (HK) Limited ("Cresvale Hong Kong") in order to raise funds for its commitment to the Rights Issue. This placement was completed in a manner which raises questions as to its probity and is discussed at Chapter 18.

#### **STRUCTURING THE SHARE SALE AND SHARE PLACEMENT**

- 5.29 From the latter part of April 1990, Standard Chartered Asia advised Tomson Pacific as to the most effective method of structuring the proposed purchase from BCIHL. In general the terms of the agreement were:
- (1) The actual purchaser of the WTCG shares would be a wholly owned subsidiary of Tomson Pacific, Evertop Surplus Limited ("Evertop Surplus"). The 34.5% parcel of WTCG shares would be acquired by it at a total cost of \$1,038,521,047.50.
  - (2) The placing by BCIHL of its remaining 31.5% shareholding in WTCG representing 419,950,494 shares ("the placement shares") would be made to Sawbridge, a company incorporated in the British Virgin Islands and beneficially owned by a charitable trust.



- (3) Hongkong Bank would advance a loan to Sawbridge which would pledge the WTCCG shares to Hongkong Bank as security for repayment of the loan. Such repayment would be guaranteed by Mr David Tong and Dr Stanley Ho.
- (4) Sawbridge would then enter into a placing agreement with Chintung who would act as broker. Chintung would use its best endeavours to arrange the sale of the placement shares to third parties independent of Tomson Pacific, BCIHL or any party related to either of them. Tomson Pacific would underwrite the placement.
- (5) When the placement by Chintung was successfully finalised, Sawbridge would use the proceeds to repay the loan to Hongkong Bank.

5.30 During the negotiations to complete this transaction, Standard Chartered Asia sought reassurances from the SFC that the purchase by Tomson Pacific from BCIHL of 34.5% of WTCCG and the placing of the remaining 31.5% of the shares held by BCIHL to independent places through Sawbridge, conducted by Chintung, would not trigger the requirement under the Code to make a general offer.

5.31 Mr Ermanno Pascutto, former Chairman of the Takeovers Committee told me that considerable attention was being paid to this transaction by the Takeovers Committee, principally because of:

- (1) The sheer number of shares that had to be placed;
- (2) A belief that ordinary investors would not be willing to pay \$2.25 per share when Tomson Pacific had paid the same amount to gain control of WTCCG; and
- (3) A belief that at the time of the announcement the share price was inflated by 8%.

5.32 The SFC was also concerned that Rule 33 of the Code would be breached. Such a breach would occur where a person holding less than 35% of the issued capital of a company acted in concert with other shareholders to obtain control triggering the requirement to make a mandatory general offer to all shareholders. Therefore, although Tomson Pacific, on the face of the deal was acquiring only 34.5% of the share capital of WTCG, steps had to be taken to ensure that whoever controlled the balance of the shares was independent of and not acting in concert with Tomson Pacific.

5.33 According to Mr Ermanno Pascutto, this transaction set a precedent as to the lengths the SFC was prepared to go to determine the independence of the placees. This was due in large to the scepticism surrounding the transaction as a whole, with doubts being raised about the independence of the placees even before the list of placees was produced to the SFC for scrutiny. For example, Mr Mark Hanson, the Director of the Listing Division of the Stock Exchange wrote to Mr Ermanno Pascutto on 27 April 1990 stating that he was concerned that:

*"Whether Tomson will in fact hold more than the proposed 34.5% of the shares via third party names."*

5.34 The detail required by the SFC to help ensure independence was stated clearly in a letter dated 28 April 1990 to Standard Chartered Asia:

*". . . we will require a list of placees and full information regarding the placement, how the placees were identified, what steps the broker took to "know the client" (and in this regard we refer to the beneficial owner) and certification by the parties that (after exercising proper diligence) to the best of their knowledge, information and belief all relevant information has been disclosed to the Takeovers Committee and none of the placees has any arrangement or understanding with any of the parties or can otherwise be considered to be acting in concert with the relevant parties."*

5.35 A copy of this letter (Appendix 7) was sent to Messrs David Tong and Arthur Lai among others.

5.36 Also at this time, lengthy discussions with the parties involved in the placement took place to determine whose obligation it was to ensure the independence of the placees. It was ultimately agreed that the SFC had to rely substantially on those persons who had access to the necessary information, in this instance Chintung, and the directors of Tomson Pacific and BCIHL.

5.37 By letter dated 3 May 1990, Mr Christopher Wigan of Standard Chartered Asia informed the SFC that:

*"Chintung would . . . use its reasonable endeavours to ensure that, to the best of its knowledge and belief, the placees are third parties independent from both vendor and purchaser or any related party of either of them. It would also, as is customary, supply lists of placees with supporting details to the SFC... the independence or otherwise of placees can only be determined on an interpretation of facts; we think it is the role of the SFC and the Committee to arrive at that interpretation on the information presented..."*  
(Appendix 8)

5.38 By way of response to the aforementioned letter, the SFC advised Standard Chartered Asia that:

*"In accepting your view that a certificate of Chintung is unnecessary and inappropriate we recognise the contractual obligation of Chintung under the placing agreement and the professionalism and reputation of Standard Chartered Asia and Chintung."* (Appendix 9)

5.39 As a further step to ensure independence, the SFC insisted that a Form of Acknowledgement be signed by each placee and by Mr David Tong on behalf of Tomson Pacific. A printed Form of Acknowledgement was drafted and settled by all participants. It stated in part:

*"We confirm that we are an independent party from and are not acting in concert with Bond Corporation International Holdings Limited . . . and Tomson Pacific Limited . . . or any related party of either of them or any of their respective directors (or their close relatives, related trust or personal holding companies) . . . "* (Appendix 10)

5.40 Standard Chartered Asia advised that it would be inappropriate for Dr Stanley Ho to sign and acknowledge such a Form as he was *"a non-executive director of Tomson and not involved in its day-to-day management"*.

5.41 On 3 May 1990:

- (1) Tomson Pacific and BCIHL signed Heads of Agreement regarding the sale and purchase of 461,564,910 shares (representing 34.5% of WTCG's issued capital) at \$2.25 per share, totalling \$1,038,521,047.50; and
- (2) A 10% refundable deposit of \$103,852,105 was paid to a joint stakeholder's account of BCIHL and Tomson Pacific.

5.42 On 4 May 1990, STDM and Pacific Cable signed the Underwriting Agreement regarding the Rights Issue.

5.43 The following Agreements were executed on 16 May 1990:

- (1) Share Sale Agreement between BCIHL, Evertop Surplus and Tomson Pacific;
- (2) Placement Sale Agreement between Sawbridge and BCIHL;
- (3) Placing Agreement between Sawbridge and Chintung;

- (4) Underwriting Agreement between Sawbridge and Tomson Pacific whereby Tomson Pacific agreed to purchase from Sawbridge or procure purchasers for all shares which Chintung could not place by 27 July 1990;
- (5) Secondary Underwriting Agreement between Sawbridge, Mr David Tong and Dr Stanley Ho whereby Mr David Tong and Dr Stanley Ho agreed to purchase any remaining shares or procure purchasers for the relevant remaining shares if Tomson Pacific did not fulfil its obligations pursuant to the Underwriting Agreement.

5.44 An Extraordinary General Meeting of Tomson Pacific held on 29 May 1990 approved the Rights Issue, the proceeds of which were to fund the purchase of the 34.5% shareholding in WTCG. Three of the five shareholders who attended the meeting were:

Mr Wong Wai (nephew of Mr Jackson Chang)

Madam Hsu Jye (sister-in-law of Mr David Tong)

Mr Hsu Sun (brother-in-law of Mr David Tong)

5.45 Each of these persons is involved in other transactions under investigation and is referred to in more detail throughout this report.

5.46 Tomson Pacific announced on 28 June 1990:

- (1) The completion of the purchase of 34.5% of the issued share capital of WTCG for \$1,038,521,047.50 in accordance with the Share Sale Agreement dated 16 May 1990;
- (2) The appointment of Dr Stanley Ho, Messrs David Tong, Jackson Chang and Sun Tao Tsun and Madam Hsu Feng (wife of Mr David Tong) to the board of WTCG;

- (3) The completion of the purchase of 31.5% of the issued share capital of WTCCG by Sawbridge which was now to be placed to independent third parties by 27 July 1990 at not less than \$2.25 per share.

#### The responsibilities of Chintung

- 5.47 As the placing agent for 31.5% of the shareholding of WTCCG, Chintung had certain duties and responsibilities. The placing agreement stated in part:

*"ChinTung agrees to use its best efforts to procure the purchase of the Placing Shares by the Placees on the terms of the Placing Letters at not less than the Placing Price (before stamp duty and any transaction or other levy payable) on or before the Final Placement Date. "*

*"ChinTung undertakes to use its reasonable endeavours to ensure that, to the best of its knowledge and belief, the Placees are third parties independent from BCIHL and Tomson [Pacific] or any related party of either of them. For the purposes of this Clause, 'related party' shall mean, in relation to BCIHL or Tomson, its holding company, subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (where "associated company") denotes ownership or control of 20 per cent. or more of the equity share capital of a Company, combined with the ability to exercise a significant influence over that Company). 'Holding company' and 'subsidiary' shall have the meanings assigned to them in section 2 of the Companies Ordinance (Cap. 32 of the Laws of Hong Kong). "*

- 5.48 On 24 May 1990, Slaughter & May, Solicitors, wrote to Chintung marking the letter to the attention of Mr Arthur Lai. A handwritten annotation at the top of the letter suggests that it was also passed to Mr Raymond Lai and Mr Gary Wong. This letter sought to highlight the specific responsibilities of Chintung. It can be seen in full at Appendix 11. In part it stated:

*"It has been recognised throughout that the Committee on Takeovers and Mergers (the 'Committee') may consider both SC Asia [Standard Chartered Asia] and ChinTung to be acting in concert with Tomson by virtue of SC Asia's role as financial adviser and ChinTung's position as its subsidiary. However, provided that the relationship is kept on a strictly arm's length professional footing, such a concert party would extend under the Code only to shareholdings of SC Asia or ChinTung in BCIL [WTCG]. It is clearly essential that there be no agreement or understanding (whether formal or informal) whereby ChinTung cooperates with Tomson and its related parties to obtain or consolidate control of BCIL. Indeed, every effort should be made to ensure that there is no contact, however inadvertent, which might be misconstrued as such.*

*The SFC has expressed the view that it is the primary responsibility of SC Asia and ChinTung to ensure that Tomson [Pacific] complies with the Code. While we have advised SC Asia that the SFC's view may be overstated, express assurances have been given to the SFC that both SC Asia and ChinTung will fulfil their Code responsibilities to the full.*

*ChinTung's role in the transaction is clearly defined in the Placing Agreement. It is the agent of Sawbridge to carry out the placing on a best endeavours basis; it has no brief to act on behalf of Tomson. SC Asia has explicitly acknowledged ChinTung's familiarity with Tomson and its management and the fact that it has proffered advice to Tomson in connection with the BCIL transaction; however, ChinTung should not be perceived to have a substantive advisory role representing Tomson's interests.*

*This latter point is all the more important given that it is ChinTung which must fulfil the critical function of identifying independent third parties to acquire the Placing Shares on a basis which avoids any intimation of Tomson influence or cooperation. The placing of the 31.4 per cent. share block to Placees who are independent of, and not acting in concert with, Bond Corporation International Holdings Limited ('BCIHL') and Tomson, or any related person of either of them, goes to the heart of the [Takeover] Committee's concerns and it is, indeed, an express condition of the waiver granted under the letter dated 16th May 1990 from the Chairman of the Committee.*

*It will be clear . . . that the placing programme will be subjected to intensive scrutiny and that, accordingly, every effort must be made to establish the independence of Placees on a basis which can be clearly demonstrated to the SFC."*

## **THE PLACEES**

- 5.49 Between 4 July 1990 and 25 July 1990, Chintung placed the 31.5% shareholding of WTCG to 16 placees. Mr Arthur Lai has told me that initially there was an overwhelming response to the placement but that towards the end of July 1990 interest was waning. A memorandum from Mr Raymond Lai dated 3 July 1990 to all sales staff at Chintung headed "*Progress of BCIL [WTCG] Shares Placing*" stated in part:

*"We have already obtained firm commitments in excess of the total number of shares available for placing. As a result, the exercise will be completed much earlier than the month end deadline. We are aiming to complete the deal by July 15, 1990."*

- 5.50 In actual fact several of the prospective placees did not proceed in taking up shares and the share placement was not completed until just prior to the deadline of 27 July 1990.



- 5.51 Mr David Stileman, Chief Executive of Standard Chartered Asia, verbally advised the SFC that the placement had been substantially completed on 19 July 1990, however Chintung did not forward the list of placees together with the respective Forms of Acknowledgement, counter signed by the placees and Mr David Tong, to the SFC until 23 July 1990.
- 5.52 All placees were initially sent a standard letter by Chintung that referred to an oral contract for an allotment of shares negotiated between Chintung and the placee. It set out the amount owing including brokerage and charges and the critical terms of the placing agreement which included the need for the placee to be independent of BCiHL, Tomson Pacific or any related company of either of them. An example of the standard letter is at Appendix 12.
- 5.53 The following list of placees, without the Forms of Acknowledgment, was provided to the SFC on 20 July 1990:

<u>Company</u>	<u>Number of Shares</u>
Asia Equity Limited	2,400,000
Lei Sheng Co. Limited	2,000,000
Clever Life Limited	500,000
Southern Harvester Finance Limited	500,000
Cathay General Inc	67,000,000
Commercial Success Limited	37,375,000
Onshine Investment Limited	37,375,000
Pierson Asia Limited	74,750,000
Cresvale Hong Kong Limited	22,000,000
N T Butterfield Trustee (Bermuda) Ltd - The Regent Fund Limited	4,000,000
Mr Chiu Ming Hung	72,000,000
Chiltern Company Limited	12,000,000
Mr Deacon Chiu	20,000,000
Hauxton Limited	68,050,494
TOTAL:	<u>419,950,494</u>

5.54 On receipt of this list, the SFC wrote to Standard Chartered Asia and asked that Chintung provide it with:

*"details of the identity and background of the beneficial owners of the corporate placees and a full description of these companies activities. We will also require, for the purposes of establishing independence, Chintung to describe how it came to place the shares with these placees and what, if any, previous relationship it has had with them."* (Appendix 13)

5.55 On 25 July 1990, Standard Chartered Asia forwarded the following details of each placee to the SFC (Appendix 14):

<u><i>Company and Address</i></u>	<u><i>Business Activities</i></u>	<u><i>Chintung Relationship</i></u>
<i>Asia Equity Limited (Formerly First Pacific Securities (HK) Ltd) 28/F Two Exchange Square Connaught Place Central Hong Kong</i>	<i>Stockbroker</i>	<i>New Client Approached Chintung for stocks on their own</i>
<i>Lei Sheng Co Ltd 311 City Plaza Palace Rest. Phase 1 City Plaza Tai Koo Shing Hong Kong</i>	<i>Investment Company Controlled by Stephen Sin</i>	<i>Regular Client</i>
<i>Clever Life Limited G/F Summit Building 21 Tai Wan Road Kowloon</i>	<i>Investment Company Vehicle owned by Tse Sui Luen Co Ltd</i>	<i>Regular Client</i>
<i>Southern Harvester Finance Limited 501 Pacific House 20 Queen's Road Central Hong Kong</i>	<i>Investment Holdings Company</i>	<i>Regular Client</i>

<i>Commercial Success Ltd 11/F Flat A Hollywood Heights No. 6 Old Peak Road Hong Kong</i>	<i>Investment Banker/ Advisor (Member of the Arral &amp; Partners Group of Companies)</i>	<i>Regular Client</i>
<i>Onshine Investment Limited 19/F Malahon Centre 10-12 Stanley Street Central Hong Kong</i>	<i>Stockbroker</i>	<i>New Client Approached Chintung for stocks on their own</i>
<i>Pierson Asia Ltd 50 Raffles Place No. 31-04/06 Shell Tower Singapore 0104</i>	<i>International Fund Manager</i>	<i>Regular Client</i>
<i>Cresvale Hong Kong Ltd 3/F Landmark East 12 Ice House Street Central Hong Kong</i>	<i>Stockbroker</i>	<i>Regular Client Approached Chintung for stocks on their own</i>
<i>N T Butterfield Trustee (Bermuda) Ltd - The Regent Fund Ltd 26/F Bank of China Tower, Central Hong Kong</i>	<i>Fund Manager</i>	<i>Regular Client</i>
<i>Chiu Ming Hung 21/F No 685 Tun Hwa South Road Taipei Taiwan</i>	<i>Merchant/Businessman from Taiwan</i>	<i>Regular Client</i>
<i>Chiltern Ltd 701 International Building 141 Des Voeux Road Hong Kong</i>	<i>Investment Holdings Company</i>	<i>Regular Client</i>
<i>Hauxton Limited 12/F No. 225 Sec. 3 Nanking East Road Taipei Taiwan</i>	<i>Investment Holdings Company</i>	<i>Client referred to Chintung by our Taiwan Associate, Rosenthal Inc Taipei</i>

*Cathay General Inc.  
16/F Far East  
Consortium Building  
121 Des Voeux Road  
Central  
Hong Kong*

*Investment Holdings  
Company  
Controlled by local  
businessman Mr David Chiu*

*Regular Client*

*Mr Deacon Chiu  
16/F Far East  
Consortium Building  
121 Des Voeux Road  
Central  
Hong Kong"*

*Merchant  
Chairman of Far East  
Holdings Ltd*

*Regular Client*

5.56 The SFC responded on 26 July 1990 that it was still dissatisfied with the information provided and that further details as to the beneficial ownership and general background of some of the placees was required. In addition, it queried how Mr David Tong could have co-signed the Forms of Acknowledgement in respect of the stockbroker placees, such as Cresvale Hong Kong Limited, Onshine Investment Limited and Asia Equity Limited when they had taken up the shares on behalf of their clients (Appendix 15).

5.57 By letter dated 27 July 1990, Standard Chartered Asia provided the SFC with the following further information (Appendix 16):

*"1. LEI SHENG COMPANY LIMITED*

*The signature that appeared on the letter was that of Mr Lau Yu Man, Chairman of the Samaha Group, and business partner of Mr Stephen Sin, both of whom are independent parties to BCIL [WTCC] and TPL.*

*2. CLEVER LIFE LIMITED*

*The letter has been signed by Mr Paul Liu, an Executive Director of Tse Sui Luen Company Limited whose signature is a proper authority representing Tse Sui Luen Company Limited, the registered shareholders of Clever Life Limited.*

*3. SOUTHERN HARVESTER FINANCE LIMITED*

*This is understood to be a small investment company and general merchanting business, controlled by Mr Jack Leung, Managing Director of the Company.*

4. *COMMERCIAL SUCCESS LIMITED*

*The signature appeared on the letter was that of Mr Raymond Ling, Managing Director of Arral Associates (HK) Limited, representing the interest of the beneficiary.*

5. *CHILTERN LIMITED*

*It is understood that the beneficial owner of this Company is Ms Sandy Wan, a Director, located at 18/F Flat A, Dominion Height, Belair Garden, 52 Tai Chung Kiu Road, Shatin.*

6. *HAUXTON LIMITED*

*Rosenthal Inc., member of the Kwong Fund Textile, a listed Taiwan company, is owned by the Ho family. It is understood that Rosenthal has taken the shares as principal, through Hauxton Inc. and therefore there would not be any client information available.*

7. *CATHAY GENERAL INC.*

*The signature appeared on the letter was that of Mr David Chiu, a Director of Far East Holdings Limited.*

8. *CHIU MING HUNG*

*Director of Wei-Chun Food/Beverage Company, second largest food company in Taiwan."*

5.58 From the information provided to them, by Chintung via Standard Chartered Asia, the SFC accepted that there was no need for them to make further enquiry into the identity of the placees. I believe that much of the information provided to the SFC was misleading. I discuss the placement of shares to each of the placees in Chapter 6 and comment in detail on how the information provided by Chintung to the SFC was misleading.

- 5.59 Mr David Stileman stated that although he signed these letters which were forwarded to the SFC on behalf of Standard Chartered Asia, the information relating to each placee came from Mr Raymond Lai. The documents I have examined indicate that the information was prepared by Messrs Raymond Lai, Peter Mou and Gary Wong (also a director of Chintung) with some assistance from Mr Arthur Lai.
- 5.60 In any event, closer scrutiny of Chintung's contract notes, margin accounts, the source of funding of the shares and the placees themselves shows that not only was much of the information supplied to the SFC by Chintung through Standard Chartered Asia inaccurate and misleading but more importantly some of the placees were not independent.
- 5.61 All references to breaches of statutory and regulatory matters are dealt with in Chapter 6.

## CHAPTER 6

### THE PLACEES

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## 6 INTRODUCTION

6.1 Pursuant to my appointment as Inspector of WTCG and Tomson Pacific I was directed by the Financial Secretary of Hong Kong to investigate and report on:

*"the events leading to the placement announced on 28 June 1990 of 419,950,494 shares of WTCG to 14 placees and the relationship, if any, between the directors or share holders of WTCG and those placees which may have resulted in inadequate or inaccurate information being provided to the WTCG shareholders. "*

6.2 On 28 July 1990, Tomson Pacific and WTCG jointly announced in the media that Sawbridge, through its placing agent, Chintung, had placed 419,950,494 shares to independent third parties.

6.3 Tomson Pacific as principal underwriter and Mr David Tong and Dr Stanley Ho as secondary underwriters were discharged from their obligations to Sawbridge to underwrite the placing of the shares now that the placement was completed.

6.4 Although Chintung through Standard Chartered Asia advised the SFC that 14 placees were involved in the placement, I have found that there were 16 placees who took up shares.

6.5 Of those 16 placees, I have obtained evidence which suggests that 9 of them acted in concert with and/or were not independent of the directors of Tomson Pacific and its major shareholders, Pacific Electric Wire & Cable Limited ("Pacific Cable") and STDM.

Three placees allegedly introduced by Dr Stanley Ho

6.6 Mr David Tong has stated that Dr Stanley Ho introduced three of the placees, namely; Commercial Success Limited ("Commercial Success"), Onshine Investments Limited ("Onshine") and Pierson Asia Limited ("Pierson Asia"). These placees had been given guarantees that if the share price dropped below the placement price of \$2.25 a buy back of the shares would be arranged to compensate for any loss suffered. The placement shares received by Onshine were held for Killenny Limited ("Killenny") and those by Pierson Asia for La Fayette Limited ("La Fayette").

6.7 Dr Stanley Ho has denied such an arrangement existed.

6.8 Following the collapse of the WTCG share price in August 1990, Mr David Tong was approached by Dr Stanley Ho to compensate the beneficial owners of Commercial Success, Killenny and La Fayette by finding a buyer for their shares.

6.9 In December 1991 and March 1992, these companies were sold to nominees of Mr David Tong for a value calculated at \$2.00 per WTCG share held by each company after the 1:5 bonus issue. This was double the market price at that time. Mr David Tong alleged that he funded the difference between the adjusted placement price and the current market price, whereas the true purchaser of the shares, Mr Sun Tao Tsun (a Taiwanese director of Tomson Pacific and WTCG) paid the balance. Mr Sun Tao Tsun denies that he purchased these shares.

6.10 Although all arrangements for the sale of the shares were conducted through Shun Tak, Dr Stanley Ho has denied any involvement.

### Chiu Ming Hung Syndicate

- 6.11 Mr Chiu Ming Hung was referred to by Chintung as the sole beneficiary of the 72,000,000 shares taken up by him in the placement. Mr Chiu Ming Hung was in fact one of a syndicate of four Taiwanese investors. According to Mr David Tong, he promised Mr Ma De-Ling, a syndicate member and a former director of Tomson Pacific, that if the share price dropped below the placement price he would compensate him for any loss suffered. In an after hours sale conducted by Chintung on 18 December 1990, Mr David Tong through the use of nominees purchased 60,000,000 of the syndicate's 72,000,000 shares at almost double the market price. Chintung did not notify the Stock Exchange of these transactions. Mr David Tong has been unable to recall what happened to the shares after they were purchased.

### Share swaps

- 6.12 At the time of the placements to Mr Chiu Ming Hung, Chiltern Limited ("Chiltern") and Brentford Investments Inc ("Brentford"), WTCG acquired parcels of shares from these placees in Great Eagle Holdings Limited, Parisco International Limited and Regal Hotels respectively. The value of these shares were in most instances comparable to the amounts owing under the placement by each of the placees. Mr David Tong has denied any knowledge of these share acquisitions stating that Mr Jackson Chang was in charge of all share trading.

### Placements to companies associated with Mr David Chiu

- 6.13 A further 87,000,000 placement shares were taken up by Cathay General Inc ("Cathay General") and Brentford, companies associated with Mr David Chiu. I believe his involvement in the placement was to assist Mr Jackson Chang and/or Mr David Tong to successfully acquire WTCG without the need for Tomson Pacific to make a mandatory offer to its shareholders. Once Mr Jackson Chang and Mr David Tong were in control of WTCG, Mr David Chiu's "*favour*" could be repaid.

### Placement to Hauxton Limited and Mandarin Development Limited

- 6.14 Chintung advised the SFC that Hauxton Limited ("Hauxton") had been allotted 68,050,494 shares.
- 6.15 The provisional placing schedule in fact showed two parcels of shares were allotted to Hauxton; one of 60,000,000 and the other of 8,050,494.
- 6.16 Hauxton needed \$136,154,250 to settle the placement of the 60,000,000 shares. The funds came from three sources namely, a bank account for which Madam Hsu Jye was a signatory, a diversion of funds from a share transaction between South View Properties Limited (a company associated with Mr David Tong) and Far East Holdings International Limited ("FEHIL") (a company associated with Mr David Chiu) and thirdly from the drawing upon Hauxton's margin account maintained with Chintung.
- 6.17 The 8,050,494 shares were rebooked to Mandarin Development Limited ("Mandarin Development"), a company controlled by Mr Arthur Lai. Although this allotment of shares was within the knowledge of Mr Arthur Lai, Mr Raymond Lai, Mr Peter Mou and Mr Gary Wong of Chintung, no reference to this placement was made in disclosures to the SFC. In this instance I believe it was the responsibility of Mr Raymond Lai and Mr Gary Wong to have provided the information regarding Mandarin.

### Remaining 7 placees

- 6.18 I have investigated the circumstances of the remaining seven placees and I have found no evidence to demonstrate that they were not independent of Tomson Pacific, WTCCG, their directors and related companies.

### THREE PLACES ALLEGEDLY INTRODUCED BY DR STANLEY HO

6.19 On 6 July 1990, a facsimile, as set out below was sent by a person unknown from a facsimile line registered in the name of WTCG (Appendix 17). There was no reference on the facsimile to the person or company who was to receive it. This document however was found in a file kept by Mr Raymond Lai's former secretary, Madam Violet Ma, at Chintung:

- "1. *Commercial Success Limited* *HK\$84,093,750*  
*11/F Flat A* *(37,375,000 shares)*  
*Hollywood Heights*  
*No. 6 Old Peak Road*  
*Hong Kong*  
  
*Attn: Mr Raymond Ling*
2. *Onshine Finance Limited* *HK\$84,093,750*  
*19/F Malahon Centre* *(37,375,000 shares)*  
*10-12 Stanley Street*  
*Central*  
*Hong Kong*  
  
*Attn: Mr Li Chi Keung*
3. *La Fayette Limited* *HK\$168,187,500*  
*c/o The Second Floor* *(74,750,000 shares)*  
*Unit No. 1-4*  
*Fullagan Industrial Building*  
*234 Aberdeen Main Road*  
*Aberdeen*  
*Hong Kong*  
  
*Attn: Ms Mandy Kwan"*

6.20 According to Mr Raymond Lai, he did not receive the facsimile directly but believed it could have been forwarded to him by Mr Peter Mou. Mr Peter Mou has denied this.

6.21 During Mr David Tong's first examination in February 1993 he stated that at the time of the placement Mr Jackson Chang told him that he had promised the persons involved with Commercial Success and Onshine that should the price of the WTCG shares drop below the placement price of \$2.25 then he:

*". . . would either make them a compensation, or arrange for someone else to buy back those shares from them."*

6.22 Mr David Tong added that he had agreed with this arrangement because he was optimistic about the stock market at the time. In other words the likelihood of having to pay any compensation was minimal. Further, should those placees have made a profit from the placement then any liability to compensate them would have been extinguished.

6.23 Following the close of the placement the share price rose to a high of \$2.70 on 6 August 1990. With the outbreak of the Gulf war however the share price collapsed. In relation to the buy back arrangement Mr David Tong stated:

*"After the placement was completed, war broke out in the Middle East and the price of the stock fell and it was, at that time, that Dr Ho approached me. He said that these people were his friends and he wanted me to help his friends. So I promised that, within one year, I will arrange for someone or some people from Taiwan to buy the shares from them. I did that because I was cooperating with STDM on many business projects worth more than \$1,000,000,000 at the time and I didn't want to put them in a difficult position."*

6.24 When questioned further about Dr Stanley Ho's approach, Mr David Tong said:

*"Dr Ho told me that these people were his friends, and he also said that there were many shareholders behind Mr Li [Chi Keung] and he didn't want these people to suffer any loss. So he said that, since we are doing such big businesses at the time, and there were lots of other opportunities to make profit elsewhere to cover the loss. So he said that we would be able to make a lot of profit elsewhere in future, so he simply asked me to help this time with the compensation."*

*". . . all he [Dr Stanley Ho] told me was that he wanted me to help his friends and buy back those shares from them."*

6.25 During his first examination in February 1993 Mr David Tong denied that there were any other similar arrangements made with other placees.

6.26 In his August 1993 examination, however, Mr David Tong stated that he had *"come to learn that there were three lots"* of shares purchased. The same guarantee had been made by Mr Jackson Chang in respect of the shares taken up by La Fayette through its agent Pierson Asia.

6.27 According to Mr David Tong, each of these placees, namely: Commercial Success, Onshine and Pierson Asia had been *"introduced to us by Stanley Ho"*, although he had not directly spoken to Dr Stanley Ho about the placement of the shares:

*". . . it was Jackson Chang who acted as the contact and arranged for everything . . ."*

6.28 Dr Stanley Ho has stated that he made no arrangements with Commercial Success or Onshine to take up shares in the placement. When asked further about the involvement of La Fayette and whether he had introduced all three companies to the placement, Dr Stanley Ho stated:

*"I have told you before and I am telling you once more, I have never heard of these firms. I have lots of friends in Hong Kong, some of them are supporting me when they knew that I became the Chairman [of WTCG]; that is all I know. They thought it is very good business because most of my business seems to produce very good profits."*



6.29 Dr Stanley Ho did recall a conversation with Mr David Tong which took place following the share price collapse in the latter part of 1990:

*". . . I was telling David Tong that, "you are putting me in great embarrassment because many of my friends, they thought they are supporting me and hoping to make a little profit and they bought a lot of Bond shares and now they are all caught. So, as you are so confident and you believe you can find some big buyers from Taiwan, when you have that opportunity you let me know". So one day I received a call from David [Tong] . . . "Oh good news Stanley, I managed to find a very good buyer but treat this confidentially, he wants to buy only big shares not small units." So I told Ambrose So and Patrick Huen to get in touch with Li [Chi Keung] and the others who claimed to have supported us."*

6.30 During Mr David Tong's examination in February 1993, he stated that by late 1991, he had arranged for Madam Tsai Hui Min and Mr Huang Wen Hui, both Taiwanese residents, to purchase the WTCCG shares held by Commercial Success and Onshine respectively for \$2.00 per share. The market price at that time was between 72 and 77 cents. Mr David Tong told me that he compensated them for doing so by paying them the difference between the market price and the adjusted placement price of the shares.

6.31 During his August 1993 examination however, Mr David Tong stated that Madam Tsai Hui Min and Mr Huang Wen Hui were only nominees of the true purchaser, Mr Sun Tao Tsun, a director of Pacific Cable, Tomson Pacific and WTCCG, in his individual capacity or together with his friends. Mr David Tong added that he paid the difference between the market price and placement price to STDM. Mr Sun Tao Tsun allegedly paid the balance.

6.32 According to Mr David Tong, he made arrangements for the sale of Killenny, La Fayette and Commercial Success (rather than for the sale of their shares in WTCG) with Mr Ambrose So and Mr Patrick Huen, both directors of Shun Tak as Dr Stanley Ho was very busy. Both Mr Ambrose So and Mr Patrick Huen have denied any real involvement in the sale of these companies other than instructing a junior employee Mr Tam Chan Sing, ("Mr Joseph Tam"), to contact the vendors of these companies.

6.33 Payment for the three companies was made by two instalments. Mr David Tong has told me that the first instalment was made during a meeting at the offices of Shun Tak. He stated that he attended it with Mr Wu Hung Chao, the Deputy General Manager of Pacific Cable.

6.34 Mr David Tong believed that the presence of Mr Wu Hung Chao would have clearly indicated to those at Shun Tak that Mr Sun Tao Tsun was the ultimate purchaser of the shares. He stated:

*" . . . of course, we didn't tell STDM who was the buyer of those shares but everybody knew that that person [Wu Hung Chao] was the representative of Mr Sun. "*

6.35 When asked why it was necessary for him to attend the offices of Shun Tak with Mr Wu Hung Chao, Mr David Tong asserted:

*"Because I have to pay a cheque to make up the loss and I don't want someone else to know that. "*

6.36 Although Mr David Tong could not recall whether Dr Stanley Ho was present at the meeting on 9 December 1991, he stated that he believed Dr Stanley Ho knew that he was paying the difference between the market value and the placement price.

6.37 The second tranche was paid on 25 March 1992. According to Mr Joseph Tam he was given a cheque payable to STDM upon delivery of the corporate kits for Commercial Success, Killenny and La Fayette to Tomson Pacific.

6.38 Dr Stanley Ho denied that he had approached Mr David Tong directly in relation to the sale of the three companies or any knowledge of Mr Sun Tao Tsun being the ultimate purchaser. He stated:

*"No such thing. I told you all these financial dealings is always done by Patrick Huen and Ambrose So. I have only met this Sun [Tao Tsun] I think once or twice in a board meeting, that is all. This is the first time that I hear that he is the buyer of these shares, I don't know."*

6.39 Dr Stanley Ho added that he did not know why the settlement cheques for the companies had been paid to STDN.

6.40 I asked Mr David Tong why he had not disclosed Mr Sun Tao Tsun's involvement in the purchase of these shares during the February 1993 examinations. He stated:

*"Well, Mr Sun is the director of Pacific Cables in Taiwan, he's also one of our directors. As far as I know, the money for the acquisition of those shares came from Taiwan but we all know that there are foreign exchange, exchange control regulations in Taiwan, rather, and I also didn't know whether it was his own money or whether it was his company's money but that was not relevant. As far as we were concerned it was a personal concern of Mr Sun. He didn't want to reveal his identity because of the complications in Taiwan."*

#### Mr Sun Tao Tsun's submission

6.41 In a submission to me, Mr Sun Tao Tsun stated:

*"In Chapter 6, you have recorded evidence from Mr David Tong that I was a purchaser of World Trade Centre shares. This is not correct. Neither myself nor Pacific Electric Wire & Cable Co Limited ("PWC"), nor any person associated [with] me or PWC has purchaser any shares in WTCG or any interest in such shares whether as principle or agent. Evidence you may have received to the contrary is false".*

- 6.42 Similar submissions were made by Pacific Cable and Mr Hu Hung Chiu (Wu Hung Chao).

Further Evidence from Mr David Tong regarding STD M

- 6.43 Having heard Mr David Tong's evidence that he paid STD M directly for the difference between \$2.00 and the market price of the WTCG shares acquired by Commercial Success, Killenny and La Fayette, I endeavoured to obtain from him documentary support of his allegation.

- 6.44 On 11 December 1993 his solicitors wrote to me stating:

*"The compensation paid by Mr Tong to the 3 placees for the shares they purchased in the placement was made by way of Mr Tong and Cortney Enterprises Limited assigning to STD M the debts due from Rivera (Holdings) Limited, a copy of the assignment of debt is enclosed for your information."*

- 6.45 A copy of this Assignment can be seen at Appendix 18. It provides in the recitals:

- (A) *The debtor [Rivera] owes the Assignors [Mr David Tong and Cortney] the sum of HK\$126,547,480 as at 26th August, 1991 with interest accrued on a monthly basis (the "Debt") .*
- (B) *The Assignors owes STD M certain debts in excess of the amount of the Debt.*

*(C) The Assignors agrees to assign the Debt to the Assignee [STDM] subject to the terms mentioned below.*

- 6.46 In the assignment, Rivera undertakes to repay the debt from the proceeds of the sale of Lot 33 and Lot 27 in Macau, being properties held by that company. Mr Jackson Chang and Mr Zhou Huaming signed the Assignment on behalf of Rivera, Mr David Tong signed on his own behalf and Dr Stanley Ho signed on behalf of STDM. Mr Daniel Lui, a director of Tomson Pacific, witnessed all of these signatures. One of the directors of Cortney purportedly signed on its behalf, that signature being witnessed by Madam Hsu Jye.
- 6.47 The Assignment is dated 22 August 1991.
- 6.48 This new evidence presented by Mr David Tong contradicts his previous statements in the following ways:
- (a) He previously stated he had paid STDM by cheque;
  - (b) He previously stated that Dr Stanley Ho was not present when the compensation was dealt with, yet Mr Daniel Lui appears to have witnessed the signing of the Assignment by Dr Stanley Ho at the same time that Mr David Tong, Mr Jackson Chang and Mr Ming Xiao Guang signed the agreement; and
  - (c) Mr David Tong made no mention of a settlement in August 1991 concerning the purchase of the WTCG shares or of the involvement of Cortney.
- 6.49 As is discussed in Chapter 4 of this report, Dr Stanley Ho and Messrs Patrick Huen and Ambrose So had initially refused to answer my questions in respect of STDM and they only acceded to answering my questions in this respect on 9 December 1993. I have written to them seeking clarification of the nature of this assignment but have not received a response.

- 6.50 I have been unable, due to time constraints, to further examine Mr David Tong, Mr Daniel Lui and Madam Hsu Jye in relation to Mr David Tong's evidence of the Assignment.
- 6.51 If I accept Mr David Tong's evidence that this assignment of a debt of \$126,547,480 was compensation for the acquisition of 178,800,000 WTCG shares (being the total of those held by Commercial Success, Killenny and La Fayette including those acquired in the 1 for 5 bonus issue in November 1990), then this compensation amounts to approximately 70.776 cents per share. The balance for the compensation remains unaccounted for.
- 6.52 It is possible that the balance of compensation was settled by the cheques that Mr David Tong refers to as being delivered to the offices of Shun Tak.

Mr David Tong's Submission

- 6.53 Solicitors for Mr David Tong made the following submission having considered my provisional findings:

*"As to the three placees allegedly introduced by Dr Ho, Mr Tong was unaware of any association with Dr Ho. Mr Tong's evidence is that Mr Jackson Chang told him at the time of the placement that he had agreed verbally to compensate some of such placees in the event of the WTCG share price falling or to find other purchasers for such shares. Mr Jackson Chang told Mr Tong that those placees were friends of STDM, but Mr Tong never spoke to any of those placees, in particular he never spoke to Mr Raymond Ling, and he was totally unaware of who they were : although they might have been introduced through Dr Ho or STDM, he assumed them to be independent third parties over whom neither Dr Ho nor STDM exercised any control. Mr Tong did not think there was anything improper in such an arrangement as in the event of compensation being paid, the shares would nevertheless be transferred to other independent purchasers.*

*There was no "guaranteed buy-back arrangement" as alleged in your draft report. All there was was a verbal assurance from Mr Jackson Chang. Mr Tong understood that those placees would not be entitled to ask for any compensation if the share price of WTCG traded above the placement price of \$2.25 subsequent to the placement. After the Gulf War broke out in later 1990, the share price of WTCG fell to approximately \$1 and Dr Ho approached Mr Tong and told him that certain of his friends had supported the placement and asked Mr Tong if he could do anything to avoid them suffering any loss. Mr Tong still did not know the names of the placees or their relationship (if any) with STDM or Dr Ho. He felt that he was not obliged to make any compensation since the WTCG share price had traded at \$2.8 to over \$2.7 after the placement, but he nevertheless agreed to find a purchaser for such shares within a year in order to maintain an amicable relationship with Dr Ho in view of the substantial investment of his companies in Macau.*

*Mr Tong cannot remember the exact amount of compensation paid but recalls that the price was agreed after some bargaining. Mr Tong also cannot remember whether the compensation was paid at any meeting or was simply delivered. In fact he confused another meeting held at STDM's office and attended by Mr Wu Hung-chao of Pacific Cable (referred to in Mr Hu's submissions to you) as the alleged meeting where the compensation was paid. So far as Mr Tong was concerned he arranged with Mr Sun for some of his friends, whom he understood to be wholly independent of Mr Sun, to purchase the three placee companies, Killenny, Commercial Success and La Fayette : it is not correct to say that Mr Sun purchased the three placees companies.*

- 6.54 Mr David Tong has also submitted that he is in fact the beneficial owner of Cortney. Cortney is discussed in further detail in Chapter 20.
- 6.55 The details relating to the involvement of Onshine, Commercial Success and Pierson Asia are set out below.

## **ONSHINE INVESTMENT LIMITED - 37,375,000 WTCG SHARES**

### The acquisition of shares in the placement by Onshine as agent for Killenny Limited

6.56 On 3 March 1989 Killenny, a BVI company, was purchased from Offshore Incorporations Limited. ("Offshore Incorporations") by Pierson Corporate Services Limited ("Pierson Corporate Services"). Pierson Corporate Services is now known as MeesPierson Corporate Services (HK) Limited. Pierson Corporate Services have advised me that in identical circumstances to those of Commercial Success, it provided secretarial services for Killenny from 5 July 1990 until 31 March 1992. Mr Li Chi Keung was appointed the sole director on 5 July 1990 (the same day as Mr Raymond Ling was appointed the sole director of Commercial Success). Payment for these services to Killenny was made as follows:

<u>Date</u>	<u>Nature</u>	<u>Method of Payment</u>
9/1/91	Supply of company; activation, secretary for period 4/7/90-31/12/90	Cashiers Order drawn by Banque Indosuez dated 24 July 1990
1/2/91	Secretary for period 1/1/91- 31/12/91	T/T Remittance to Pierson Corporate Services by Pierson Asia on behalf of Leedon International Corp remitted on 5 March 1991
27/3/92	Secretary for period 1/1/92 - 31/3/92	T/T Remittance to Pierson Corporate Services by Pierson Asia on behalf of Leedon International Corp remitted on 9 April 1992

6.57 It will be seen in discussion concerning the placement to Commercial Success that the above payments were identical in both timing and method of payment to those of Commercial Success who also employed Pierson Corporate Services.



- 6.58 I have not determined the beneficial ownership of Leedon International Corp.
- 6.59 Mr Li Chi Keung could not recall from whom he had purchased Killenny or where its records were kept.
- 6.60 Mr Li Chi Keung told me that he acquired Killenny specifically to take up the 37,375,000 WTCG shares in the share placement.
- 6.61 However from a handwritten note obtained from Madam Violet Ma's file, it showed that Killenny was originally to take up 45,500,000 WTCG shares not 37,375,000 Appendix 19.
- 6.62 A standard placing letter dated 5 July 1990 in respect of this arrangement was also marked "cancelled". It was addressed to:
- "Mrs Peggie Liu  
Killenny Ltd  
c/o Paralegal Services Ltd  
Stephenson, Wong & Co  
14/F Swire House  
11 Chater Road, H.K. "*
- 6.63 The standard placing letter referred to 45,500,000 shares having been agreed to be purchased and was signed by Mr Raymond Lai, a director of Chintung.
- 6.64 I requested Paralegal Services Ltd to provide me with all information in relation to the services it provided to Killenny. It advised that it has no record of Killenny being a client. Madam Peggie Liu, a former partner of Stephenson Wong & Co, advised me that she has acted for Mr Li Chi Keung and Onshine Finance Limited ("Onshine Finance") however she had no recollection of acting for, or knowledge of, Killenny.
- 6.65 Mr Li Chi Keung is the Managing Director of Onshine Securities Limited, a member of The Stock Exchange, and of Onshine Finance. He is a business associate of Dr Stanley Ho.

6.66 In addition to being a stockbroker, Mr Li Chi Keung has told me that he operates a gambling room called "The Golden Room" at the Lisboa Casino in Macau. He has an agreement with STDM to introduce wealthy clients from Hong Kong and overseas to gamble at the Golden Room. In relation to the operation of the Golden Room I am informed by Mr Li Chi Keung through his solicitor that:

*"The Gold [Golden] Room takes care of all matters inside the Gold Room except gambling tables. All gambling tables inside the Gold Room are operated by the Lisboa Casino as banker of these tables . . . the Casino bears the expenses, and essentially the risk, of running the tables.*

*The Casino would pay the operators of the Gold Room certain commission based on the turnover of chips brought in by the operators and the drop from the tables."*

6.67 To finance the day to day operations of the Golden Room, Mr Li Chi Keung stated that he draws a number of postdated cheques from Woodford Investment Limited ("Woodford") in favour of STDM. These cheques are covered by Letters of Credit issued by either Liu Chong Hing Bank Limited ("Liu Chong Hing Bank") or the Seng Heng Bank. The Golden Room:

*"always draws up from the Casino the maximum amount covered by the Letters of Credit . . . when these [postdated] cheques became due, the Gold Room would send to the Casino [STDM] another set of post-dated cheques issued by Woodford Investments Limited for the same total amount to maintain the same financial position with the Casino."*

6.68 Woodford is a BVI company, incorporated in January 1990 and is the vehicle through which its 197 shareholders invest in the Golden Room. I am informed by Mr Li Chi Keung that he and his wife, Madam Wong Hoi Ping ("Rita Wong"), hold approximately 12.5% of Woodford's issued share capital. In a letter to me, Mr Li Chi Keung, through his solicitors, stated that:

*". . .it is the mutual understanding among all shareholders of Woodford Investments Limited that [Mr Li Chi Keung] shall have the control of finance, administration and operation of the Gold Room and he is free to utilise the Gold Room's money to finance his own business free of interest. "*

6.69 Dr Stanley Ho described Mr Li Chi Keung's involvement with STD M:

*"He [Mr Li Chi Keung] is owing money to us [STD M] everyday. But you know all the time he repays, we give them rollovers and all that. "*

6.70 Further reference to the Golden Room is made in Chapter 15 concerning the purchase of the three properties in Mandarin Plaza, New York.

6.71 The facsimile sent from WTCG's private facsimile number on 6 July 1990 which was found in Madam Violet Ma's file at Chintung referred to Onshine Finance as taking up 37,375,000 placement shares (Appendix 17).

6.72 Indeed, a further standard placing letter dated 6 July 1990 (being the same date as the Commercial Success's standard placing letter) from Chintung to Mr Li Chi Keung of Onshine stated that the oral contract concluded between them that day, regarding the purchase of 37,375,000 WTCG shares at \$2.25 each, was confirmed. Attached to the confirmation letter was the Form of Acknowledgement as settled by the SFC which stated in part (Appendix 20):

*"We confirm that we are an independent party from and are not acting in concert with Bond Corporation International Holdings Limited ("BCIHL") and Tomson Pacific Limited ("Tomson") or any related party of either of them or any of their respective directors (or their close relatives, related trust or personal holding companies.) For the purposes of this paragraph, "related party" shall mean, in relation to BCIHL or Tomson, its parent company, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other (where "associated company" denotes ownership or control of 20 per*

*cent or more of the equity share capital of a Company, combined with the ability to exercise a significant influence over that Company).* "

6.73 Mr Li Chi Keung signed the Form of Acknowledgement on behalf of Onshine. Mr David Tong co-signed it on behalf of Tomson Pacific under the typed statement:

*"We confirm that in the opinion of Tomson that the above statement of independence is correct"*

although he was aware of and agreed with the guaranteed buy back arrangements made by Mr Jackson Chang. According to Mr David Tong, at the time of the placement he did not consider that a guaranteed buy back arrangement for shares was improper. He said:

*"I was aware of the arrangement but I didn't know that it would be improper because its very common for Taiwanese to do business like that. You buy something, you're not happy with it then you can return it afterwards."*

6.74 He added that:

*"It was through my subsequent contact with the merchant banks that I came to realize that this is improper."*

6.75 To fund the purchase of the 37,375,000 WTCG shares, \$84,812,751.56 was needed. Mr Li Chi Keung has given evidence that the persons listed below held beneficial interests in Killenny and that payment for the shares was divided amongst them as follows:

<u>Beneficiaries</u>	<u>Occupation</u>	<u>Beneficial Interest (%)</u>	<u>\$</u>
Mr Chan Shu Kit	Chairman of Tack Hsin Holdings	40	33,925,100.62
Mr Li Chi Keung	Managing Director of Onshine Securities	30	25,443,825.47
Mr Chan Man Si	Shroff Office Manager of Golden Room	15	12,721,912.73
Mr Yeung Chun Pong	Manager of Onshine Securities	5	4,240,637.58
Mr Leung Wing Ling	Horse Trainer	5	4,240,637.58
Mr Tsang Ngai Keung	Director of Onshine Securities	2.5	2,120,318.79
Mr Wong Sai Ping	Brother-in-law of Mr Li Chi Keung	2.5	2,120,318.79
	Total	<u>100%</u>	<u>\$84,812,751.56</u>

6.76 I have examined Messrs Chan Shu Kit, Yeung Chun Pong, Leung Wing Ling and Tsang Ngai Keung in relation to their involvement in this transaction. Each has told me that Mr Li Chi Keung approached them individually and said that there were a large number of WTCG shares for sale and that they would make a good investment. He allegedly asked each of them whether they were interested in investing in these shares and how much they could afford to buy.

6.77 Each of them has told me that they agreed to take the portion referred to above, although none apparently had enough of their own money to pay for their allotment. Mr Li Chi Keung has told me, and it has been confirmed by the beneficiaries examined, that he agreed to lend each of them the amount equivalent to their contribution at the prime rate of interest.

- 6.78 Messrs Chan Shu Kit, Yeung Chun Pong and Leung Wing Ling told me that they had previously borrowed money from Mr Li Chi Keung on a personal basis to finance stock transactions, to assist in their businesses and for other personal reasons. Mr Li Chi Keung had on these occasions apparently charged 2% - 3% above the prevailing bank interest rate. In this instance, however, Mr Leung Wing Ling commented that if any loss was suffered after the WTCG shares were purchased he would not be liable for any interest. The other beneficiaries examined made no mention of such an arrangement but emphasised that Mr Li Chi Keung believed a profit would definitely be made in which case interest would be payable on the monies borrowed. No documentation exists to substantiate the terms of the arrangement made between Mr Li Chi Keung and the beneficiaries.
- 6.79 Having agreed with each beneficiary the amount of their allotment, Mr Li Chi Keung told me that he arranged for the respective amounts to be paid into each of their bank accounts. The beneficiaries examined have confirmed that they then drew cheques made payable to Onshine Investment Limited for that exact sum. Bank statements have also been produced by each of them showing this occurred. When asked why it was necessary to actually go through the procedure of depositing and then immediately withdrawing the funds, each of the beneficiaries examined sought to explain it by stating that it was a way of committing oneself to the transaction and of evidencing the fact that the monies had been borrowed.
- 6.80 Mr Li Chi Keung has told me that he did not have enough money to fund the placement. With respect to the \$59,368,927.37 which was paid into the beneficiaries' bank accounts, Mr Li Chi Keung stated that he drew \$80,000,000 from Woodford's account. According to Mr Li Chi Keung this was the maximum amount of credit available under the Letter of Credit. He presented STDM with a Letter of Credit for the comparable amount and was issued with gambling chips. The chips were subsequently cashed and approximately \$60,000,000 of those funds was paid into the beneficiaries' bank accounts. The balance was used as working capital for the Golden Room. Post dated cheques were then drawn for amounts up to \$5,000,000 to secure payment and rolled over on a constant basis.

- 6.81 The balance of \$25,443,825.47, which represented his 30% allotment was borrowed from Liu Chong Hing Bank with the 37,375,000 WTCG shares that were acquired being pledged as security.
- 6.82 As discussed earlier, Mr David Tong has told me that Mr Jackson Chang promised Mr Li Chi Keung, (as he promised Mr Raymond Ling of Commercial Success), that if the WTCG shares dropped in value he would either compensate him for any loss incurred or arrange for someone to buy back the shares.
- 6.83 Mr Li Chi Keung denied the accuracy of Mr David Tong's statement. He stated:
- ". . . Prior to and after the purchase of those shares nobody had ever talked to me or provided that kind of guarantee that I would not lose any money. "*
- 6.84 On 9 July 1990, Onshine, on behalf of Killenny, instructed Chintung to register the 37,375,000 WTCG shares in the name of Liu Chong Hing Bank (Nominees) Limited ("Liu Chong Hing Nominees") and deliver them up to Liu Chong Hing Bank as security for the monies borrowed. This was done on 20 July 1990. I have been advised by Liu Chong Hing Bank that it had granted Onshine Finance an overdraft facility against securities in 1988 which continued on an *"on-going revolving basis"*.
- 6.85 On 31 October 1991, a dividend of 10 cents per share was paid to WTCG shareholders. A further dividend of 1.5 cents per share was paid on 15 January 1992. I have been informed by Mr Li Chi Keung's solicitor that the two dividend payments were deposited into Killenny's account with the Nam Wan main office of Seng Heng Bank.

The acquisition of Killenny by interests associated with Mr Sun Tao Tsun

- 6.86 Mr Li Chi Keung claimed that if a profit had been realised from the WTCG shares he would have shared it with the beneficiaries. When the share price reached \$2.70, each of the beneficiaries examined has told me that they individually approached Mr Li Chi Keung requesting him to sell the WTCG shares to realise the profit. Mr Li Chi Keung refused to do so, claiming that he was optimistic that the share price would continue to rise to \$3.00 and that if the price fell below the placement price of \$2.25 he would be responsible for any loss.
- 6.87 Following the collapse of the WTCG share price in August 1990, each of the beneficiaries examined has told me that Mr Li Chi Keung did not demand any interest from them but agreed to simply forget the entire arrangement. According to Mr Li Chi Keung, in October 1990, each of the beneficiaries transferred their respective beneficial interests in Killenny to him. The beneficiaries examined have denied any knowledge of a company called Killenny and of these alleged transfers. I requested Mr Li Chi Keung to provide me with any documentation to evidence the transfers but I have been informed by his solicitor that none exists.
- 6.88 In or about January 1991, due to a further drop in the share price, Mr Li Chi Keung told me that he approached Dr Stanley Ho seeking his assistance in disposing of the WTCG shares. According to Mr Li Chi Keung, he had not told Dr Stanley Ho that he had used STD M's money to purchase the shares. He further asserted that STD M was unaware that the \$80,000,000 letter of credit had been used primarily for his own activities rather than for the Golden Room.
- 6.89 In a subsequent examination Mr Li Chi Keung added, claiming privilege, that after he had requested Dr Stanley Ho's help to dispose of the shares he told Mr Ambrose So that the shares had in fact been purchased with money from the casino. According to Mr Li Chi Keung, Mr Ambrose So stated that:



*". . . he would talk to his boss, Dr Ho, and see whether an arrangement could be made to dispose of those shares so that the proceeds could be used to cover the amount I owe."*

6.90 Dr Stanley Ho confirmed that Mr Li Chi Keung approached him when the share price had collapsed. He stated that he only became aware Mr Li Chi Keung had taken up shares in the placement at this time:

*". . . I only knew afterwards when he said, 'Oh Stanley, I supported you and now I am losing heavily; because I thought you were the Chairman then I bought some of these shares, and now will you tell me when you are going to be able to change the situation?' And I said, 'Well, I only hope that we can do better later, ' or something like that."*

6.91 When asked later in the examination whether Mr Li Chi Keung had approached him to buy back his shares Dr Stanley Ho stated:

*"Yes, he was saying that, 'well, when you have a chance, you have some big buyers, then let us know.' But under no obligation because there is nothing written."*

6.92 As referred to earlier in this chapter, Mr David Tong stated that Dr Stanley Ho approached him requesting he assist Mr Li Chi Keung by finding a buyer for the shares. According to Mr David Tong, Dr Stanley Ho told him:

*". . . that these people were his friends, he also said that there were many shareholders behind Mr Li [Chi Keung] and he didn't want these people to suffer any loss. So he said that, since we are doing such big businesses at the time, and there were lots of other opportunities to make profit elsewhere to cover the loss. So he said that he would be able to make a lot of profit elsewhere in future, so he simply asked me to help this time with the compensation."*

6.93 Mr David Tong told me that he promised Dr Stanley Ho, that he would find buyers to buy back the shares within one year. Mr David Tong added that although he believed that:

*". . . the period relevant to that agreement had long expired but I had to honour my commitment because Onshine was recommended to us by the STDM people. "*

6.94 Towards the end of 1991, Dr Stanley Ho recalled Mr David Tong contacted him saying:

*"Good news, I've now managed to get a very special Taiwan investor to pay a very high price but keep this very, very confidential . . . "*

6.95 According to Dr Stanley Ho, Mr David Tong "*mentioned*" to him the price and he passed the information onto Mr Ambrose So. When asked whether the price was the market price Dr Stanley Ho replied:

*"No, no, much higher, I remember it was much higher. How much higher, I don't remember, I merely gave it straight to Ambrose [So], and Patrick [Huen] got hold of Li Chi Keung and perhaps T T Ling and those other friends whoever have supported us, that [David] Tong managed to find a buyer. "*

6.96 In accordance with instructions received from either Mr Patrick Huen or Mr Ambrose So, Mr Joseph Tam has told me that he contacted Mr Li Chi Keung to advise him that a buyer was willing to pay \$2.00 per share. At the time, the shares were trading at between 72 and 77 cents. According to Mr Joseph Tam he approached Mr Li Chi Keung whilst the latter was in Shun Tak's offices:

*"I asked him whether he was interested in selling those shares at a price of roughly \$2.00. "*

*"He didn't have any special reaction but he said that if there was a buyer willing to offer that price, then he would be willing to sell. "*

- 6.97 Mr Li Chi Keung's evidence was consistent with that given by Mr Joseph Tam.
- 6.98 As Killenny's only asset was the WTCG shares (the amount of which had increased to 44,850,000 due to a 1 for 5 bonus issue following the close of WTCG's books on 30 November 1990) ("the Bonus Issue") the issued share capital of Killenny was sold rather than the WTCG shares.
- 6.99 By structuring the sale in this way it avoided the payment of stamp duty but more importantly, prevented the sale of the shares in WTCG from coming to the attention of the market.
- 6.100 During the February 1993 examinations, Mr David Tong stated that he agreed to pay Mr Huang Wen Hui, a Taiwanese resident and friend of Madam Hsu Jye (Mr David Tong's sister-in-law), compensation for buying Killenny's 44,850,000 WTCG shares by paying the difference between the market price and the price he paid Mr Li Chi Keung for the shares. He added:

*". . . but since we were talking about a large lot of shares, of course, we did not work out the amount of compensation exactly. . . "*

- 6.101 It was not until the August 1993 examinations that he conceded that Mr Huang Wen Hui was only a nominee for Mr Sun Tao Tsun and/or his friends.
- 6.102 Mr David Tong told me that he made the arrangements for the sale of Killenny, Commercial Success and La Fayette with Mr Patrick Huen and Mr Ambrose So as Dr Stanley Ho was too busy.

6.103 Mr Ambrose So has denied any knowledge of the manner in which the share sale was settled.

6.104 Mr Patrick Huen also denied any real involvement in this transaction. He stated:

*"I mean involvement is a very big word, because I want to be a little bit specific on the definition of involvement. Because I did not contact Raymond Ling, I did not negotiate with Mr David Tong, I did not actually have any discussion with all these people to conclude the transaction . . . I think I just passed the information to Joseph Tam to relay the message to these people"*

6.105 The first instalment payment was paid on 9 December 1991. Mr David Tong initially recalled that he attended the offices of Shun Tak with Mr Sun Tao Tsun's assistant, Mr Wu Hung Chao, who is the Deputy General Manager of Pacific Cable.

6.106 Although Mr David Tong was unsure whether this meeting occurred in December 1991 or at the time of the second instalment payment on 25 March 1992, from the evidence it would appear that it was the former, as the second tranche was paid at the offices of Tomson Pacific.

6.107 I requested further information in writing from the following directors and employees of Shun Tak in relation to the meeting which, according to the evidence of Mr David Tong, related to the sale of all three companies:

Mr Patrick Huen

Mr Joseph Tam

Mr Ambrose So

Mr Y K So

Mr Andrew Tse

My questions and the answers provided through their solicitor are set out below:

*"Q Please name your staff members who were present.*

*A Unfortunately, none of my clients remembers the meeting to which you refer and there are no notes of it.*

*Q How was payment for these companies effected ie cash/cheques/cashier orders?*

*A My clients do not know nor do they have any documentary evidence.*

*Q Were receipts provided? If so, please supply copies.*

*A My clients do not believe so but they cannot remember. Again, they have no documentary records.*

*Q Were your staff aware that Mr Wu Hung Chao was attending on behalf of Mr Sun Tao Tsun, the Chairman of Pacific Electric Wire & Cable Limited?*

*A My clients do not remember the meeting and they most certainly do not remember in what capacity Mr Wu was acting.*

*Q Were any of your staff aware that Mr David Tong paid the difference between the market and placement price for the shares?*

*A No.*

*Q Were separate cheques issued by Mr David Tong for the amount he contributed?*

*A Again, my clients do not remember nor do they have any records*

*Q Were any of your staff involved in settling the price of \$2.00 per share?*

*A No. "*

6.108 In an earlier interview however, Mr Joseph Tam stated that he had received 2 cheques from "a messenger" which represented the first instalment payments in respect of Commercial Success and Killenny in December 1991. He stated:

*"Yes. . . I arranged to pay in the cheque. Then I said this to my manager [Mr Patrick Huen]. My manager told me that I should inform Mr Li Chi Keung and Mr Raymond Ling that we had received 50% of the deposit. He also told me that I could inform them that they should contact their Macau office STDM"*

6.109 Mr Li Chi Keung however, did produce a copy of a receipt, Appendix 21 issued to him by STDAM dated 9 December 1991 for \$45,393,950. Translated, the receipt stated:

*"To: Accounts Department, Macau Casino. This is to acknowledge receipt of \$45,393,950.00 from Mr Li Chi Keung. Please return the \$45 million cheque deposited by "Golden Room" and refund the balance by means of cash coupons to Mr Li Chi Keung."*

The receipt was signed by Dr Stanley Ho on behalf of Macau Entertainment Co Ltd.

6.110 The second tranche of \$45,393,950 in respect of Killenny was paid on 25 March 1992 upon delivery of the corporate kits for Killenny, Commercial Success and La Fayette to Tomson Pacific. According to Mr Joseph Tam, he was given an envelope by Mr Yeung Kam Hoi ("Mr K H Yeung"), the company secretary of Tomson Pacific and WTCG, which may have contained two cheques. He recalled that they were payable to STDAM. Mr K H Yeung has advised that he does not believe that he handed over any envelope or cheques to Mr Joseph Tam.

6.111 Mr Li Chi Keung also produced a copy of a further receipt issued to him by STDAM and dated 30 March 1992, which was again signed by Dr Stanley Ho and in all respects identical to the receipt translated above (except for the date).

6.112 In relation to these two instalment payments Mr Li Chi Keung stated:

*". . .now, because Shun Tak found the buyer for this deal and the buyer would pay for those shares by two instalments, so Ambrose So told Dr Ho that now the money had been received and I had already made many overdrafts, my Golden Room had already made many overdrafts. So in other words, the money received, the payment received was used to offset the debt which the Golden Room owed STDAM."*

- 6.113 I have not been able to determine with any certainty the manner in which payment by Mr David Tong and Mr Wu Hung Chao (on behalf of Mr Sun Tao Tsun) was effected or the actual amount paid other than the evidence discussed earlier that was only recently provided by Mr David Tong, concerning the assignment of a debt to STDM.
- 6.114 Establishing the truth in respect of these transactions was complicated even further following receipt of Mr Sun Tao Tsun's denial of any involvement in the purchase of Killenny and Mr Wu Hung Chao's denial of attending any such meeting. Their submissions were received after preparation of my preliminary conclusions but were forwarded to Mr David Tong for his comment prior to receipt of his submission..
- 6.115 Mr David Tong's submission to me, made by solicitors on his behalf, again changed his version of events. It stated in part:

*"Mr Tong cannot remember the exact amount of compensation paid but recalls that the price was agreed after some bargaining. Mr Tong also cannot remember whether the compensation was paid at any meeting or was simply delivered. In fact he confused another meeting held at STDM's office and attended by Mr Wu Hung-chao of Pacific Cable (referred to in Mr Wu's submissions to you) as the alleged meeting where the compensation was paid. So far as Mr Tong was concerned he arranged with Mr Sun for some of his friends, whom he understood to be wholly independent of Mr Sun, to purchase the three placee companies, Killenny, Commercial Success and La Fayette : it is not correct to say that Mr Sun purchased the three placee companies. "*

- 6.116 Following the second instalment payment on 25 March 1992, Mr Li Chi Keung on behalf of Killenny, wrote to Onshine Holdings Limited ("Onshine Holdings") advising it that a Madam Wong Man Ling was now solely authorised to operate the accounts of Killenny and that his resignation as a director of Killenny was accepted by the Board of Killenny. Madam Wong Man Ling was appointed director of the company with immediate effect.

- 6.117 During Mr David Tong's February 1993 examinations, he stated that Madam Wong Man Ling, an entertainment reporter with the Sing Pao newspaper, was merely a nominee for Mr Huang Wen Hui (a Taiwanese resident and friend of Mr Hsu Sun and Madam Hsu Jye). This accords with Madam Wong Man Ling's evidence that she had been asked to sign documents relating to Killenny by Mr Hsu Sun (Mr David Tong's brother-in-law) but was unaware that she was the company's sole signatory or that it held 44,850,000 WTCG shares.
- 6.118 By letter dated 22 April 1992, Onshine Holdings was notified by Madam Wong Man Ling on behalf of Killenny, that she had resigned as director and secretary of Killenny and that Mr Huang Wen Hui had been appointed to both positions by resolution of the Board of Killenny. Further, Mr Huang Wen Hui was to become the sole signatory of Killenny's bank accounts.
- 6.119 Although it is now alleged that both Madam Wong Man Ling and Mr Huang Wen Hui were nominees of Mr Sun Tao Tsun, no rational explanation has been given as to why Madam Wong Man Ling was inserted as a nominee for such a short period. I have tried to contact Mr Huang Wen Hui to discuss his involvement in this transaction, however all correspondence has been returned to me.
- 6.120 Mr Huang Wen Hui's involvement in the trading of large amounts of WTCG shares during 1990, is discussed at Chapter 26.
- 6.121 Mr Li Chi Keung has denied knowing Madam Wong Man Ling or Mr Huang Wen Hui.

Subsequent dealings in Killenny's WTCG shares

- 6.122 I understand that the new owners of Killenny did not take steps to take possession of the WTCG shares in which they had acquired an interest following the completion of the purchase of Killenny in March 1992. They continued to form part of the security for Onshine Finance's banking facilities with Liu Chong Hing Bank as at November 1993. This further supports my view that this was not an arms-length transaction.



## CONCLUSION

- 6.123 Mr David Tong and Dr Stanley Ho were both secondary underwriters to the placement. As such, had they been required to take up 0.5% of WTCG's shares (being 6,665,880 shares) or more, then they may have been among the parties liable to make a general offer at \$2.25 per share to all WTCG shareholders. Such an occurrence would have cost approximately \$2,000,000,000 had all shareholders accepted the offer. Both of them therefore had an interest in the success of the placement.
- 6.124 Mr David Tong has stated that Killenny, Commercial Success and La Fayette were introduced to the placement by Dr Stanley Ho and that Mr Jackson Chang had agreed to compensate them in the event of the WTCG share price falling or to find other purchasers for the shares.
- 6.125 This has been denied by Dr Stanley Ho and Mr Li Chi Keung in relation to Killenny.
- 6.126 As will be seen later in this chapter, the similarities between the acquisition of Killenny and Commercial Success are numerous and lead me to conclude that they were connected, being set up for a particular role in the placement. Both companies were acquired by Pierson Corporate Services with secretarial services commencing on 4 July 1990. Mr Li Chi Keung and Mr Raymond Ling were appointed directors of the respective companies on 5 July 1990, one day before the placement of shares to these companies. Payment for the secretarial services provided from 4 July 1990 to 25 March 1992 were paid on the same days and by the same method, namely a cashiers order from Banque Indosuez and two telegraphic transfers remitted on behalf of Leedon International Corp through Pierson Asia.
- 6.127 Neither Mr Li Chi Keung or Mr Raymond Ling could recall from whom these companies had been acquired or where the companies books had been kept. Such evidence infers I believe, that they had little or no involvement with these companies.
- 6.128 Mr Li Chi Keung is associated with STDM through the Golden Room at the Lisboa Casino which funds its continuing operation.

- 6.129 Mr Li Chi Keung applied the funds issued by STDM (which were for the Golden Room plus the monies borrowed on the security of the shares) to acquire the 37,375,000 WTCG shares. It is unclear however, whether STDM had knowledge of this, although I would think that the accounting systems of the Lisboa Casino would be sophisticated and capable of detecting the misuse of such a large amount of funds.
- 6.130 In support of Mr David Tong's statements that there was a compensation arrangement, is the following evidence.
- 6.131 Mr Li Chi Keung allegedly failed to sell the WTCG shares when a profit could have been realized despite the requests of the other beneficial shareholders of Killenny.
- 6.132 Following the collapse of the share price in August 1990, Mr Li Chi Keung approached Dr Stanley Ho requesting he assist in finding a buyer for the shares. Dr Stanley Ho has alleged that it was only at this time that he was aware that Mr Li Chi Keung had taken up shares.
- 6.133 In any event, Dr Stanley Ho contacted Mr David Tong and told him that he did not wish to see his friend suffering a loss from the shares. Mr David Tong promised Dr Stanley Ho that he would find a buyer to buy back the shares within one year.
- 6.134 As promised Mr David Tong did so, informing Dr Stanley Ho that he had *"a very special Taiwan investor"* who would buy the shares and who would pay *"a very high price"*. These arrangements were to be kept *"very very confidential."*
- 6.135 Although Dr Stanley Ho may not have had direct involvement with the sale of the companies, he did direct his staff to contact Mr Li Chi Keung informing him that a buyer would buy back his shares at \$2.00 per share. Due to the Bonus Issue, Mr Li Chi Keung would be paid \$89,700,000 for these shares when he had purchased them for approximately \$84,000,000.

- 6.136 I have little doubt that from this time Dr Stanley Ho knew that Mr Li Chi Keung's shares were being bought back for a price which would ensure he would not suffer any loss.
- 6.137 Although Messrs Ambrose So and Patrick Huen both denied any real involvement in the sale of the companies, I believe that they instructed and supervised Mr Joseph Tam, a junior employee, as to the manner in which the sale was to take place. The fact that Shun Tak arranged for the sale of such a large parcel of shares at a cost of more than double their current price in a way which would not be brought to the attention of the Stock Exchange is, I believe, significant.
- 6.138 Further, according to Mr David Tong's oral evidence, he agreed with Mr Sun Tao Tsun to compensate him for the difference between the adjusted placement price and market price of the shares. Mr David Tong told me that he paid the compensation by way of a separate cheque to STDM. Mr Joseph Tam recalled receiving cheques payable to STDM in respect of both instalment payments.
- 6.139 STDM's failure to provide me with copies of receipts for these payments has, I believe, hindered my investigation in this area.
- 6.140 The further evidence presented by Mr David Tong showing that the compensation was partially paid by way of the assignment of a debt to STDM is additional evidence that implicates STDM as being financially interested in those placement shares.
- 6.141 The two receipts issued by STDM to Mr Li Chi Keung acknowledging repayment of more than \$90,000,000 support Mr Li Chi Keung's statement that STDM had funded this placement of shares and therefore had to be repaid.

- 6.142 On the basis of the evidence I have received I have found that there is a strong inference that Killenny was not an independent placee. I believe that there was an arrangement in place whereby the beneficial owner of Killenny would not suffer a loss by taking up the shares in the placement and that Dr Stanley Ho, STDM and Shun Tak were integrally linked to this compensation arrangement. I am therefore critical of Mr David Tong, Mr Jackson Chang and Dr Stanley Ho and I consider that their conduct was unfairly prejudicial to WTCG's minority shareholders.
- 6.143 In addition, by signing the Form of Acknowledgement as to independence when he was aware of and had agreed with the compensation arrangements, Mr David Tong clearly misled the SFC.
- 6.144 I have not been able to reach a conclusion as to who was the actual purchaser of Killenny.

#### **COMMERCIAL SUCCESS LIMITED - 37,375,000 WTCG SHARES**

##### The acquisition of the shares in the placement by Commercial Success

- 6.145 On 30 March 1990, Commercial Success, a BVI company, was sold by Offshore Incorporations to Pierson Corporate Services. Documentation from Pierson Corporate Services, shows that it provided secretarial services for Commercial Success from 5 July 1990 until 31 March 1992. Mr Ling Ming Kee ("Mr Raymond Ling") was appointed the sole director on 5 July 1990. Payment for these services was as follows:

<u>Date</u>	<u>Nature</u>	<u>Method of Payment</u>
9/1/91	Supply of company; activation, secretary for period 4/7/90 - 31/12/90	Cashiers Order drawn on Banque Indosuez dated 24 July 1990
1/2/91	Secretary for period 1/1/91 - 31/12/91	T/T Remittance to Pierson Corporate Services by Pierson Asia on behalf of Leedon International Corp remitted on 5 March 1991
27/03/92	Secretary for period 1/1/92 - 31/3/92	T/T Remittance to Pierson Corporate Services by Pierson Asia on behalf of Leedon International Corp remitted on 9 April 1992

- 6.146 This is identical to the payments made by Killenny in respect of its dealings with Pierson Corporate Services.
- 6.147 In similar circumstances to Mr Li Chi Keung, Mr Raymond Ling could not recall from whom he had purchased Commercial Success or where its records were kept.
- 6.148 Mr Raymond Ling told me that he acquired Commercial Success specifically to take up the 37,375,000 WTCG shares in the share placement.
- 6.149 From a handwritten note however, obtained from Madam Violet Ma's file, it showed that Commercial Success was originally to take up 104,000,000 WTCG shares (Appendix 22). A standard placing letter dated 5 July 1990 (being the same date as Killenny's standard placing letter) and stamped "*cancelled*" was addressed to (Appendix 23):

*"Miss Shirley Wong  
Commercial Success Ltd  
c/o Pierson Corp Secretaries (HK) Ltd  
3F HK Diamond Exchange Bldg  
8-10 Duddell St  
Hong Kong".*

- 6.150 The letter referred to 104,000,000 shares having been agreed to be purchased. The letter was signed by Mr Raymond Lai.
- 6.151 At the time of the placement, Mr Raymond Ling was a fund manager with a management company called Arral Associates (HK) Limited ("Arral Associates"). He stated that *"from time to time"* when he had dealt with Chintung it was on behalf of Arral Associates who had an account at Chintung.
- 6.152 Although Chintung through Standard Chartered Asia advised the SFC that Commercial Success was associated with Arral Associates, Mr Raymond Ling told me that he believed that was a *"misunderstanding"* on Chintung's part which was never mentioned to him. He had in fact purchased the shares in his personal capacity. The information therefore supplied by Chintung through Standard Chartered Asia to the SFC was inaccurate and misleading.
- 6.153 Mr Arthur Lai and Mr Raymond Lai told me that Mr Raymond Ling was a regular client of Chintung and that he had approached Mr Raymond Lai for the placement shares. Mr Raymond Lai contended that the approach from Mr Raymond Ling was independent of discussions with any other prospective places.
- 6.154 Mr Raymond Ling told me that he purchased 37,375,000 WTCG shares because he believed the share price was under valued and that as WTCG was to be managed by Dr Stanley Ho and Mr David Tong, the shares would be profitable. He stated:

*". . . I knew about the placement and I was more or less contacted about the placement and I asked my father about it because, as you are aware, my father is very close to Dr Ho. Dr Ho at the time was the Chairman to the company and . . . my father was also aware of the background of the company. So you know, it is not that I need to do a lot of explanation to him regarding what I'm going to buy but I did ask him after, before I, you know, promised to take up the placement . . . So, you know, the shares were offered to me and then I asked my father whether, you know, he would lend me the money to do that. And then after he said 'yes' to me, then I went back and say to Chintung 'I will take the shares'."*

Mr Raymond Ling's father, Mr Ling Tat Tong, apart from being a personal friend and business associate of Dr Stanley Ho, is also a "runner" at the Lisboa Casino, Macau. I understand that a runner introduces wealthy gamblers to the Macau casinos.

- 6.155 Mr Raymond Ling claimed that he spoke to Dr Stanley Ho about the prospects of the shares. The latter recalled that Mr Raymond Ling may have rung him and asked what he thought of the shares, and he may have merely said:

*"I suppose its a good share because otherwise I would not have become the chairman. If you want to buy, then good luck to you."*

- 6.156 To purchase the 37,375,000 WTCG shares \$84,812,752.37 was required. Mr Raymond Ling told me that he borrowed the money from his father and that the funds were transferred from the Canadian Imperial Bank of Commerce account of Canadian solicitors Blake, Cassels and Graven. I requested he produce evidence of this transfer, however I was advised by his solicitors that:

*"Our client has spoken to his father about the documentation from Blake Cassels & Graven. We were given to understand that our client's father has since fallen out with his former lawyers and therefore no longer retains them. He is therefore not prepared to assist our client in obtaining the documentation you request."*

6.157 The placement shares were in fact paid for by the transfer of US\$10,900,000 from an account with the Bank of New York to Standard Chartered Bank in New York on 10 July 1990 and a cashier's order from Banque Indosuez in Hong Kong for \$145,069.51. The cashier's order was forwarded by Mr Raymond Ling on behalf of Commercial Success to Chintung on 25 July 1990. I note that Commercial Success did not maintain an account with Banque Indosuez. Mr Raymond Ling's solicitor has advised me that:

*". . . to the best of his recollection, the amount of \$145,069.51 was settled directly by our client's father. Our client does not know which specific account was drawn on."*

I have been unable to determine the ultimate source of these two payments.

6.158 I have endeavoured to contact Mr Ling Tat Tong to obtain his comments but I understand he does not reside in Hong Kong and he has not responded to my requests to attend for examination.

6.159 Mr Raymond Ling denied any knowledge of a guaranteed share buy back arrangement should the share price fall below the placement price.

6.160 A standard placing letter dated 6 July 1990 from Chintung to Mr Raymond Ling of Commercial Success confirmed the oral contract concluded between them on that day, regarding the purchase of 37,375,000 WTCG shares at \$2.25 each. Attached to the standard placing letter was the Form of Acknowledgement.

6.161 Mr Raymond Ling signed the Form of Acknowledgement on behalf of Commercial Success. Mr David Tong co-signed the Form of Acknowledgement on behalf of Tomson Pacific although he was aware of and agreed with the guaranteed buy back arrangements made by Mr Jackson Chang. As referred to earlier, Mr David Tong did not consider that such conduct was improper.

6.162 Mr Raymond Ling denied the accuracy of Mr David Tong's statement that he was part of a share buy back arrangement. He stated:



*". . . that's not true because I took the shares, I took the placement, I didn't even consult David Tong at all. OK, I know him but not that well and after I've spoken to Dr Ho, I felt there's no need to speak to David Tong about it so I never spoke to David Tong about my place, about my taking up the placement at all."*

*"I didn't even speak to Jackson Chang . . . I don't think he had any idea except maybe . . . if perhaps Chintung would have told me. But other than that, I personally . . . have not told him, either David Tong or Jackson Chang about me taking up the placement."*

- 6.163 Mr Raymond Ling denied that Dr Stanley Ho had conveyed anything about the buy back arrangement to him.

The Operation of Commercial Success by Mr Raymond Ling

- 6.164 Documents received from Hongkong & Shanghai Banking Corporation (Nominees) Limited ("Hongkong Bank Nominees") show that Commercial Success opened a securities account at the Mongkok Branch of the Hongkong Bank on 20 November 1990. Mr Raymond Ling was authorised to operate the account on behalf of Commercial Success. Significantly however, the contact person named on the Hongkong Bank signature card was Mr Joseph Tam, the Manager of Property Investments for Shun Tak (Appendix 24). This meant that Mr Joseph Tam, an employee of Shun Tak, had control over the WTCG shares owned by Commercial Success. Mr Joseph Tam denied any knowledge of this account.
- 6.165 Mr Joseph Tam has told me that his job also entailed him handling personal matters for Dr Stanley Ho under the direction of either Mr Patrick Huen or Mr Ambrose So.

Dividends received by Commercial Success

- 6.166 On 31 October 1991, a dividend of 10 cents per share was paid to WTCG shareholders. \$4,482,500 was credited to Commercial Success's bank account at Hongkong Bank. On 21 November 1991, in accordance with written instructions from Mr Raymond Ling on behalf of Commercial Success \$4,400,000 was transferred to Commercial Success's account at Seng Heng Bank Ltd ("Seng Heng Bank"). Mr Raymond Ling stated that the account at the Seng Heng Bank may have been opened at the request of his father. I have not been able to determine the ultimate recipient or recipients of the funds that were deposited.
- 6.167 On 15 January 1992, an interim dividend of 1.5 cents per share was paid to WTCG shareholders and this too was credited to Commercial Success's account. As at 31 January 1992, the account had a balance of \$748,890.60.
- 6.168 By letter dated 23 March 1992, Mr Raymond Ling instructed Hongkong Bank on behalf of Commercial Success to transfer \$748,000 from Commercial Success's account to Protech Company Limited's ("Protech") account at the Seng Heng Bank. Mr Raymond Ling told me that he was acting on his father's instructions.
- 6.169 According to Mr Patrick Huen, Protech is a wholly owned subsidiary of STDM. Its directors are Mr Ambrose So and Mr Patrick Huen.
- 6.170 STDM has refused to provide me with any information relating to the manner in which Protech disbursed these monies, stating that the Board of Directors of STDM resolved:

*"that confidential information relating to the company's affairs should not be disclosed to overseas regulatory authorities."*

The acquisition of Commercial Success by interests associated with Mr Sun Tao Tsun

- 6.171 Following the close of the placement in late July 1990, the WTCG share price rose to \$2.70. On 8 August 1990 however, the share price began to drop sharply below the placement price of \$2.25. Mr Raymond Ling has given evidence that he spoke to Dr Stanley Ho about his loss, but Dr Stanley Ho, he alleged, remained non-committal. Dr Stanley Ho denies this, admitting that he may have spoken to Mr Ling Tat Tong.
- 6.172 As referred to earlier in this chapter, Mr David Tong stated that Dr Stanley Ho approached him and asked him to assist Mr Raymond Ling. Mr David Tong has confirmed that he promised Dr Stanley Ho that he would find buyers to buy back the shares within one year.
- 6.173 Towards the end of 1991, Mr David Tong told Dr Stanley Ho that he had found a wealthy buyer who was willing to pay above market price. As discussed above in relation to Onshine, Dr Stanley Ho relayed this message to Mr Ambrose So that contact be made with Mr Raymond Ling to ascertain whether he was interested in selling his shares for \$2.00 each. Mr Raymond Ling confirmed that Mr Joseph Tam contacted him. Mr Ambrose So, on the other hand has stated that Dr Stanley Ho asked him to inform Mr Ling Tat Tong. According to Mr Joseph Tam, there were no negotiations entered into to determine the purchase price of the issued share capital of Commercial Success as it had already been agreed.
- 6.174 As Commercial Success's only asset was its WTCG shares (the number of which had now increased to 44,850,000, due to the Bonus Issue) the issued share capital of Commercial Success was sold rather than selling the WTCG shares, in the same manner as Onshine. By structuring the sale in such a manner it avoided bringing the sale of these shares to the attention of the market.

- 6.175 During the February 1993 examinations, Mr David Tong stated that he agreed to pay Madam Tsai Hui Min, a Taiwanese resident (and friend of his sister-in-law Madam Hsu Jye), compensation for buying Commercial Success's 44,850,000 WTCG shares by paying the difference between the market price and the adjusted placement price of the shares. It was not until the August 1993 examinations, that he conceded that Madam Tsai Hui Min was only a nominee for Mr Sun Tao Tsun and/or his friends.
- 6.176 Mr David Tong stated that he made the arrangements for the sale of Commercial Success, Killenny and La Fayette with Mr Patrick Huen and Mr Ambrose So as Dr Stanley Ho was too busy.
- 6.177 As stated earlier when discussing Onshine, Mr Ambrose So and Mr Patrick Huen denied any real involvement in this matter other than to pass the information onto Mr Joseph Tam.
- 6.178 The settlement monies for the purchase of Commercial Success (as in the case of Killenny and La Fayette) were, according to Mr David Tong, paid in two tranches.
- 6.179 Mr David Tong said he attended a meeting at the offices of Shun Tak with Mr Wu Hung Chao in December 1991 at which time the first instalment payment was made to STD. As discussed earlier, all persons involved in this matter from Shun Tak have responded that they "*do not remember*" such a meeting taking place and further that there were no records evidencing receipt of any monies.
- 6.180 Likewise as discussed in relation to Killenny, Mr David Tong's submission following receipt of my preliminary conclusions varied his version of events claiming that the alleged meeting did not take place and that the purchaser of Commercial Success was independent of Mr Sun Tao Tsun.

- 6.181 The second tranche of approximately \$45,000,000 in respect of Commercial Success was paid on 25 March 1992 upon delivery of the corporate kits for Commercial Success, Killenny and La Fayette to Tomson Pacific. According to Mr Joseph Tam he was given an envelope by Mr K H Yeung which may have contained two cheques. He recalled they were payable to STDM.
- 6.182 I have been unable to determine with any accuracy the manner in which payment in respect of Commercial Success was effected or the amount actually paid.
- 6.183 Mr David Tong told me that he would provide me with copies of the cheques but he has failed to do so. He has, however, provided details of an assignment of a debt to STDM which would account for part of this compensation.
- 6.184 According to Mr Raymond Ling, his father instructed him to pay the cheques to his current account at STDM.
- 6.185 Although requested to provide all documentation in relation to these payments and their disbursement, I was informed by Shun Tak through its solicitor that these were *"internal documentation of STDM and hence not available"*.
- 6.186 The company records of Commercial Success produced to me show that on 25 March 1992, Mr Raymond Ling resigned as a director of Commercial Success and Madam Wong Man Ling was appointed in his place. It was also resolved on that date that Madam Wong Man Ling operate solely *"all of the company's current, savings and other bank accounts maintained with any bank"*.
- 6.187 During the February 1993 examinations Mr David Tong stated that Madam Wong Man Ling was merely a nominee for Madam Tsai Hui Min. Madam Tsai Hui Min is, like Mr Huang Wen Hui, a Taiwanese resident and friend of Mr Hsu Sun and Madam Hsu Jye. This accords with Madam Wong Man Ling's evidence that she had been asked to sign documents relating to Commercial Success by Mr Hsu Sun, Mr David Tong's brother-in-law, but was unaware that she was the company's sole signatory or that it held 44,850,000 WTCG shares.

- 6.188 Following the sale of Commercial Success, Mr Spancer Lau Che Kong ("Mr Spancer Lau"), an accountant employed by Tomson Pacific, was named as the contact person for Commercial Success's account in lieu of Mr Joseph Tam. Mr Spancer Lau has denied any knowledge of Commercial Success and its operations.
- 6.189 On 22 April 1992, Madam Wong Man Ling resigned as a director of Commercial Success and Madam Tsai Hui Min was appointed. It was further resolved that the signing arrangement on all the company's bank accounts be amended to name Madam Tsai Hui Min as the sole signatory.
- 6.190 I have attempted to contact Madam Tsai Hui Min but have not been successful. Both Madam Hsu Jye and Mr Hsu Sun have contended that as far as they were aware, Madam Tsai Hui Min purchased Commercial Success, and used Madam Wong Man Ling as her nominee in Hong Kong. Mr David Tong stated, however, that Madam Hsu Jye was Mr Sun Tao Tsun's contact in Hong Kong and that she "*should*" have known that he was the beneficial owner of Commercial Success, not Madam Tsai Hui Min.
- 6.191 Although I requested a further interview with Mr Sun Tao Tsun to discuss Mr David Tong's assertions he has avoided this.
- 6.192 As stated earlier, Mr Sun Tao Tsun has, in his submission to me, denied any connection with the purchase of these WTCG shares.

The subsequent dealing by Commercial Success with its WTCG shares

- 6.193 On or about 21 June 1993 Mr Peter Fung, the Managing Director of Sun Hung Kai International Limited ("Sun Hung Kai") introduced Madam Hsu Jye and Mr Hsu Sun to his assistant Madam Lai Po Chu ("Madam Hermia Lai"). She was told that they had a number of WTCG shares that needed to be sold and in Mr Peter Fung's absence she should assist them.

- 6.194 Madam Hermia Lai stated that at about midday on 21 June 1993 she received a telephone call from Mr Spancer Lau of Tomson Pacific. The latter allegedly told her that he needed to deliver a large parcel of WTCG shares to Sun Hung Kai and he required an assistant from Sun Hung Kai to accompany him to Hongkong Bank Nominees to collect the shares.
- 6.195 Madam Lee Ying Yan ("Madam Joyce Lee") a junior employee of Sun Hung Kai attended the offices of Tomson Pacific and met Mr Spancer Lau. Together with Mr Spancer Lau and Mr Lo Nim Yan, a securities clerk from Tomson Pacific she collected 44,850,000 WTCG shares from the Central branch of Hongkong Bank.
- 6.196 In support of this are two Hongkong Bank Nominees' delivery orders which relate to the collection of these shares. Both were dated 21 June 1993 and signed by Madam Tsai Hui Min. The first delivery order named Mr Lo Nim Yan as being authorised to collect the shares, however, beside his name was written "*replaced...*". The second delivery order named Madam Joyce Lee as the authorised recipient of the shares on behalf of Madam Tsai Hui Min (Appendix 25).
- 6.197 According to Madam Hsu Jye, the reason for the two delivery orders was because she had received a telephone call from Madam Tsai Hui Min in Taiwan asking whether someone could arrange to collect the shares. Madam Hsu Jye suggested Mr Lo Nim Yan. Madam Tsai Hui Min then allegedly called her later stating that it would not be necessary to use Mr Lo Nim Yan as she had made her own arrangements. Madam Hsu Jye was unable to explain how Madam Tsai Hui Min was able to sign the two delivery orders when she was telephoning instructions from Taiwan.
- 6.198 According to Madam Hermia Lai, the 44,850,000 shares were delivered to Sun Hung Kai and counted by staff members.
- 6.199 On 23 June 1993, 80,000,000 WTCG shares were sold by Sun Hung Kai on the instructions of Madam Hsu Jye. I have been informed by Sun Hung Kai Investment Limited that the 44,850,000 shares owned by Commercial Success however did not form part of the 80,000,000 shares sold.

- 6.200 The Commercial Success shares were subsequently collected from Sun Hung Kai by Mr Spancer Lau and his assistants. I have been unable to trace their current location.
- 6.201 Both Mr Lo Nim Yan and Mr Spancer Lau have denied any involvement in or knowledge of the collection of these shares and of Commercial Success. As I have concluded in Chapter 4, Mr Spancer Lau is not a reliable witness.
- 6.202 I have noted the sale of the 80,000,000 WTCG shares by Sun Hung Kai in June 1993, however as it is not within the terms of reference of my appointment I have not continued my investigation into this matter.

### **CONCLUSION**

- 6.203 Mr David Tong and Dr Stanley Ho were both secondary underwriters to the placement. As such, had they been required to take up 0.5% of WTCG's shares (being 6,665,880 shares) or more then they may have been among the parties liable to make a general offer of \$2.25 per share to all WTCG shareholders. Such an occurrence would have cost approximately \$2,000,000,000 had all the shareholders accepted the offer. Each of them therefore had an interest in the success of the placement.
- 6.204 Mr David Tong has stated that Commercial Success, Killenny and La Fayette were introduced to the placement by Dr Stanley Ho and that Mr Jackson Chang had agreed to compensate them in the event of the WTCG share price falling or to find other purchasers for the shares.
- 6.205 This has been denied by Dr Stanley Ho and Mr Raymond Ling in relation to Commercial Success.



- 6.206 The similarities between the acquisition of Commercial Success and Killenny are numerous and lead me to conclude that they were connected, being set up for a particular role in the placement. Both companies were acquired by Pierson Corporate Services with secretarial services commencing on 4 July 1990. Mr Raymond Ling and Mr Li Chi Keung were appointed directors of the respective companies on 5 July 1990, one day before the placement of shares to these companies. Payment for the secretarial services provided from 4 July 1990 to 25 March 1992 were paid on the same days and by the same method; namely, a cashiers order drawn by Banque Indosuez and two telegraphic transfers remitted on behalf of Leedon International Corp through Pierson Asia.
- 6.207 Neither Mr Raymond Ling or Mr Li Chi Keung could recall from whom these companies had been acquired or where the companies books had been kept. Such evidence infers I believe, that they had little or no involvement with these companies.
- 6.208 While Mr Raymond Ling has stated that he took up the 37,375,000 WTCG shares, the evidence given suggests that his father, Mr Ling Tat Tong had greater influence over these shares. The following evidence supports this conclusion. Before Mr Raymond Ling took up the shares, he says he obtained his father's agreement to fund the acquisition. The settlement monies were, according to Mr Raymond Ling, transferred from his father's account with Canadian lawyers. The first dividend payment made to Commercial Success by WTCG of \$4,400,000 was transferred from Commercial Success's account at Hongkong Bank to its account at the Seng Heng Bank. Mr Raymond Ling believed that that account had been opened at the request of his father. The second dividend payment of \$748,000 was also transferred from Commercial Success's account at Hongkong Bank to Protech's account at the Seng Heng Bank upon the instruction of his father.
- 6.209 Further, the two instalments to acquire Commercial Success were paid to STD M along with the assignment of the loan owing by Rivera to Mr David Tong and Cortney. According to Mr Raymond Ling the funds relating to the instalments were deposited into his father's current account at STD M.

- 6.210 As in the case of Mr Li Chi Keung and Killenny, following the collapse in the WTCG share price, Mr Raymond Ling approached Dr Stanley Ho requesting he assist in finding a buyer for the shares in WTCG held by Commercial Success. Dr Stanley Ho has denied this stating that he may have spoken to Mr Ling Tat Tong about it. Dr Stanley Ho then contacted Mr David Tong and told him that he did not wish to see his friend suffering any loss. Mr David Tong promised Dr Stanley Ho that he would find buyers to buy back the shares within one year. As promised, in late 1991 Mr David Tong contacted Dr Stanley Ho telling him that he had "*a very special Taiwan investor*" who would buy the shares and who would pay "*a very high price*" but that these arrangements were to be kept "*very very confidential*".
- 6.211 Dr Stanley Ho then directed his staff to contact Mr Raymond Ling with details that a buyer would buy back the shares for \$2.00 per share. Although Mr Joseph Tam recalled contacting Mr Raymond Ling, Mr Ambrose So told me that Dr Stanley Ho had asked him to inform Mr Ling Tat Tong of these arrangements. Due to the Bonus Issue Mr Raymond Ling would be paid \$89,700,000 for these shares when he had purchased them for approximately \$84,000,000.
- 6.212 I have little doubt that from this time Dr Stanley Ho knew that Mr Raymond Ling's shares were being bought back for a price which would ensure that he did not suffer any loss.
- 6.213 Although Messrs Ambrose So and Patrick Huen denied any real involvement in the sale of the companies, I believe that they instructed and supervised Mr Joseph Tam, a junior employee, as to the manner in which the sale was to take place. The fact that Shun Tak arranged for the sale of such a large parcel of shares at a cost of more than double the current market price in a way which would not be brought to the attention of the Stock Exchange is, I believe, significant.

- 6.214 Further, according to Mr David Tong, he agreed with Mr Sun Tao Tsun to compensate him for the difference between the adjusted placement price and market price of the shares. Mr David Tong told me that he paid the compensation by way of a separate cheque to STDM. Mr David Tong has subsequently provided me with evidence that the compensation was paid by means of an assignment of a debt to STDM. As this assignment would only account for part of the compensation, I believe that the compensation was paid by means of both payment by cheque and the assignment of the debt to STDM. Mr Joseph Tam recalled receiving cheques payable to STDM in respect of both instalment payments.
- 6.215 STDM's failure to provide me with copies of the receipts has, I believe, hindered my investigation into this area.
- 6.216 On the basis of the evidence I have received, I have found that there is a strong inference that Commercial Success was not an independent placee. I believe that there was an arrangement in place whereby the beneficial owner of Commercial Success would not suffer a loss by taking up the shares in the placement and that Dr Stanley Ho, STDM and Shun Tak were integrally linked to this compensation arrangement. I am critical of Messrs David Tong, Jackson Chang and Dr Stanley Ho and I consider that their conduct was unfairly prejudicial to WTCG's minority shareholders.
- 6.217 In addition, by signing the Form of Acknowledgement as to independence when he was aware of and had agreed with the compensation arrangements, Mr David Tong clearly misled the SFC.
- 6.218 I have not been able to reach a conclusion as to who was the actual purchaser of Commercial Success.

#### **PIERSON ASIA LTD - 74,750,000 WTCG SHARES**

##### The acquisition of shares in the placement by Pierson Asia as agent for La Fayette

- 6.219 Pierson Asia Limited ("Pierson Asia") (now known as MeesPierson Asia Limited)

acquired as agent for La Fayette 74,750,000 WTCG shares, being the largest of the 16 placees. The 74,750,000 shares exactly equalled the sum of the total amounts taken up by Commercial Success and Onshine. Together, the three placements to Commercial Success, Onshine and Pierson Asia amounted to 149,500,000 WTCG shares representing approximately 11% of WTCG's issued capital.

- 6.220 Pierson Asia is a licensed merchant bank.
- 6.221 Due to the secrecy provisions of the Singapore Banking Act, both the SFC and I have experienced considerable difficulty in obtaining information about this placee.
- 6.222 By letter dated 5 November 1990, the SFC enquired of Pierson Asia whether it could provide the full names of the clients on whose behalf it held or dealt in WTCG shares between 28 June 1990 and 8 August 1990 and in particular the WTCG shares taken up in the placement.
- 6.223 Mr Edmund K M Lee, the Managing Director of Pierson Asia responded to the SFC on 19 November 1990 that:

*"We wish to advise that the only transaction undertaken by us during the period in question was our participation in a placement of shares through Chin Tung Limited. We purchased a total of 74,750,000 at HK\$2.25 per share as an agent on behalf of our portfolio clients for settlement on 20 July 1990.*

*In accordance with The Singapore Banking Act (Chapter 19), Section 47 of 1990, we are not in a position to provide you with the full names of these portfolio clients."*

- 6.224 In view of this reply the SFC did not pursue its enquiry into the beneficial owners of the placement shares.

6.225 According to Mr Ho Wing On ("Mr Christopher Ho"), La Fayette is a BVI company which was purchased by his secretarial company, Raycarr Corporate Services Limited ("Raycarr") from Royal Trust BVI Limited (now known as Integro Corporate Services (BVI) Limited). Mr Christopher Ho is the Deputy Chairman and Group Chief Executive Officer of the Grande Holdings Limited, a listed company. According to Mr Christopher Ho:

*". . . my family and Dr Stanley Ho are partners in a company called Grande International Holdings which controls the Grande Group."*

6.226 Mr Christopher Ho has told me that his friend, Dr Santos Ferreira, a former civil servant in Macau, requested La Fayette be transferred to him.

6.227 Mr Christopher Ho added that Dr Santos Ferreira and Mr Norratat Tangpakorn, a Thai national are the joint beneficial owners of La Fayette.

6.228 I was initially advised by Shun Tak's solicitor that only Mr Norratat Tangpakorn "*controlled*" La Fayette and that he introduces gambling clients from Thailand to the Lisboa Casino. I requested his contact address from Shun Tak and was advised through its solicitor that:

*"Those details are kept by STDM in Macau. In light of the resolution of the Board of Directors of STDM . . . STDM will not provide these details."*

6.229 Dr Stanley Ho denied knowing Mr Norratat Tangpakorn and being associated either directly or indirectly with La Fayette or Pierson Asia. He said it was possible that he may know Mr Norratat Tangpakorn by his Chinese name. Mr Christopher Ho stated that he had met Mr Norratat Tangpakorn once and spoken with him on the telephone regarding documentation for La Fayette.

- 6.230 Mr Christopher Ho provided me with an address for Dr Santos Ferreira. I wrote to him and Mr Norratat Tangpakorn at that address requesting a meeting, however I have not received a response.
- 6.231 According to Mr Christopher Ho, although La Fayette was transferred to Dr Santos Ferreira and Mr Norratat Tangpakorn, Raycarr continued to provide secretarial services for La Fayette. Madam Kwan Wai Man ("Madam Mandy Kwan"), who is employed by Merrigold Laundry & Valet Services Limited (a company controlled by Mr Christopher Ho) remained acting as La Fayette's nominee director. Raycarr was La Fayette's only shareholder.
- 6.232 Raycarr's debit notes produced by Mr Christopher Ho show that secretarial services were provided to La Fayette from July 1990 until 24 March 1992. According to Madam Mandy Kwan, she only signed documents for La Fayette when instructed by Mr Christopher Ho to do so. Both she and Mr Christopher Ho denied seeing any documents in relation to La Fayette from Pierson Asia.
- 6.233 Madam Mandy Kwan added that she did not personally retain in her possession the books and records of La Fayette.
- 6.234 Mr Christopher Ho denied any knowledge of La Fayette acquiring 74,750,000 WTCG shares in the placement, or having any involvement with Pierson Asia in Singapore. He did however state that he knew Pierson Asia's then general manager, Mr Edmund K.M. Lee.
- 6.235 He further denied providing the name and address of La Fayette to anyone at WTCG so that it could be included in the facsimile from WTCG dated 6 July 1990 which referred to the allotment of shares to Commercial Success, Killenny and La Fayette.
- 6.236 As in the case of Commercial Success and Killenny, a "*cancelled*" standard placing letter dated 6 July 1990 was found in Madam Violet Ma's file. It was addressed to:

*"Ms Mandy Kwan  
La Fayette Limited  
c/o The Second Floor, Unit No. 1-4  
Fullagan Industrial Building  
234 Aberdeen Main Road  
Aberdeen, Hong Kong"*

- 6.237 The letter was signed by Mr Raymond Lai and acknowledged the allotment of 74,750,000 WTCG shares.
- 6.238 The address referred to is that of Merrigold Laundry & Valet Services Limited.
- 6.239 Attached to the cancelled standard placing letter was a handwritten note on Madam Bertha Tam's (a sales assistant at Chintung) personalized notepaper (Appendix 26). It stated:

*"Pierson Asia Ltd  
50 Raffles Place  
No 31-04/06  
Shell Tower  
Singapore 0104  
74.75 M  
848 1643"*

- 6.240 Madam Bertha Tam could not recall from whom she had taken this booking.
- 6.241 "848 1643" is one of Tomson Pacific's telephone numbers. I have not been able to determine whose telephone number it was at the time of the placement. This note infers however that WTCG may have been a contact for this placement.
- 6.242 A further standard placing letter dated 6 July 1990 from Chintung to Pierson Asia (being the same date as those sent to Commercial Success and Killenny) stated that the oral contract concluded between them on that day, regarding the purchase of 74,750,000 WTCG shares at \$2.25 each was confirmed.

- 6.243 Pierson Asia executed the Form of Acknowledgement concerning independence. Mr David Tong co-signed it on behalf of Tomson Pacific, although as in the case of Commercial Success and Killenny he was aware of and had agreed with the guaranteed share buy back arrangements made by Mr Jackson Chang. As discussed earlier Mr David Tong has told me that he did not consider such an arrangement to be improper.
- 6.244 Pierson Asia purchased the 74,750,000 shares in two lots. The first allotment of 72,000,000 shares was settled on 11 July 1990 for a total consideration of \$163,385,100. The balance of 2,750,000 shares was settled on 20 July 1990 for \$6,240,404.63. The 74,750,000 WTCG shares were immediately transferred to and registered in the name of Hongkong Bank Nominees.
- 6.245 I have been unable to ascertain what happened to the dividends paid to La Fayette by WTCG on 31 October 1991 and 15 January 1992.

The acquisition of La Fayette by interests associated with Mr Sun Tao Tsun

- 6.246 When I asked Mr Joseph Tam about the circumstances of the sale of La Fayette he stated that he had not contacted "anyone" as he had done with Mr Li Chi Keung and Mr Raymond Ling. He added that he only came to "know" La Fayette in March 1992, unlike Commercial Success and Killenny. When I asked Mr Ambrose So for further details about his involvement with La Fayette, I was subsequently advised through his solicitor that:

*"Mr. Ambrose So was contacted by Mr. [Norratat] Tangpakorn and asked if he could receive the corporate kit of LFL [La Fayette Limited] and arrange for its delivery to TPL [Tomson Pacific]. Mr. So agreed to do this and instructed Joseph Tam to deliver the corporate kit to TPL which he did.*

*Mr. So never saw the corporate kit of LFL nor has he any knowledge about its activities or assets."*



- 6.247 As discussed earlier, it was not until his August 1993 examination that Mr David Tong made reference to Pierson Asia being the third placee which had been guaranteed a share buy back.
- 6.248 The arrangements for the acquisition of La Fayette were according to Mr David Tong, made by Mr Ambrose So and Mr Patrick Huen as Dr Stanley Ho was too busy. Mr Patrick Huen and Mr Ambrose So have denied any real involvement.
- 6.249 The settlement monies for the purchase of La Fayette (as in the case of Killenny and Commercial Success) were paid in two tranches. According to the oral evidence of Mr David Tong, he attended a meeting at the offices of Shun Tak with Mr Wu Hung Chao in December 1991 at which time the first instalment payment was made to STDM. As discussed earlier, all persons involved in this matter from Shun Tak have responded that they "*do not remember*" such a meeting taking place and further that there were no records evidencing receipt of any monies. Mr Tong has now submitted that he confused this with another meeting.
- 6.250 In addition Mr David Tong has stated that some of the compensation paid to La Fayette was being paid by way of an assignment of a debt owing from Rivera to him and Cortney.
- 6.251 As stated in relation to Killenny, in a recent submission by solicitors on his behalf, Mr David Tong has stated that he could not remember whether the compensation was paid at any meeting or was simply delivered.

Delivery of the records of La Fayette

- 6.252 According to Mr Christopher Ho, in late March 1992 the books and records of La Fayette were collected by a messenger sent by Dr Santos Ferreira. He denied knowing that these documents were delivered to Shun Tak.

- 6.253 Mr Joseph Tam took the corporate kits for La Fayette, Killenny and Commercial Success to Tomson Pacific on 25 March 1992. As discussed earlier he delivered them to Mr K H Yeung at Tomson Pacific and received an envelope which may have contained two cheques. He recalled that they were payable to STDM. Although Mr David Tong advised me that he would produce copies of the cheques he has failed to do so having only provided a copy of the assignment mentioned above.
- 6.254 As I have not seen La Fayette's company records I am unable to say whether Madam Wong Man Ling or others in Hong Kong or Taiwan were used as nominees for Mr Sun Tao Tsun or others from Taiwan.

### **CONCLUSION**

- 6.255 Mr David Tong and Dr Stanley Ho were both secondary underwriters to the placement. As such, had they been required to take up 0.5% of WTCG's shares (being 6,665,880 shares) or more they may have been among the parties liable to make a general offer at \$2.25 per share to all WTCG shareholders. Such an occurrence would have cost approximately \$2,000,000,000 had all shareholders accepted the offer. Each of them therefore had an interest in the success of the placement.
- 6.256 Mr David Tong has stated that Pierson Asia, Killenny and Commercial Success were introduced to the placement by Dr Stanley Ho and that Mr Jackson Chang had agreed to compensate them in the event of the WTCG share price falling or to find other purchasers for the shares.
- 6.257 Due to the lack of evidence from Dr Santos Ferriera and Mr Norratat Tangpakorn, I have been unable to determine the circumstances relating to the acquisition, funding and subsequent sale of the 74,750,000 WTCG shares and I am critical of their failure to assist me.

- 6.258 The involvement of Shun Tak, the sale of the shares at \$2.00 per share and the payment for the company by way of two instalment payments along with the direct evidence of Mr David Tong, leads me to conclude that La Fayette was connected with Killenny and Commercial Success.
- 6.259 Further similarities between this placement and those to Commercial Success and Killenny are that Mr Norratat Tangpakorn is associated with STDM through his activities as an operator of gambling trips to the Lisboa Casino. The secretarial services provided by Raycarr to La Fayette were for the same period as those provided to Commercial Success and Killenny by Pierson Corporate Services. Pierson Corporate Services is affiliated with Pierson Asia in Singapore.
- 6.260 The failure of STDM however to provide me with the contact details for Mr Norratat Tangpakorn and copies of the receipts for the two instalment payments in respect of La Fayette has made my investigation into this placee particularly difficult.
- 6.261 I have also been hindered in my investigation by the banking secrecy provisions in Singapore.
- 6.262 Although not as strong an inference as in the case of Killenny and Commercial Success, I have found that in many respects La Fayette is so similar to the aforementioned companies that it is probably that they were connected. I believe that there was an arrangement in place whereby the beneficial owner of La Fayette would not suffer a loss by taking up the shares in the placement and that Dr Stanley Ho, STDM and Shun Tak were integrally linked to this compensation arrangement. I am therefore critical of Messrs David Tong, Jackson Chang and Dr Stanley Ho and I consider that their conduct was unfairly prejudicial to WTCG's minority shareholders.
- 6.263 In addition, by signing the Form of Acknowledgement as to independence when he was aware of and had agreed with the compensation arrangements, Mr David Tong clearly misled the SFC.

- 6.264 Pierson Asia's letter to the SFC advising that they "*purchased a total of 74,750,000 at HK\$2.25 per share as an agent on behalf of our portfolio clients*" was, I believe, misleading and may have led the SFC to believe Pierson Asia was acting on behalf of discretionary account clients rather than one nominee client, La Fayette.
- 6.265 I have not been able to reach a conclusion as to who was the actual purchaser of Lafayette.

#### **CHIU MING HUNG SYNDICATE - 72,000,000 WTCG SHARES**

- 6.266 According to the information provided by Chintung for delivery to the SFC through Standard Chartered Asia, the second largest placement was to Mr Chiu Ming Hung. Mr Raymond Lai informed Standard Chartered Asia that Mr Chiu Ming Hung was a "*Merchant/Businessman from Taiwan*" and a "*Regular Client*". Subsequently this was expanded to "*Director of Wei-Chun Food/Beverage Company, second largest food company in Taiwan.*"
- 6.267 Examination of Chintung's records shows that in fact the 72,000,000 WTCG shares were taken up by a syndicate, one member of which was a former director of Tomson Pacific.

#### The acquisition of the placement shares by the Chiu Ming Hung Syndicate

- 6.268 Mr Peter Mou and Mr Arthur Lai were primarily responsible for Chintung's Taiwanese clients, many of whom had been introduced through Rosenthal in Taiwan. Mr Chiu Ming Hung was a client of Rosenthal. Mr Peter Mou handled his account with Chintung and he described him as follows:

*"He is one of the very big and very rich Taiwanese in Taiwan and I think his total net worth is more than 500 million NT dollars, he is very big. And he is a very big trader in Taiwan - in the top four big (share) traders in Taiwan. He is a very famous Taiwanese".*

- 6.269 Mr Chiu Ming Hung had in April 1990, taken up 14,350,000 Rivera placement shares, which represented 1.25% of the issued share capital of Rivera, through Chintung.
- 6.270 Mr Peter Mou stated that he contacted Mr Chiu Ming Hung to introduce the WTCCG placement to him and during a later examination confirmed that Mr Chiu Ming Hung purchased the shares on behalf of a syndicate. When asked why this information had not been supplied to the SFC when requested Mr Peter Mou stated that it was the responsibility of those in Chintung's back office.
- 6.271 Both Mr Ermanno Pascutto and Mr Alan Mercer of the SFC said they were unaware that Mr Chiu Ming Hung's shares were taken up on behalf of a syndicate.
- 6.272 The 72,000,000 WTCCG shares were deposited into a margin account at Chintung called "T0026 Mr Chiu Ming Hung Account No. 3". The following people were shown at Chintung as being interested in that account:
- (1) Mr Chiu Ming Hung
  - (2) Mr Ma De-Ling
  - (3) Mr Huang Jen Chung
  - (4) Mr Wang Ke Jing
  - (5) Mr John Ho Ming Tak ("Mr John Ho")
- 6.273 Mr Ma De-Ling had resigned as a director of Tomson Pacific on 8 May 1990.
- 6.274 In the file kept by Madam Violet Ma the following "*cancelled*" standard placing letter dated 13 July 1990 was addressed to:

*"Mr Ma De-Ling  
c/o Tayuan Securities  
5/F, No. 85 Jen Ai Road, Sec. 4  
Taipei, Taiwan  
R.O.C."*

- 6.275 The letter acknowledged the allotment of 72,000,000 WTCG shares and had been signed by Mr Raymond Lai. A further standard placing letter, also dated 13 July 1990, was addressed to Mr Chiu Ming Hung.
- 6.276 Mr David Tong has given evidence that he wanted Mr Chiu Ming Hung's syndicate to buy a large quantity of shares during the placement period to stimulate the share price.
- 6.277 To secure this, Mr David Tong gave Mr Ma De-Ling a verbal promise that if the syndicate purchased a large quantity of shares and the share price subsequently dropped, they would be compensated for any loss incurred. There was apparently no agreement however to buy back the shares. I have been unable to contact Mr Ma De-Ling to confirm or deny Mr David Tong's evidence. Mr David Tong claims that he did not discuss this arrangement with his legal or merchant bank advisers.
- 6.278 During negotiations with Mr Ma De-Ling, Mr David Tong told me that he understood Mr Ma De-Ling represented the other three persons in the syndicate.
- 6.279 The syndicate agreed to take up 72,000,000 WTCG shares for an amount of \$163,385,100. As 0.25% of the commission rate payable to Chintung was rebated, the amount owing was reduced to \$162,980,100.
- 6.280 Mr Chiu Ming Hung paid Chintung partially for the placement with these four cheques:

<u>Account Holder</u>	<u>Drawee Bank</u>	<u>Amount</u>
		\$
Mr Ma De-Ling	Ka Wah	19,247,950.00
Mr Ma De-Ling	Ka Wah	19,247,950.00
Mr Ma De-Ling	Ka Wah	30,689,152.80
Mr Chiu Ming Hung	Citibank	<u>74,547,097.74</u>
		<u>\$143,732,150.54</u>

- 6.281 The amount of \$19,247,949.96 was transferred from Rosen Pacific's share dealing account at Chintung to the joint margin account into which the 72,000,000 shares had been deposited. Rosen Pacific is, I understand, a company associated with Mr John Ho.

- 6.282 During his examinations, Mr Peter Mou stated that he did not know why three of the cheques had been drawn from an account with Ka Wah Bank, when Mr Chiu Ming Hung always used Citibank.
- 6.283 Copies of the three Ka Wah Bank cheques were subsequently found in Madam Violet Ma's file together with a letter dated 16 July 1990 from Mr Raymond Lai acknowledging receipt of the three cheques from Mr Ma De-Ling. The letter was not addressed and may have been sent by facsimile. Mr Ma De-Ling's business card was also in this file.
- 6.284 A final standard placing letter dated 13 July 1990 was addressed to Mr Chiu Ming Hung. Mr Chiu Ming Hung signed the Form of Acknowledgement. Mr David Tong co-signed it on behalf of Tomson Pacific, although he had promised Mr Ma De-Ling that he would be compensated for any loss incurred, should the share price fall below \$2.25.
- 6.285 I wrote to Mr Chiu Ming Hung in Taiwan requesting details of his involvement in the placement. His response as translated was:

*"I refer to the 72 million shares of Tomson and confirm that these shares were purchased for investment purposes only. The deal was made through Chintung's Mr Lai and all the 72 million have been sold a long while ago. I believe that Chintung would have a detailed record of all the share transactions . . ."*

- 6.286 I endeavoured to meet Mr Chiu Ming Hung in Taiwan, however I was advised by his solicitor that he was "out of town".

### The sale of the placement shares by the Chiu Ming Hung Syndicate

- 6.287 During Mr David Tong's first examinations in February 1993, he stated that in or about December 1990 when the share price had fallen below the placement price, Mr Ma De-Ling approached him seeking a cash compensation for the losses suffered in respect of the 72,000,000 WTCG shares held by the syndicate. The compensation, though allegedly discounted after some negotiation between Mr Ma De-Ling and Mr David Tong, was based on the difference between the current market and the placement price. I have not been able to contact Mr Ma De-Ling to confirm this.
- 6.288 Chintung's margin account statements for the Chiu Ming Hung Syndicate show that from 30 July 1990 to 7 August 1990, 19,488,000 WTCG shares were withdrawn from the account in small lots. Many of the stock delivery orders were acknowledged by other stockbrokers, for example, Peregrine Brokerage Limited, Chung Tak & Co and Man Lung & Co. I have been informed by each of these brokers that they were acting on the instructions of Mr Ma De-Ling and sold the stock on his behalf.
- 6.289 Although these withdrawals reduced the number of WTCG shares held by the syndicate to 52,512,000, various stock deposits occurred throughout October 1990 leaving 60,534,000 WTCG shares in the account as at 2 October 1990.

### Method of compensation

- 6.290 The compensation of the loss incurred on these WTCG shares appears to have been paid in three parts. Firstly, Mr David Tong purchased 30,000,000 WTCG shares at double the current market value using Mr Hsu Sun as his nominee. Secondly, Martra Inc. ("Martra") bought 30,000,000 WTCG shares at double the current market value. Thirdly, Mr David Tong told me that he was to pay a cash compensation for the remaining 12,000,000 shares, although as discussed above these shares were in fact no longer held by the syndicate.



Acquisition of 30,000,000 shares by Mr Hsu Sun as nominee for Mr David Tong

- 6.291 On 18 December 1990, the Chiu Ming Hung Syndicate sold 30,000,000 WTCG shares to Mr Hsu Sun for \$2.50 per share cum bonus through Chintung. The market price of WTCG shares the day before was \$1.14. Mr Peter Mou stated that he thought he negotiated the sale of these shares with Mr Hsu Sun. At the time, 30,000,000 shares represented approximately 2.4% of WTCG's issued share capital.
- 6.292 The trade was not reported to The Stock Exchange and I sought to determine the reasons for this omission.
- 6.293 Mr Peter Mou's submission to me states that this transaction would also have required the approval of another director, that the dealing tickets from the transaction would have been returned to the dealing room and that the responsibility for reporting the transaction to the Stock Exchange rested with the Dealing Manager, Mr Edward Ho.
- 6.294 Mr Edward Ho's submission to me was as follows:

*"When a client telephones SCS [Chintung] to place a buy or sale order that call will be answered by one of the salesmen and after taking the order he will call to the dealing department to place the order; the dealer in turn will pass the order to one of the floor traders for execution. The floor trader, after the orders have been executed, will confirm to the dealer and the dealer will confirm to the salesman. The salesman, will issue a "contract ticket" and pass it to the dealer who will then cross-check the contract ticket in the "acknowledged by" box. If special approval is required for the trade, at that time, the relevant person will initial the ticket in the "approved by" box. The dealer then sends the contract ticket to the computer/operations department for data entry and the person who loads the information initials the contract ticket in the "inputted by" box.*

*It is the responsibility of the dealing department to report to the Stock Exchange all trades carried out each day and each dealer report the trades evidenced by the contract tickets that bear his initials. The initials in the "acknowledged by" box do not appear to be those of any of the dealers in the dealing department in December 1990. Instead, Mr Ho is of the opinion that they appear to be the initials of Raymond Lai.*

*Therefore, Mr Ho's view is that these contract tickets were not initialled by anyone in the dealing department and that there is no evidence that they were received by the dealing department which would explain why they were not reported to the Stock Exchange. "*

6.295 Mr Raymond Lai was asked to comment upon Mr Edward Ho's submission and his solicitor advised:

*"As you know, trading conducted on the floor of the stock exchange is automatically reported but trades transacted outside the market where the buyer and seller are matched are not usually reported. In particular, there may be matched transactions after the market has closed. Under those circumstances, our client would sign the dealing tickets on behalf of the dealer. Having looked at the tickets in questions, Mr Lai agrees that the signatures are his and, although he cannot be sure, believes that these tickets were in respect to one of the matched transactions referred to above. However, our client is adamant that Mr Edward Ho was given these tickets at the end of the day in question as he needed to have these tickets in order to balance his department's books. Mr Lai points out that in any one day, there could have been between 400-700 tickets passed to Mr Ho's department and, therefore, it is not surprising that he does not recall these individual items. Moreover, Mr Ho had some 8-9 juniors under him and it could well be the case that these tickets were given to one of those juniors for processing. "*

6.296 He went on to state that ultimately it was the responsibility of the dealing department to report the trade.

6.297 I have also enquired of Mr Hsu Sun and Mr David Tong the circumstances of this purchase of 30,000,000 WTCG shares. Mr Hsu Sun admitted that he was acting on behalf of Mr David Tong.

6.298 Although Mr Hsu Sun was unable to recall the source of the \$75,453,750 needed to purchase the 30,000,000 shares during his examination. He subsequently advised me through his solicitors, that \$75,460,000 had been paid from a joint account he held with Madam Hsu Jye. The source of these funds was as follows:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>
		\$
19.12.90	Transfer from the account of David Tong Company Limited at American Express Bank	34,380,000
19.12.90	Transfer from the account of David Tong Company Limited at Ka Wah Bank	5,300,000
19.12.90	Transfer from David Tong's directors account with Rivera (Holdings) Limited	15,000,000
19.12.90	Transfer from the account of Mr Koo Tai Ne at American Express Bank	20,780,000
	Total	<u>\$75,460,000</u>

- 6.299 David Tong Company Limited ("David Tong Company") is beneficially controlled by Mr David Tong and used by him and his wife Madam Hsu Feng as one of their service companies. Details of David Tong Company's accounts are discussed at Chapter 25. Reference to Mr Koo Tai Ne's ("Mr Danny Koo's") account is in Chapter 19 concerning Martra. In essence, however, both accounts were operated by Madam Hsu Jye. Martra is allegedly controlled by Mr Danny Koo, a friend of Mr David Tong and, I believe, at that time the General Manager of Tomson Asia Development in Taiwan. I have endeavoured to contact Mr Danny Koo but he has failed to respond to my requests.
- 6.300 I have been unable to examine Rivera's records and no evidence has been presented to me to show that this loan was authorised.
- 6.301 When Mr David Tong was asked why he had used Mr Hsu Sun as his nominee rather than buying the shares in his own name, he stated:

*"Because I believe that if I were to buy those shares myself it would become very conspicuous. And I wasn't sure whether that would trigger the risk that a general offer might be required. And also furthermore, initially I intended to give them compensation by cash, but they eventually opted to sell those shares back to me. But I have quickly sold those shares to the market shortly afterwards in the name of Michael Hsu Sun."*

Acquisition of 30,000,000 shares by Martra Inc. ("Martra")

- 6.302 Also on 18 December 1990, a further 30,000,000 WTCG shares were sold by the Chiu Ming Hung Syndicate to Martra for \$2.50 per share cum bonus. Again the transaction was booked through Mr Peter Mou. Again, no notification of this trade was given to the Stock Exchange in accordance with daily trading rules.
- 6.303 The evidence of Mr Peter Mou, Mr Raymond Lai and Mr Edward Ho relating to the failure to notify The Stock Exchange of the previous trade of 30,000,000 WTCG shares also relates to this trade.

6.304 In relation to Martra's involvement in the purchase of this block of 30,000,000 WTCG shares, Mr David Tong stated that as he could not afford to purchase any further WTCG shares, he arranged for Martra to do so. It was allegedly agreed between Mr David Tong and Mr Danny Koo that the compensation Mr David Tong was to pay to Mr Ma De-Ling should be paid to Mr Danny Koo instead. Mr Danny Koo was then to reimburse Mr Ma De Ling directly in Taiwan. Mr David Tong claimed that he did not exercise any control over these shares I have tried to contact Mr Danny Koo in relation to Mr David Tong's statement, however he has failed to respond.

6.305 Subsequent to his February 1993 examinations, Mr David Tong advised me through his solicitor that the consideration for the purchase of these 30,000,000 WTCG shares came from Taiwan, and was funded by himself and Mr Danny Koo. The amounts set out below were deposited into David Tong Company's account with American Express Bank:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>
		<u>\$</u>
10.12.90	Transfer from Security Pacific Bank account of David Tong Company	8,040,000
10.12.90	Deposit by Madam Hsieh Hui Ching	3,830,000
15.12.90	Deposit of various cheques by unknown persons (allegedly being money swaps from Taiwan)	<u>60,000,000</u>
	Total:	<u>\$71,870,000</u>

6.306 Utilising these monies and other monies standing to the credit of the David Tong Company account with American Express Bank, a cheque for \$75,460,000 was drawn in favour of Martra on 19 December 1990.

- 6.307 Mr David Tong denied lending either Mr Danny Koo or Martra the monies and stated that Mr Danny Koo paid the equivalent amount in Taiwanese dollars into his bank account in Taiwan. Although requested, no evidence of this deposit has been produced to me. Mr David Tong was unable to explain to me, however, why it was necessary to pay out the money from the David Tong Company account when both Martra and Mr Danny Koo maintained bank accounts in Hong Kong for which Madam Hsu Jye, Mr David Tong's sister-in-law, is the sole signatory.
- 6.308 Mr David Tong has also been unable to explain the involvement of Madam Hsieh Hui Ching and why \$3,830,000 was deposited by her on 10 December 1990.

Cash compensation to Mr Ma De-Ling for 12,000,000 shares

- 6.309 During the February 1993 examination, Mr David Tong stated that he paid Mr Ma De-Ling compensation for the remaining 12,000,000 shares based on the difference between the current market price and the adjusted placement price. When asked to produce evidence of the amount paid, Mr David Tong replied through his solicitors that:

*"Mr Tong cannot remember whether there was any compensation paid in respect of the remaining 12 million WTCG shares."*

- 6.310 As discussed earlier in this chapter, due to the withdrawal of WTCG shares by Mr Ma De-Ling in July 1990, the syndicate account only held 60,000,000 WTCG shares, not 72,000,000.

Disbursement of the proceeds from the sale of the 60,000,000 WTCG shares by the Chiu Ming Hung Syndicate

6.311 The proceeds from the sale of the 60,000,000 WTCG shares were disbursed to the Chiu Ming Hung Syndicate as follows:

	<u>\$</u>	<u>%</u>
Mr Huang Jen Chung	17,607,824.25	11.81
Mr Wang Ke Jing	17,607,824.25	11.81
Mr John Ho	17,607,824.25	11.81
Mr Ma De-Ling	28,074,117.75	18.83
Mr Chiu Ming Hung	68,194,909.05	45.74
	<u>\$149,092,499.55</u>	<u>100.00%</u>

Withdrawal of shares from Mr Hsu Sun's account

6.312 Due to the Bonus Issue, Mr Hsu Sun received a further 6,000,000 WTCG shares, increasing the amount of WTCG shares held in his margin account to 36,000,000. On 24 and 28 January 1991 these shares were withdrawn from his account. Mr Hsu Sun has been unable to recall what happened to them.

6.313 Although Mr David Tong stated that the 36,000,000 WTCG shares were subsequently sold through the market, he has been unable to provide me with any evidence to support that contention.

Withdrawal of shares from Martra's account

6.314 Set out below is a table of deposits and withdrawals of WTCG shares made in respect of Martra's margin account at Chintung:

<u>Date</u>	<u>Deposited</u>	<u>Withdrawn</u>	<u>Balance</u>
30 November 1990			1,872,000
10 December 1990	20,400,000		22,272,000
13 December 1990		17,000,000	5,272,000
18 December 1990		5,000,000	272,000
19 December 1990	30,000,000		30,272,000
19 December 1990	6,000,000		36,272,000
19 December 1990		8,000,000	28,272,000
21 December 1990		10,000,000	18,272,000
24 January 1991		10,000,000	8,272,000
28 January 1991		8,000,000	272,000

6.315 The source of the 20,400,000 WTCG shares deposited on 10 December 1990 were transfers from the following accounts with Chintung:

<u>Account holder</u>	<u>No of shares</u>
Mr Chiu Ming Hung	3,189,600
Mr John Ho	3,189,600
Mr Wang Ke Jing	3,189,600
Mr Huang Jen Chung	3,189,600
Mr Ma De-Ling	<u>7,641,600</u>
TOTAL	<u>20,400,000</u>

6.316 Martra received 6,000,000 WTCG shares on 19 December 1990 pursuant to the Bonus Issue.

6.317 On each occasion, either Madam Hsu Jye alone, or together with Mr Hsu Sun, issued instructions to Chintung for the withdrawal of the shares.

6.318 Madam Hsu Jye has stated that although the withdrawn shares may have been delivered to her she cannot recall what happened to them subsequently.



Sale by Mr Chiu Ming Hung of 35,000,000 Great Eagle Holdings Limited shares

6.319 On 24 July 1990, one day after the syndicate settled the payment for its WTCG shares, Mr Chiu Ming Hung sold 35,000,000 Great Eagle Holdings Limited ("Great Eagle") shares to a subsidiary of WTCG, Humphreys Estate (Strawberry Houses) Limited ("HESH") for \$3.15 per share. Chintung acted as the broker. Over the period 28 August 1990 to 29 October 1990, HESH sold 29,406,000 of these shares in 78 separate dealings using a number of brokers. HESH made losses which totalled \$20,239,943.62.

6.320 At the time the Great Eagle shares were bought, the average daily turnover for the previous 13 days was approximately 4,800,000 shares. The price paid by HESH was comparable with the market price at the time.

6.321 The net consideration paid by HESH to Mr Chiu Ming Hung was disbursed as follows:

	\$	%
Chiu Ming Hung (cheque)	65,749,792.50	60
Ma De-Ling (cheque)	32,874,896.25	30
John Ho (transfer)	<u>10,958,298.75</u>	<u>10</u>
	<u>\$109,582,987.50</u>	<u>100%</u>

6.322 Mr Peter Mou authorised the above cheques and their transfer.

6.323 Mr David Tong has denied any knowledge of this "share swap" stating that it was Mr Jackson Chang who conducted all share trading on behalf of WTCG.

Mr David Tong's Submission

6.324 The following submission was made by solicitors acting on behalf of Mr David Tong after consideration of my preliminary conclusions:

*"The only placee to whom Mr Tong personally had spoken and given an indication of compensation in the event of the WTCG share price not*

*increasing following the placement, was the syndicate headed by Mr Chiu Ming Hung. Mr Tong merely indicated to Mr Ma De Ling, whom he understood to be the representative of the syndicate which consisted of large individual Taiwanese investors, that the investment in the WTCG placement shares would not come to a loss. Apart from Mr Ma De Ling the other members of the syndicate were not known personally to Mr Tong, but Mr Chiu Ming Hung was known at the time as one of the four largest individual share speculators in Taiwan and the others were all gentlemen of substance and heavy players on the Taiwan stock market. There was never any question of Mr Tong being able to exercise any influence over Mr Chiu Ming Hung or any of the other members of the syndicate, all of whom were entirely independent investors, who would have resented and rejected any attempt by Mr Tong to influence their investment decisions. Mr Tong did not specify or suggest the number of shares that the syndicate should take up and he had no idea how many they might apply for in the placement. The syndicate members would not have been influenced in their attitude to their investment in WTCG by any indication of compensation, as they would not be interested in investing in a company if they did not think that it would make a profit; and as you are aware, it was only because of the intervention of the wholly unforeseen Gulf War that WTCG's shares price fell and Mr Tong felt obliged as a matter of honour rather than as a legal obligation to arrange for compensation. Although Mr Ma De Ling had previously been a director of Tomson Pacific (having retired from such office in May 1990) he was no longer associated with Tomson Pacific at the time of the placement, and Mr Tong considered him to be a wholly independent third party, as were all the other members of the syndicate. As he told you Mr Tong gave no indication/made no offer of compensation to any other prospective purchaser of shares in the WTCG placement.*

*Mr Tong's evidence is that the compensation to Mr Chiu Ming Hung was determined after negotiation and the compensation for the 12 million WTCG shares (if any) would be minimal as they had been disposed of shortly after the placement, possibly at a profit as you have found. Mr Chiu Ming Hung opted to sell the remaining 60 million WTCG shares and Mr Tong arranged for 30 million to be purchased by Mr Hsu Sun on his behalf and a further 30 million by Martra. As to the former 30 million shares Mr Tong told you that he did not buy them himself as he was not sure, whether that would trigger a general offer under the Take-over Code, and he quickly sold on those shares in the market through Hsu Sun. Mr Tong was unaware of any necessity to notify the Stock Exchange of the sale of the two parcels of 30 million WTCG shares, and he had no intention of misleading the SFC when he signed the form of acknowledgement as to independence. He was also wholly unaware of the sale by Mr Chiu Ming Hung of 35 million Great Eagle Holdings Limited shares to HESH or of the later dealings in those shares by HESH. If and insofar as there may have been any "share swap", Mr Tong was wholly unaware of it and, as he has told you, the detail of any share trading on behalf of WTCG or its subsidiaries (in this case HESH) was carried out by Mr Jackson Chang, which we believe you accept to be the case. "*

## **CONCLUSION**

- 6.325 I conclude, for the reasons set out below, that the placement to Mr Chiu Ming Hung was not independent of the directors of Tomson Pacific.
- 6.326 Mr David Tong was, together with Dr Stanley Ho, a secondary underwriter to the placement. As such, had he been required to take up 0.5% of WTCG's shares (being 6,665,880) or more, he may have been among the parties liable to make a general offer at \$2.25 per share to all WTCG shareholders. Such an occurrence would have cost approximately \$2,000,000,000 had all shareholders accepted the offer. Mr David Tong therefore had an interest in the success of the placement.

- 6.327 Mr David Tong has told me that he wanted the Chiu Ming Hung Syndicate to buy a large quantity of shares during the placement period to stimulate the share price. To ensure this, Mr David Tong promised Mr Ma De-Ling, a former director of Tomson Pacific, that if the share price dropped, he would compensate the syndicate for any loss.
- 6.328 On 18 December 1990, Mr David Tong through his nominee Mr Hsu Sun (his brother-in-law), purchased 30,000,000 shares from the Chiu Ming Hung Syndicate at \$2.50 when the market price the day before was \$1.14. Mr Hsu Sun has admitted being Mr David Tong's nominee.
- 6.329 Further, Mr David Tong told me that he used Mr Hsu Sun as his nominee as he believed he could have triggered the need to make a general offer to all the WTCG shareholders if he had bought the shares in his own name.
- 6.330 The \$75,460,000 needed by Mr Hsu Sun to acquire the 30,000,000 shares came from four deposits. Three of the deposits were from Mr David Tong personally and the fourth was paid by Mr David Tong's business partner, Mr Danny Koo.
- 6.331 A further parcel of 30,000,000 shares were acquired from the Chiu Ming Hung Syndicate by Martra on 18 December 1990. Again although the funds were drawn from a David Tong Company bank account, the source of those funds were three deposits, one of which was from another David Tong Company account. The sources of the other two deposits have not been clearly explained to me by Madam Hsu Jye.
- 6.332 I have found it difficult to determine Martra's role in this matter because I have been unable to contact Mr Danny Koo and I have found Madam Hsu Jye determined to reveal as little as possible. I also find it difficult to accept that Madam Hsu Jye and Mr David Tong are unaware of what happened to the 60,000,000 shares that were purchased.

- 6.333 Because of Mr David Tong's contradiction of his early evidence, it is not clear whether he paid compensation to Mr Ma De-Ling in respect of the remaining 12,000,000 WTCG shares, and although I believe that it is very likely that he did, there is no dispute that these shares were included in the placement of 72,000,000 for which compensation arrangements were promised.
- 6.334 By signing the Form of Acknowledgement as to independence when he had promised Mr Ma De-Ling that he would be compensated if any loss was suffered Mr David Tong clearly misled the SFC. I am therefore critical of Mr David Tong's conduct which I believe was unfairly prejudicial to WTCG's minority shareholders.
- 6.335 I am critical also of Chintung's failure to notify the SFC that Mr Chiu Ming Hung was trading as a syndicate. The information provided therefore was inaccurate and misleading. Further, I believe the omission to notify the Stock Exchange of the sale of the two parcels of 30,000,000 WTCG shares at double the current market price may have been a deliberate act. However the evidence of Mr Peter Mou, Mr Raymond Lai and Mr Edward Ho is not, in this instance, conclusive enough for me to form an opinion as to who was responsible for the omission.

#### **HAUXTON LIMITED - 68,050,494 WTCG SHARES**

- 6.336 Hauxton Limited ("Hauxton") was incorporated in Liberia on 8 March 1990. It was purchased from Herman H. Y. Ng & Co, a Hong Kong accounting firm, on 9 July 1990.
- 6.337 The consideration for the purchase of the company was a cheque for \$10,800 drawn by David Tong Company. The cheque was signed by Madam Hsu Jye on behalf of David Tong Company and I understand that the purchase was arranged by Mr Spancer Lau, an employee of Tomson Pacific.

- 6.338 The beneficial ownership of Hauxton has been difficult to determine because no original company books and records appear to be in Hong Kong. Those records inspected by me have been copies of documents held by third parties, (for example, the certificate of incorporation lodged at a bank to open a company account). I have therefore spent considerable time examining circumstantial evidence which indicates control or ownership.
- 6.339 In common with all companies which I have examined for which Madam Hsu Jye is the authorised signatory in Hong Kong, Hauxton, though apparently carrying on business in Hong Kong, is not registered as an oversea company. Madam Hsu Jye claims to have sent all Hauxton's records to its directors who are residents of Taiwan.
- 6.340 I am unable to verify whether the records of Hauxton were in fact ever sent from Hong Kong. Due to the complexity of transfers between accounts (more noticeable with respect to other companies discussed at Chapters 19, 20, 21 and 22) it seems reasonable to assume that at least some form of rudimentary cash book would have been required in Hong Kong to reconcile balances between accounts at the end of key periods. However, no such records have been produced to me.
- 6.341 On 17 July 1990, Hauxton opened an account with First Pacific Bank at its Causeway Bay Branch. The account opening documentation lists the directors as being:
- Madam Chiang Pei Ling  
Madam Hsieh Hui Ching  
Madam Shih Hsiao Kuei
- 6.342 These three women are apparently friends of Madam Hsu Jye and are all Taiwanese residents. I have endeavoured to contact them during the investigation without success.

- 6.343 Madam Hsu Jye was the sole authorised signatory for Hauxton's account at the First Pacific Bank. Apparently, Madam Hsu Jye was given authority to operate this account at a director's meeting on 17 July 1990. The minutes represent that the meeting was held in Hong Kong and that Madam Chiang Pei Ling and Madam Hsieh Hui Ching formed the quorum.
- 6.344 I have no evidence to substantiate that these two women were in Hong Kong at the time of this meeting. The minutes forwarded to First Pacific Bank were certified by Herman H.Y. Ng & Co but apparently not in the presence of either of the two directors. Accordingly, I cannot be confident that the signature of Madam Chiang Pei Ling as chairman of the meeting is actually hers and it is possible that the bank account may have been opened without proper authority. Madam Hsu Jye has stated that this is not the case and that the bank account was opened on the instructions of the directors.
- 6.345 A David Tong Company cheque for \$3,000 signed by Madam Hsu Jye was deposited to open the account. Hauxton's bank account, however, appears only to have been used in connection with one transaction, the acquisition of the Tian Teck Land Limited shares which is discussed at Chapter 9.

Hauxton's role in the placement

- 6.346 Hauxton is shown on the placees' list presented to the SFC as taking up 68,050,494 WTCG shares. The provisional placing schedule shows two parcels of shares were allotted to it; one of 60,000,000 and the other of 8,050,494 (Appendix 27). Two separate contract notes were issued to Hauxton in respect of these amounts.
- 6.347 Hauxton first appears on Chintung's provisional placing schedule as a handwritten entry on 19 July 1990 and as part of the full schedule on 23 July 1990. Prior to that, however, there were two entries which appear to be related to Hauxton (Appendix 28).
- 6.348 On a page dated 13 July 1990, one entry stated:

*"Passed to Jackson Chang 67,000,000"*

6.349 Mr Arthur Lai said he thought that this entry meant that Mr Jackson Chang had a friend who wanted 67,000,000 WTCCG shares. Mr Peter Mou said he had no idea what this entry meant.

6.350 On a page dated 14 July 1990, in lieu of "*Passed to Jackson Chang 67,000,000*" the following placee had been inserted :

*"P T Soda Sumatera 67,000,000"*

6.351 Mr Arthur Lai explained this by saying that Mr Jackson Chang mentioned to him that P T Soda Sumatera was an Indonesian organisation with whom he was acquainted. He added that he never made any further enquiries about that company and thought Mr Jackson Chang would arrange the funding and other details to enable it to take up the 67,000,000 shares.

6.352 On 19 July 1990 however, the entry for P T Soda Sumatera was replaced by the handwritten reference to Hauxton. On 23 July 1990 the provisional placing schedule showed two entries for Hauxton, one of 60,000,000 shares and one of 8,050,494 shares. Mr Arthur Lai stated that he thought P T Soda Sumatera was removed because the arrangement with it to take up the shares had fallen through.

6.353 Hauxton's entry onto the provisional placing list therefore appears to be a last minute substitution for a placee that was to be arranged by Mr Jackson Chang. Mr David Tong denies that he had any involvement in arranging any proposed placing to P T Soda Sumatera or in its substitution with Hauxton.

6.354 My investigations have revealed that Hauxton did not, however, take both parcels of shares provisionally allocated to it. It appears to have received the parcel of 60,000,000 shares, and a company called Mandarin Development Limited ("Mandarin Development") received the remaining parcel of 8,050,494 shares.



The allocation of 60,000,000 shares

- 6.355 Hauxton's agreement to purchase the parcel of 60,000,000 WTCG shares was referred to in the standard placing letter sent to it by Chintung and dated 19 July 1990. As the letter does not bear an address for Hauxton, I presume it was hand delivered.
- 6.356 I have questioned several people who I thought may have delivered or received the letter but no one admits any knowledge of its delivery or receipt. As I have no evidence to confirm that any of Hauxton's directors were in Hong Kong at the relevant time, it is reasonable to assume that Madam Hsu Jye received the letter. However, Madam Hsu Jye has denied receiving it.
- 6.357 Madam Hsu Jye added that she was not involved in the placement to Hauxton although her friend Madam Chiang Pei Ling, a director of Hauxton *"mentioned it to her."*
- 6.358 The Form of Acknowledgement was signed by Madam Shih Hsiao Kuei, another director of Hauxton and co-signed by Mr David Tong.
- 6.359 Several documents suggest that Mr Peter Mou was the account executive for Hauxton. For example, a handwritten note on his personalized notepaper was found in Madam Violet Ma's file, which stated *"Hauxton Ltd 60m"*. Mr Peter Mou acknowledged writing the note, however he emphasised that the booking instruction had been given to him by Mr Arthur Lai.
- 6.360 In addition, Mr Peter Mou's account executive number, *"555"* is shown on Hauxton's contract notes. Mr Peter Mou did not dispute that Hauxton was one of his clients following the placement but added that in relation to the acquisition of the placement shares:
- ". . . that the whole deal is handled by Arthur Lai himself. . . "*
- 6.361 Mr Arthur Lai, on the other hand, stated that Mr Peter Mou handled Hauxton and that the latter dealt directly with Madam Hsu Jye.

6.362 Mr Arthur Lai stated that he did not consider it improper that though Madam Hsu Jye was Mr David Tong's sister-in-law she also acted as the representative for Hauxton. His rationale was that Madam Hsu Jye held the funds for her Taiwanese friends who, because of foreign exchange reasons, she had to represent.

6.363 However, in relation to the introduction of Hauxton to the placement, Mr Arthur Lai added:

*"But Jackson [Chang] definitely have something to do with it [the placement to Hauxton], because Jackson talked to Peter [Mou] on a day to day basis as to how the placing goes and everything . . ."*

6.364 Mr Arthur Lai could not recall discussing Hauxton with Mr David Tong.

6.365 In the absence of evidence from Mr Jackson Chang, I believe it is likely that he spoke to either Mr Arthur Lai or Mr Peter Mou stating that he would find an alternative place for the remaining 60,000,000 shares and that he referred the settlement of the transaction to Madam Hsu Jye.

6.366 Following the allotment of the 60,000,000 WTCG shares to Hauxton withdrawals of 30,000,000 and 8,000,000 shares took place on 24 and 25 July 1990 respectively, leaving a balance of 22,000,000 WTCG shares.

6.367 The security withdrawal for the 30,000,000 WTCG shares on 24 July 1990 did not name the person who collected them.

6.368 The 8,000,000 shares however were collected by Mr Wong Wai. He is Mr Jackson Chang's nephew and at the time worked under the supervision of Madam Hsu Jye at Tomson Pacific. Mr Wong Wai stated that he collected the shares on the instruction of Madam Hsu Jye and delivered them to her.

Funding the purchase of the 60,000,000 WTCCG shares

6.369 The 60,000,000 shares cost in total \$136,154,250, inclusive of brokerage and other charges. This was paid for in three tranches:

	\$
	64,481,033.11
	60,000,000.00
	<u>11,329,010.36</u>
TOTAL	<u>\$135,810,043.47</u>

6.370 There is a discrepancy of \$344,206.53 between the amount payable for the 60,000,000 WTCCG shares and amount paid. The discrepancy arose as a result of the sale and purchase of 3,000,000,000 shares in First Pacific Bancshares. The circumstances of this sale are discussed more fully in Chapter 7 and my explanation of the discrepancy is set out below:

	\$
Purchase of 3,000,000,000 First Pacific Bancshares	123,744,150.00
Sale of 3,000,000,000 First Pacific Bancshares	<u>122,255,850.00</u>
Loss	1,488,300.00
Add: Interest charge (13/6-17/7/90) (Note 1)	<u>901,770.78</u>
Less: Interest charges on (13/6/-17/7/90) and other expenses (Note 2)	2,262,982.31
Transaction costs re 1,900,000,000 First Pacific Bancshares	<u>471,295.00</u> <u>2,734,277.31</u>
Amount added to the payment	<u>\$344,206.53</u>

Note 1 This interest charge is calculated at the rate of 14% for 2 days upon \$123,744,150 and 14% for 33 days upon \$63,744,150. This second amount being \$123,744,150 less a \$60,000,000 payment diverted to Hauxton by South View (discussed below).

Note 2 The calculation for this figure can be seen in Appendix 29.

- 6.371 The discrepancy of \$344,206.53 can be reconciled by first taking the loss incurred by Supreme Enterprises and adding to that the interest charges relating to the financing of that transaction. Second by crediting against this figure, the interest charges and transaction costs of the initial sale of 3,000,000,000 shares in First Pacific Bancshares and the transaction costs of the eventual sale of 1,900,000,000 shares in First Pacific Bancshares back to the Far East Group.
- 6.372 Not only were the costs attributed to Supreme Enterprises reimbursed, but interest on the \$60,000,000 credited against their account on 15 June 1990.
- 6.373 I have not been able to determine why Far East Group would meet all of the transaction costs of the sale of 3,000,000,000 shares and the buyback of 1,900,000,000 shares, and pay interest on the deposit of \$60,000,000. Such activities are indicative of a warehousing arrangement.

The source of the \$64,481,033.11

- 6.374 The amount of \$64,481,033.11 was paid by way of a cheque dated 20 July 1990 from the account of "*Hsieh Hui Ching &/or Chang Yueh Chun &/or Shih Hsiao Kuei*" held at the Security Pacific Asian Bank Limited ("SPAB") and signed by Madam Hsu Jye.
- 6.375 I requested Madam Hsu Jye to provide evidence as to the ultimate source of these funds but she has informed me through her solicitors that she has no such evidence. As Madam Hsu Jye was the sole signatory of this joint account, and managed its operations in Hong Kong, I find her statement difficult to accept.
- 6.376 I am not empowered under the Companies Ordinance to inspect the bank accounts of individuals without their consent. As I have not received such consent I have been unable to trace the source of these funds.

### The source of the \$60,000,000

- 6.377 Determining the source of the \$60,000,000 has proven to be a complex exercise. In short, these funds were diverted from South View Properties Limited's ("South View") margin account with Chintung following the sale of 100,000,000 Regal Hotel shares to Far East Holdings International Limited. I believe that South View was controlled by Mr Jackson Chang and Mr David Tong in respect of this transaction. Mr David Tong has denied any knowledge of the diversion of funds. Details of this share sale are discussed in Chapter 7.
- 6.378 It appears to me that Mr Peter Mou authorised the diversion of the \$60,000,000 to Hauxton's credit to enable it to fund its commitment under the placement, although Mr Peter Mou has denied this assertion. A detailed memorandum entitled "*Hauxton Limited*" from Mr Peter Mou to Madam Hsu Jye which shows the payment of \$60,000,000 is contained in Chapter 7.
- 6.379 Mr Peter Mou has denied preparing the memorandum and it is not signed by him. Madam Hsu Jye cannot recall receiving it. Madam Viola Law however, stated that she provided Mr Peter Mou with details of the interest charges which were referred to in the memorandum and that she was present in his office when he was preparing it.

### The source of the \$11,329,010.36

- 6.380 The memorandum from Mr Peter Mou to Madam Hsu Jye (Chapter 7) disclosed that Hauxton owed Chintung the sum of \$11,329,010.36. On 14 September 1990, Hauxton borrowed on margin \$11,329,010.36 to settle this outstanding amount. On 17 September 1990, 22,000,000 WTCG shares were transferred to Hauxton's margin account as security for that loan.

6.381 On 25 and 31 October 1990 cheques were drawn from the accounts of Mr Danny Koo and Mr Tung Ming Hsun for \$10,000,000 and \$1,812,731.01 respectively and deposited into Hauxton's margin account. I understand that Madam Hsu Jye is a signatory for both accounts. When asked about these deposits, Madam Hsu Jye was unable to offer an explanation.

Operation of Hauxton's margin account and the disposal of the balance of 22,000,000 WTCG shares

6.382 No account opening documents were completed for Hauxton's margin account at Chintung. It is evident however from Hauxton's Statements of Account that it commenced operating on 14 September 1990. All of the Statements of Account were addressed to:

*"Hauxton Ltd  
c/o Peter Mau  
M9474-555"*

6.383 I believe the reference to "Peter Mau" is a misspelling of Peter Mou.

6.384 Mr Peter Mou, however, insists that whilst Hauxton was his client in September 1990 he did not deal with it during the placement.

6.385 20,000,000 WTCG shares were withdrawn from Hauxton's margin account on 25 October 1990. It was authorised by Mr Peter Mou and Mr Gary Wong on behalf of Chintung Finance Limited ("Chintung Finance"), the financing arm of Chintung. Mr Wong Wai collected the shares and delivered them to Madam Hsu Jye.

6.386 On 28 February 1991, the balance of 2,400,000 WTCG shares (which included 400,000 shares allotted pursuant to the Bonus Issue) were withdrawn from Hauxton's account. Mr Wong Wai again collected the shares and delivered them to Madam Hsu Jye.

- 6.387 Madam Hsu Jye has acknowledged that she was involved in the operation of Hauxton's margin account, however she insisted that she acted on the instructions of Madam Chiang Pei Ling in Taiwan.
- 6.388 Madam Hsu Jye added that she gave instructions for Hauxton's shares to be withdrawn from Chitung and that she believed they had been delivered to the directors of Hauxton when they were in Hong Kong. There is no evidence that this occurred.

Mandarin Development - the allocation of 8,050,494 shares

- 6.389 Mandarin Development is a Liberian company but it is not registered as an overseas company in Hong Kong.
- 6.390 The copies of the statutory records of Mandarin Development I have received from Mr Arthur Lai are inconsistent.
- 6.391 Mandarin Development was incorporated on 23 July 1987, and a transfer of subscription form purportedly transfers the one share in issue to a Mr David Tang on 24 July 1987. However by a resolution of the sole assignee of the incorporator dated 1 September 1990 and signed by Mr David Tang, Mr David Tang, Mr Peter Mou and Madam Marina Kwong Kit Man ("Madam Marina Kwong") (Mr Peter Mou's secretary) were appointed directors.
- 6.392 Minutes of the first meeting of directors purportedly held on 1 September 1990 include amongst others, resolutions to:
- Approve the transfer of the subscriber share to Mr David Tang and issue a share certificate;
  - Allot a further share to Mr David Tang and issue a share certificate; and
  - Appoint the Mr David Tang - President, Mr Peter Mou - Secretary and Madam Marina Kwong - Treasurer.

- 6.393 It appears that Mr Peter Mou and Madam Marina Kwong then resigned as directors on 2 September 1990, and that Mr Patrick Poon was appointed as a director, secretary and treasurer. I have not seen any minutes to confirm these changes.
- 6.394 The share certificates in favour of Mr David Tang purportedly approved to be issued on 1 September 1990 are dated 19 November 1990, and are signed by Mr David Tang as President and Mr Peter Mou as Secretary and Treasurer (despite his alleged resignation on 2 September 1990).
- 6.395 I have sighted a Chitung memorandum dated 4 April 1991 requesting that various documentation setting up the Mandarin Development margin account at that firm be completed and backdated (Appendix 30).
- 6.396 Solicitors for Mr Arthur Lai have given me a copy of an Affidavit sworn by Mr Patrick Poon in which he states that he is a director and 100% beneficial owner of Mandarin Development. I have discounted this evidence as the Affidavit was sworn in January 1994, and does not mention whether he was the beneficial owner in July 1990, and as it is inconsistent with evidence given to me by Mr Arthur Lai during examination.
- 6.397 Mr David Tang has told me that his recollection of his involvement in Mandarin Development was not good, but after a discussion with Mr Arthur Lai, he remembered that he held shares in Mandarin Development on behalf of Mr Arthur Lai, but thought that these shares were sold to someone else *"in September I think."*
- 6.398 He did say that if the shares had been sold, and he was the nominee for somebody else, he could not understand why had agreed to continue as a nominee.
- 6.399 After consideration of all the evidence available to me I have concluded that Mandarin Development was effectively controlled by Mr Arthur Lai until at least 1 September 1990.



6.400 Mr Arthur Lai has told me that Mandarin Development is "*his company*". However he has claimed that Mandarin Development is sometimes used for the benefit of other people, and that this is one such instance.

6.401 An undated handwritten note in Madam Violet Ma's file referred to "*5M Mandarin Dev. Ltd.*", which suggests that a placement of this size was at one time contemplated. (Appendix 31).

6.402 On 25 July 1990 however, Mandarin Development's margin account at Chitung was debited \$18,268,484.04 for the "*placement of 8,050,494 shares Bond.*" Mr Peter Mou authorised the debit and the stock deposit slip in respect of these shares (Appendix 32) which he has submitted was on the instructions of Mr Arthur Lai.

6.403 The standard placing letter dated 25 July 1990 and signed by Mr Peter Mou was addressed to:

*"Mandarin Development Ltd  
4/F Fung House  
Central  
Hong Kong"*

6.404 The address was that of Livasiri & Co, solicitors. That firm does not have any record of acting for or holding any records on behalf of Mandarin Development. Mr Peter Mou told me that Livasiri & Co were frequently used by Chitung prior to the latter's acquisition by Standard Chartered Asia and this may explain the address used.

6.405 Handwritten on the top of the standard placing letter was "*Hauxton*". The Form of Acknowledgement attached was never signed by a representative of Mandarin Development or co-signed by Mr David Tong (Appendix 33).

6.406 The SFC had been advised that Hauxton had taken up a total of 68,050,494 shares and this discrepancy was never rectified and an executed Form of Acknowledgement from Mandarin Development was never requested.

- 6.407 Mr Arthur Lai stated that in fact the 8,050,494 shares in WTCG were bought for Mr Patrick Poon. I have not however been able to substantiate his assertion about Mr Patrick Poon's involvement as the latter failed to attend a pre-arranged meeting in Taiwan to discuss this matter.
- 6.408 Later in this chapter I also deal with a commission received by Mandarin Development. I conclude that there are circumstances surrounding the realisation of that commission which further support the view that in 1990 Mandarin Development was beneficially owned by Mr Arthur Lai.
- 6.409 When asked about Mandarin Development's involvement in the placement, Mr Peter Mou stated that it was Mr Arthur Lai's company and that he thought Mr Patrick Poon had an interest in it.
- 6.410 Mr Peter Mou denied however that he was involved in placing those shares to Mandarin Development. He claimed his only role was handling the settlement once the placing was agreed.
- 6.411 Mandarin Development's margin statements show that the shares were immediately sold on the market from 24 July 1990 and a profit of \$1,206,500.79 was realized when all but 494 shares were sold as at 1 August 1990. No evidence has been produced to me to show that any of the profit was transferred to Mr Patrick Poon.
- 6.412 Mr Arthur Lai and Mr Peter Mou have both said that these shares were purchased as a "*filler*" to complete the placement. Mr Arthur Lai stated that as Hauxton was unable to complete the acquisition of the 68,050,494 shares, Mandarin Development took up 8,050,494 of them. When asked who had requested his assistance, Mr Arthur Lai stated:

*"At that moment it was either Peter [Mou] or Raymond [Lai] or even Patrick [Yeung] have asked me, well there's eight million short, can we find someone? I said, well if there's eight million short, if you need me to fill in, I'll fill in. You tell me it's okay or not. I think that is really how it worked at that moment. "*

6.413 Mr Yeung Kai Cheung Patrick ("Mr Patrick Yeung") was a director of Chintung and in 1990 was a member of Chintung's Executive Committee.

6.414 Following his examination in July 1993, Mr Arthur Lai wrote to me. His letter stated in part:

*"As you know, I have been very concerned about the accusation that Mandarin has not been proper in the acquisition of the 8.05 Million shares in Bond Corporation as it was to the best of my knowledge that Mandarin was only asked to assist at the last minute when someone had failed to take up the some 8.05 Million shares. Enclosed please find a placing letter to Mandarin which was signed on July 25, 1990 and a copy of the memorandum issued by Anita Shing, Head of Control of ChinTung Ltd. to all staff dated July 24, 1990, lifting the restricted order for normal purchases or sales of Bond shares by staff and management. It is very obvious that Mandarin has been blamed wrongly for taking up the 8.05 Million shares with neither the knowledge nor the proper approval by Standard Chartered Securities. Mandarin did not purposely hide its identity throughout the time of placing . . . ."*

6.415 Mr Ermanno Pascutto, then Deputy Chairman of the SFC, stated that:

*"Well, if Standard Chartered Asia, Chintung or [a] principal of them held shares sufficient to exceed 35% when added to the holding of Tomson Pacific, it would probably on its own have triggered a mandatory offer obligation, because of the presumptions in respect of acting in concert, which are found in the Code. . . The Code provided at that time that a financial*

*adviser is considered to be acting in concert with its client in respect of the holdings of the financial adviser and that a company's presumed to be acting in concert with its directors, so if Arthur Lai was a director of Chintung, that may have been sufficient linkage for Code purposes. "*

- 6.416 The 8,050,494 shares taken up by Mandarin Development represented approximately 0.6% of WTCG's issued share capital. According to the comments of Mr Ermanno Pascutto, the purchase of these shares alone may have triggered a mandatory offer for WTCG by Tomson Pacific.

Mr David Tong's submission concerning Hauxton

- 6.417 The following submission was made in relation to the above by Mr David Tong's solicitors:

*" At the time of the placement, Mr Tong was aware that Hauxton was a vehicle of investment by various friends of Madam Hsu Jye and in particular Madam Chiang Pei Ling. He accepts that he signed the form of acknowledgement of independence in relation to Hauxton as he considered those investors to be wholly independent third parties. Madam Hsu Jye merely acted on behalf of those parties and took no active part in the placement. Mr Tong was not involved in the financing of Hauxton to purchase the shares and, so far as we are aware, there is no evidence to connect Mr Tong with such financing. Also, Mr Tong had no discussion with Mr Arthur Lai either about the shares purchased by Hauxton or the acquisition of 8,050,494 shares in WTCG by Mandarin Development. Mr Tong knew nothing of the latter company and had no idea that it was connected with Mr Arthur Lai. Mr Tong, as we have already said, relied upon Mr Arthur Lai and had no reason to suspect that he might act otherwise than with total propriety in relation to the placement of WTCG shares. "*

## CONCLUSION

- 6.418 The involvement of Hauxton and the question of its independence is far from clear. I have received conflicting evidence from Mr Peter Mou and Madam Hsu Jye as to who instructed Chintung to take up the placement for Hauxton. Madam Hsu Jye has asserted that the placement was only mentioned to her by Madam Chiang Pei Ling. Mr Peter Mou claimed that he received the booking instruction from Mr Arthur Lai. On the other hand, Mr Arthur Lai stated that Mr Peter Mou handled Hauxton and that he dealt directly with Madam Hsu Jye.
- 6.419 The source of funding however has raised my suspicions that Hauxton may be controlled by Mr David Tong and/or Mr Jackson Chang.
- 6.420 The \$136,143,250 needed to acquire the 60,000,000 shares came from three deposits. One of the deposits of \$60,000,000 was diverted from a share transaction involving South View, a company I believe was controlled by Mr Jackson Chang and Mr David Tong in respect of that transaction. Mr David Tong has however denied any knowledge of this diversion of funds.
- 6.421 I have endeavoured to trace the disposal of the 60,000,000 shares which were withdrawn from Hauxton's margin account between 24 July 1990 and 28 February 1991. All of the shares were delivered to Madam Hsu Jye. She has told me that she acted on the instructions of Madam Chiang Pei Ling and that the shares were delivered to the directors of Hauxton. No evidence of this having occurred has been produced to me.
- 6.422 The uncertainty surrounding this placee has been increased by the failure of Hauxton's directors in Taiwan to speak to, or correspond with, me.

- 6.423 The directors of Chintung were clearly under considerable pressure to successfully place all the 419,950,494 WTTCG shares. Mr David Tong and Dr Stanley Ho as secondary underwriters to the placement may have been among the parties liable to make a general offer of \$2.25 to all of WTTCG shareholders if more than 0.5% of WTTCG's shares (being 6,666,588 shares) were not taken up. Such an occurrence would have cost approximately \$2,000,000,000 if all shareholders accepted the offer. Mr David Tong and Dr Stanley Ho therefore had an interest in the success of the placement.
- 6.424 Evidence contained with the provisional placing schedules indicates that Hauxton was a replacement for a placee that was to be arranged by, or associated with, Mr Jackson Chang. Madam Hsu Jye was clearly involved in arranging Hauxton's finance and I do not believe that she would have acted without the knowledge of her brother-in-law, Mr David Tong.
- 6.425 I do not accept that Hauxton was independent of the directors of Tomson Pacific and I consider the signing of the Form of Acknowledgement by Mr David Tong misleading.
- 6.426 Mr Arthur Lai has told me that he controls Mandarin Development which was allotted 8,050,494 shares in the placement. Messrs Peter Mou, Raymond Lai and Arthur Lai were well aware of the inaccuracy of the statement made to the SFC that Hauxton had indeed taken up 68,050,494 shares. A placing schedule produced by Chintung refers to Mandarin Development and Hauxton being allotted 8,050,494 and 60,000,000 shares respectively. The list provided to the SFC however, made no reference to these two parcels of shares. The information provided by Chintung to the SFC was clearly inaccurate and misleading.
- 6.427 Mr Arthur Lai has told me that he took up the shares as a "filler". He has asserted that at the time that Chintung's restriction order had been lifted and he was therefore able to purchase the shares. Chintung's restriction order was only to be lifted when the placing was completed. Clearly by taking shares in the placement the order should still have been in force.

6.428 Be that as it may, Mr Arthur Lai was in a special position whereby he was advising Tomson Pacific and its directors in respect of the share placement. It is therefore arguable that he was acting in concert with Tomson Pacific and its directors by taking up the shares in the placement.

6.429 Mr Gary Wong has submitted that he was not aware Mandarin Development was allocated 8,050,494 WTCG shares at the time he prepared information about the placees for eventual use by the SFC. His submission from his solicitors states:

*"The placee list was provided to the SFC on 23 July whereas the margin account credit entry was not made until 25 July. In any event, that credit entry would have been made by the account executive, Peter Mou, and there is no reason why Mr Wong should have been aware of that. Mr Wong has told us that he did not know about that entry until he became involved in your investigation."*

6.430 It is clear that had Mandarin Development's involvement been disclosed to the SFC, it would have materially affected the latter's decision to waive the requirement for Tomson Pacific to make a mandatory general offer.

6.431 I am not aware of any evidence which indicates that Mr David Tong knew of the placement to Mandarin Development, accordingly I am not critical of him in this respect.

**CATHAY GENERAL INCORPORATED - 67,000,000 WTCG SHARES**  
**BRENTFORD INVESTMENT INCORPORATED - 20,000,000 WTCG SHARES**

- 6.432 Cathay General Incorporated ("Cathay General") is a wholly owned subsidiary of Far East Consortium Ltd and Brentford Investment Incorporated ("Brentford") is a wholly owned subsidiary of Far East Holdings International Limited. Mr Deacon Chiu, the Chairman of the Far East Group of companies stated that all dealings in relation to the placements to the Far East Group of companies were handled by his son, Mr David Chiu. The allocation of 67,000,000 and 20,000,000 WTCG shares to Cathay General and Brentford respectively meant that approximately 20% of the placement was handled by Mr David Chiu.
- 6.433 Mr David Chiu stated that Mr Arthur Lai initially approached him asking that he take up 100,000,000 shares. He refused to do so but agreed to underwrite 20,000,000 shares.
- 6.434 When asked why he had then taken up 87,000,000 shares, he stated:

*"Well, he [Jackson Chang] said David, please support me. My group is cash-rich, you know, it is new in the market. And, secondly, he assured me the Taiwanese is going to make the share very exciting and it is going to be free for all for us in no time. So, I thought there was some money to be made. But still it was for 100 million and after many discussion, at the end I took, I think, 80 million of it. And I recall I want to split it with 40 million to me and 40 million to my father's Far East Holdings. And my father say I don't trust this people, minimum I give you face, take 20 million. That is why he took 20 million. So we end up FEC taking 60 million."*



### Allotment of 67,000,000 shares to Cathay General

- 6.435 As at 5 July 1990, Chintung's provisional placing list showed Mr David Chiu as taking up 67,000,000 shares.
- 6.436 A cancelled standard placing letter dated 4 July 1990 and accepted by Mr David Chiu on behalf of Cathay General also referred to the allotment of 67,000,000 shares. A further standard placing letter dated 24 July 1990, however, referred to Cathay General purchasing 60,000,000 shares for a total cost of \$135,951,750.
- 6.437 This too was reflected in a list of placees sent by Mr Gary Wong to Hongkong Bank on 25 July 1990 which stated the number of shares allotted and the name in which the shares were to be registered (an extract of the facsimile is shown as Appendix 34). Details of these were:-

<u>Placee</u>	<u>Number of Shares</u>
Brentford Investment Inc	20,000,000
Cathay General Inc	60,000,000
Saxton Corporation Limited	7,000,000

- 6.438 It appears from Chintung's records that Cathay General actually took 60,000,000 shares and the balance of 7,000,000 shares were taken up in the name of Saxton Corporation Limited ("Saxton") on 24 July 1990 for \$15,884,662.50.

### Involvement of Saxton Corporation Limited - 7,000,000 shares

- 6.439 Saxton is a Liberian company acquired by the Far East Group. Although the company was transferred to Madam Eva Hui, an employee of Far East Consortium and a close friend of Mr David Chiu, on or about 28 June 1988, I believe that the company remained substantially under the control of Mr David Chiu. Saxton opened a margin trading account with Chintung in May 1990, which was guaranteed by Mr David Chiu. Madam Eva Hui stated that she was unaware that Saxton had taken up a placement of 7,000,000 WTCG shares.

6.440 The standard placing letter sent out by Chintung was addressed to:

*"Mr Edward Lam  
Saxton Corporation Limited  
16/F Far East Consortium Building  
121 Des Voeux Road  
Central  
Hong Kong,"*

6.441 Mr Edward Lam is an employee of the Far East Group.

6.442 I was subsequently advised by Mr David Chiu, however, that the following persons were the ultimate beneficiaries of the shares taken up by Saxton:

Madam Nancy Chiu	4,000,000
Mr Lo Man Pung ("Mr Eddie Lo")	2,000,000
Mr Tsoi Chun Lee	1,000,000
	<hr/>
TOTAL	<u>7,000,000</u>

6.443 Madam Nancy Chiu is Mr David Chiu's wife. She advised me that she acquired the 4,000,000 shares as principal and sold them in small lots through Yu On Securities over the period 25 July 1990 to 7 August 1990.

6.444 Mr Eddie Lo is an undischarged bankrupt who is a consultant to Fulldiamond Limited ("Fulldiamond"), a Hong Kong company. Its principle activities are stock broking and investing in securities and properties. Mr Eddie Lo and the activities of Fulldiamond are discussed at Chapters 4 and 24.

- 6.445 Mr Eddie Lo advised me that he acquired 1,000,000 WTCG shares as agent for his wife, Madam Lam Pui Tsing ("Madam Alice Lam") through Foreground Finance Company Limited ("Foreground") for \$2,265,862.50. The shares were deposited into Madam Alice Lam's margin account with Foreground and sold on market in small lots over the period 27 July 1990 to 8 November 1990.
- 6.446 I understand from Mr David Chiu that Mr Tsoi Chun Lee is a personal friend. I have requested information relating to this share purchase, however he has failed to respond.
- 6.447 I believe that Mr Raymond Lai and/or Mr Gary Wong misled the SFC by failing to advise them that Cathay General had not taken up 67,000,000 shares but that 7,000,000 of those were booked under the name of Saxton, whose beneficiaries were Madam Nancy Chiu, Mr Eddie Lo and Mr Tsoi Chun Lee.

Subsequent dealings in its shares

- 6.448 According to Mr David Chiu, when the WTCG share price dropped in August 1990 he endeavoured to arrange for WTCG to be taken over because he did not believe that Mr David Tong and Mr Jackson Chang were "*big players*" in Hong Kong.
- 6.449 He stated that he had been asked by Mr David Tong and Mr Jackson Chang not to sell his shares when a profit could have been realised so as not to affect the share price and to give them face. Mr David Chiu told me that the proposed takeover failed as Mr David Tong and Mr Jackson Chang wanted \$3.00 per share when the market price was approximately \$1.20.
- 6.450 Mr David Chiu also stated that he had spoken to Mr Jackson Chang at the time of the placement who had indicated that if he suffered a loss he would "*make it up*".
- 6.451 Unable to sell his shares, Mr David Chiu recalled that he approached Mr Jackson Chang requesting that he buy back the shares. Mr Jackson Chang refused to do so on the basis that Mr David Chiu had not made himself clear about any arrangement prior to the placement.

6.452 According to Mr David Chiu at his last oral examination, Cathay General continues to hold its 60,000,000 WTCG shares. Selling them he stated, "*would adversely affect his company's books.*" He has denied that he is warehousing the shares for Tomson Pacific.

Allotment of 20,000,000 shares to Brentford

6.453 On 17 July 1990, "*Far East Holdings Ltd*" was named on Chintung's provisional placing schedule as taking up 20,000,000 shares (Appendix 35). The list of placees submitted to the SFC, however, named Mr Deacon Chiu as the recipient of those shares. The Form of Acknowledgement dated 17 July 1990 was also signed by Mr Deacon Chiu and co-signed on behalf of Tomson Pacific by Mr David Tong.

6.454 A further standard placing letter dated 24 July 1990, however, was addressed to:

*"Mr Edward Lam  
A/C Brentford Investment Inc.  
16/F Far East Consortium Building  
121 Des Voeux Road  
Central  
Hong Kong".*

6.455 On 6 November 1990, the SFC requested, pursuant to Section 31(1) of the Securities and Futures Commission Ordinance, that Mr Deacon Chiu provide them with details of the persons on whose behalf the shares were purchased. On 22 November 1990 he responded that the transaction was carried out in Brentford's name.

Subsequent dealings in its shares

6.456 Brentford sold 8,766,000 WTCG shares in small lots in August 1990 for approximately \$2.70 per share and retains 11,223,000 shares.

Share swap - Regal Hotels International Holdings Limited shares ("Regal")

- 6.457 On 16 July 1990, HESH, a subsidiary of WTCG, bought 20,000,000 Regal shares from Far East Holdings International Limited ("FEHIL") for \$43,775,275. It would appear that the funds received by FEHIL were used to acquire the 20,000,000 WTCG shares. Details of this transaction are discussed in Chapter 7.

**CONCLUSION**

- 6.458 The evidence of Mr David Chiu is that he too was promised by Mr Jackson Chang that if the share price fell below \$2.25 a buyer would be arranged to buy back the shares. According to Mr David Chiu however, when he approached Mr Jackson Chang to implement this, he refused on the grounds that Mr David Chiu had not made himself clear at the time of the arrangement. Mr David Tong made no reference to a promise of a guaranteed buy back being made to Mr David Chiu.
- 6.459 I believe that Mr David Chiu's involvement in the placement is integrally linked to other transactions entered into between the Far East Group and WTCG, namely the acquisition of the 100,000,000 Regal Hotel shares discussed in detail at Chapter 7, the acquisition of the Guangzhou Land discussed at Chapter 11 and the acquisition by Tomson Pacific of a 50% interest in Far East Biscuit discussed at Chapter 12. Accordingly, I believe that it may be inferred that Mr David Chiu was acting in concert with the directors of Tomson Pacific.
- 6.460 The information provided by Chintung to the SFC in relation to Cathay General was clearly inaccurate and misleading. Cathay General did not take up 67,000,000 shares. Rather, 7,000,000 were taken up by Saxton, a company I believe is beneficially controlled by Mr David Chiu. It is claimed that the 7,000,000 shares were applied for on behalf of Madam Nancy Chiu, Mr Eddie Lo and Mr Tsoi Chun Lee. Chintung was clearly aware that Saxton had been allocated 7,000,000 shares as it was included on Chintung's placing list. In particular Mr Gary Wong claims to have inspected all of the contract notes before forwarding the schedule of placees to the SFC. In this instance the contract notes did show Saxton as a placee.

- 6.461 Chintung also misled the SFC by advising them that Mr Deacon Chiu was the recipient of the 20,000,000 shares. In fact the shares were taken up by Brentford, a subsidiary of the Far East Group. I understand that Mr Deacon Chiu separately notified the SFC of this and I am not critical of him in this regard.
- 6.462 The share swap involving Regal shares should have raised the suspicions of those at Chintung that the placement to Brentford was not being conducted at arms length.

#### **CHILTERN COMPANY LIMITED - 12,000,000 WTCG SHARES**

- 6.463 By way of the standard placing letter dated 16 July 1990 from Chintung to Mr Yeung Sau Shing ("Mr Albert Yeung") of Chiltern Company Limited ("Chiltern") the oral contract concluded between them on that day regarding the purchase of 12,000,000 shares at \$2.25 per share was confirmed.
- 6.464 The Form of Acknowledgement was executed by Chiltern and on a later date Mr David Tong co-signed it on behalf of Tomson Pacific. Payment of \$27,230,850 was effected by a cheque drawn on Chiltern's account with the Hongkong Bank.
- 6.465 The address provided by Chiltern, being 701 International Building, 141 Des Voeux Road Central, is occupied by Emperor International Holding Limited. Mr Albert Yeung is the chairman of the Emperor Group, and the major shareholder of Emperor Holdings Limited, a listed company in Hong Kong.
- 6.466 During examination Mr Albert Yeung stated that he was "*involved*" in the WTCG share placement but that the 12,000,000 shares were bought in the name of Chiltern as principal. He confirmed he had a "*very good business relationship*" and was "*very good friends*" with Mr Arthur Lai and Mr Peter Mou of Chintung and that as the shares were being actively traded in the market he decided to take up some of them. He commented that he was initially asked by Mr Peter Mou to take 20,000,000 to 25,000,000 shares but agreed only to take 12,000,000 for a short term investment.

6.467 It was clearly misleading therefore that when asked by the SFC to provide further details relating to Chiltern, Chintung advised:

*"It is understood that the beneficial owner of this company is Ms Sandy Wan, a director located at 18/F Flat A, Dominion Height, Belair Garden, 52 Tai Chung Kiu Road, Shatin".*

6.468 Madam Sandy Wan Yin Fong ("Madam Sandy Wan") has given evidence that she is Mr Albert Yeung's secretary and is employed by Emperor International Exchange Company. She stated that she was the sole director and shareholder of Chiltern and kept all bank and other records for the company.

6.469 When asked whether she was the beneficial shareholder of Chiltern she stated that whilst she was the sole registered shareholder she had executed a blank transfer form for that share and had given it to Mr Albert Yeung. Chiltern is a Liberian company and hence it is not possible to independently determine its true ownership although I accept that beneficially it is owned by Mr Albert Yeung.

6.470 She stated further that she did not initiate any share transactions on her own but would always consult Mr Albert Yeung on any acquisition of shares or payment that she was making.

6.471 Madam Sandy Wan had no recollection of any share transactions involving WTCG. Both Mr Arthur Lai and Mr Peter Mou have given evidence that they knew Mr Albert Yeung controlled Chiltern. Handwritten notes in Chintung's files show that Mr Peter Mou was dealing with Mr Albert Yeung.

6.472 A second standard placing letter was addressed to "*Mr Albert Yeung*" and dated 16 July 1990. It was signed by Mr Raymond Lai and had been sent by facsimile to Mr Albert Yeung. I assume that this letter preempted the placing letter of the same date addressed to "*Chiltern*", referred to above.

6.473 In the provisional placing list prepared by Chintung's back office, "*Emperor Int'l Exchange Co*" was named on 17 July 1990 as taking up 12,000,000 shares. On 18 July 1990 however, "*Chiltern Ltd*" had been inserted in lieu of "*Emperor Intl Exchange Co*".

The share swap - Parisco International Limited shares

6.474 In similar circumstances to those referred to in the Chiu Ming Hung Syndicate and Brentford placements, HESH, a subsidiary of WTCG, purchased 7,000,000 Parisco International Limited ("Parisco") shares on 16 July 1990 from Chiltern through Chintung. Chiltern received \$29,570,012.50 from the sale against having to pay \$27,230,850 for its 12,000,000 WTCG shares taken up in the placement.

6.475 The purchase of the Parisco shares by HESH was well timed. HESH held the Parisco shares for 3 days and then sold them all in small blocks over a 4 week period. Unlike the sale of the Great Eagle shares, HESH made a net a profit of \$7,815,098.68.

6.476 Mr David Tong has denied any knowledge of this "*share swap*", again alleging that Mr Jackson Chang was in charge of the day to day operations of WTCG.

6.477 Madam Sandy Wan has stated that the purchase of the Parisco shares was not in any way connected with the purchase of WTCG shares.

6.478 Over the period 17 July 1990 to 1 October 1990, Chiltern sold its 12,000,000 WTCG shares resulting in a loss of \$3,020,000.

Enquiries made by the SFC following the placement

6.479 On 6 November 1990, the SFC made a demand pursuant to Section 31(1) of the Securities and Futures Commission Ordinance Cap. 24 ("the SFC Ordinance") for "*the full names of the clients on whose behalf*" Chiltern bought its 12,000,000 placement shares.



6.480 On 21 November 1990, Chiltern responded by naming Madam Sandy Wan as the person on whose behalf the shares were purchased. The letter was signed by Madam Sandy Wan. In light of the evidence referred to earlier, this is clearly false and misleading.

## **CONCLUSION**

6.481 Both Messrs Arthur Lai and Peter Mou have told me that they knew that Chiltern was controlled by Mr Albert Yeung. In any event, Chintung advised the SFC that Madam Sandy Wan, Mr Albert Yeung's secretary was Chiltern's beneficial owner. Madam Sandy Wan has told me that she had no recollection of any share transactions involving WTCG. The information provided by Chintung through Standard Chartered Asia to the SFC was, I believe, inaccurate and misleading.

6.482 Further, at the time of the placement of 12,000,000 WTCG shares to Chiltern for \$27,230,850, HESH, a subsidiary of WTCG purchased 7,000,000 Parisco shares from Chiltern for \$29,570,012.50. Such a share swap arrangement should have raised the suspicions of those at Chintung that the placement to Chiltern was not being conducted at arms length. Whether this type of conduct falls within the definition of "*acting in concert*" however is unclear. It was certainly contrary to the spirit of the code.

## **CRESVALE HONG KONG LIMITED - 22,000,000 WTCG SHARES**

6.483 According to Mr Chiang Wee Thiong, Cresvale Hong Kong Limited ("Cresvale Hong Kong") Sales General Manager, Mr Jackson Chang had been a regular client having placed business with that firm on behalf of Rivera and other Taiwanese investors. During my investigation I have examined a placement of Rivera shares conducted by Cresvale Hong Kong in June 1990 and this is discussed in Chapter 18.

- 6.484 By way of standard placing letters dated 11 and 12 July 1990 from Chintung to Mr Chiang Wee Thiong, the oral contracts made between them on those dates regarding the acquisition of 22,000,000 WTCG shares at \$2.25 per share were confirmed. Mr Leonard Kruse, the managing director of Cresvale Hong Kong and Mr Noel McCulla, a director of Cresvale Hong Kong executed the Forms of Acknowledgement and on a later date, Mr David Tong co-signed them on behalf of Tomson Pacific.
- 6.485 Mr Raymond Lai has given evidence that Mr Chiang Wee Thiong approached him on the basis that if Cresvale Hong Kong was to take up shares on behalf of its clients then it did not wish to pay Chintung a commission but would rather earn the commission itself. An agreement was reached between Mr Chiang Wee Thiong and Mr Jackson Chang whereby Tomson Pacific would pay Chintung the commission for placing the shares to Cresvale Hong Kong.
- 6.486 Cresvale Hong Kong took up 22,000,000 WTCG shares on behalf of 14 clients. 10,500,000 of these shares were purchased on behalf of 13 clients whose allotments ranged from 30,000 to 3,000,000 WTCG shares. The majority of these shares were sold on the Stock Exchange during the last week of July 1990.
- 6.487 The remaining 11,500,000 WTCG shares were taken up by Cresvale Far East Limited ("Cresvale Far East") with 10,000,000 of those shares being acquired by its Holdings Book and 1,500,000 by its Hong Kong Book.
- 6.488 The 10,000,000 WTCG shares held in Cresvale Far East's Holdings Book were sold in small lots over the period 30 July to 12 October 1990.
- 6.489 The 1,500,000 WTCG shares held in Cresvale Far East's Hong Kong Book were pooled with other WTCG shares held in that Book and as such it has not been possible to trace when those shares were sold. I have not found any evidence to suggest this placee was not independent.

6.490 With respect to the commission payable to Chintung by Cresvale Hong Kong, Chintung forwarded a debit note dated 1 August 1990 for \$123,750 addressed to Mr Jackson Chang of Tomson Pacific for:

*". . . handling charges in connection to placing of 22,000,000 shares Bond Corporation International Limited to Cresvale Hong Kong Limited at HK\$2.25 per share."*

6.491 According to Mr Gary Wong, the \$123,750 was ultimately written off in May 1991 following Tomson Pacific's continual failure to pay it.

**NT BUTTERFIELD TRUSTEE (BERMUDA) LIMITED  
THE REGENT FUND LIMITED - 4,000,000 WTCG SHARES**

6.492 By way of the standard placing letter dated 12 July 1990 from Chintung to Mr Johnny Watt of NT Butterfield Trustee (Bermuda) Limited ("NT Butterfield") the oral contract concluded between them that day regarding the purchase of 4,000,000 WTCG shares at \$2.25 each was confirmed. The Form of Acknowledgement which was attached was signed on behalf of NT Butterfield by Mr Hamish Macpherson and on a later date Mr David Tong co-signed it on behalf of Tomson Pacific.

6.493 NT Butterfield have advised me it acted as the *"sub-custodian to execute the instructions on behalf of the principal, the Regent Fund Limited, which was incorporated in the Cayman Islands"*. Payment of \$9,076,950 was effected by cheque drawn on the account of NT Butterfield.

6.494 Over the period 4 July to 2 October 1990, NT Butterfield bought a further 10,000,000 WTCG shares and sold 11,360,000 for between \$1.38 and \$2.625.

6.495 Having reviewed the facts I do not consider that there are any suspicious circumstances surrounding this placee. I am satisfied that this transaction was bona fide and independent of Tomson Pacific, WTCG, their directors and their associated companies.

## **LEI SHENG CO LIMITED - 2,000,000 WTCG SHARES**

- 6.496 By way of the standard placing letter dated 4 July 1990 from Chintung to Lei Sheng Company Limited ("Lei Sheng") the oral contract concluded between them that day regarding the purchase of 2,000,000 shares at \$2.25 each was confirmed. The Form of Acknowledgement which was attached was signed by Mr Lau Yu Man, Chairman of the Samaha Group, and on a later date Mr David Tong co-signed it on behalf of Tomson Pacific.
- 6.497 Chintung described Lei Sheng as an *"investment company controlled by Stephen Sin - a regular client"* to the SFC when the latter asked for further details of its beneficial ownership.
- 6.498 Mr Gary Wong, has told me that Lei Sheng was not a regular client of Chintung but that Mr Stephen Sin who holds a senior position in Samaha Group, is a regular client. When asked about the WTCG share placement, Mr Stephen Sin advised that he was unaware Lei Sheng had taken up any WTCG shares and that his superior, Mr Lau Yu Man was responsible for the transaction.
- 6.499 From handwritten notes found in Madam Violet Ma's file, it appears that Mr Peter Mou was responsible for this placee and that it was initially to take up 5,000,000 shares. Mr Peter Mou has stated that his account was passed to Mr Freddie Kwan prior to the placement.
- 6.500 Lei Sheng confirmed to me that it purchased the shares as principal and subsequently sold them through Champion Century Limited on 30 and 31 July 1990 for between \$2.60 and \$2.65.
- 6.501 It appears that Chintung failed to thoroughly research this placee and those who controlled it. As such the SFC was misled as to the ownership of Lei Sheng.

6.502 Be that as it may, having reviewed the facts and circumstances surrounding this placee I consider that this transaction was bona fide and independent of Tomson Pacific, WTCG, their directors and associated companies.

**SOUTHERN HARVESTER FINANCE LIMITED - 500,000 WTCG SHARES**

6.503 By way of the standard placing letter dated 4 July 1990, from Chintung to Mr Jack Leung of Southern Harvester Finance Limited ("Southern Harvester"), the oral contract concluded between them on that day regarding the purchase of 500,000 WTCG shares at \$2.25 per share was confirmed.

6.504 Southern Harvester executed the Form of Acknowledgement and on a later date Mr David Tong co-signed it on behalf of Tomson Pacific.

6.505 Mr Jack Leung has confirmed that Southern Harvester bought the WTCG shares as principal, and that payment was effected by a cheque drawn on the company's account with Dah Sing Bank Ltd.

6.506 Southern Harvester's records show that it sold 490,000 WTCG shares on 1 August 1990 for between \$2.50 and \$2.725 and the remaining 10,000 WTCG shares for \$1.06 per share on 28 March 1991.

6.507 The evidence suggests that this transaction was bona fide and independent of Tomson Pacific, WTCG, their directors and associated companies.

**CLEVER LIFE LTD - 500,000 WTCG SHARES**

6.508 By way of the standard placing letter dated 4 July 1990 from Chintung to Clever Life Limited ("Clever Life") the oral contract concluded between them on that day regarding the purchase of 500,000 WTCG shares at \$2.25 per share was confirmed.

- 6.509 Mr Paul Liu, a director of Clever Life, executed the Form of Acknowledgement and on a later date Mr David Tong co-signed it on behalf of Tomson Pacific. I have been informed by Clever Life that it purchased the shares as principal and that payment was effected by a cheque drawn on the company's account with Standard Chartered Bank.
- 6.510 The 500,000 shares were sold during the period 24 to 27 July 1990 for between \$2.425 to \$2.550 through Chintung, Yu On Securities Co Limited and Wardley-Thompson (Securities) Limited.
- 6.511 The evidence suggests that this transaction was bona fide and independent of Tomson Pacific, WTCG, their directors and associated companies.

#### **ASIA EQUITY LIMITED - 2,400,000 WTCG SHARES**

- 6.512 By way of the standard placing letter dated 4 July 1990 from Chintung to Mr Patrick Choi of Asia Equity Limited ("Asia Equity") the oral contract concluded between them on that day regarding the purchase of 2,400,000 WTCG shares at \$2.25 per share was confirmed.
- 6.513 The Form of Acknowledgement was signed on behalf of Asia Equity and on a later date Mr David Tong co-signed the Form of Acknowledgement on behalf of Tomson Pacific.
- 6.514 The payment of \$5,446,170 was effected by a cheque drawn on the account of First Pacific Securities (HK) Limited. (now known as Asia Equity) on 6 July 1990.
- 6.515 I am informed by the Vice President of Morgan Stanley & Co that Morgan Stanley Asia Limited handled the purchase of the 2,400,000 WTCG shares through Asia Equity on behalf of Morgan Stanley & Co Incorporated of New York, USA. Although they declined to disclose the names of their clients due to client confidentiality, I have not found any evidence to suggest that this placee was not independent of Tomson Pacific, WTCG, their directors and associated companies.

## INFORMATION SUPPLIED TO THE SFC BY CHINTUNG

- 6.516 In the days immediately following completion of the placement of the WTCG shares, Standard Chartered Asia as part of the agreed arrangement with the SFC, provided the SFC with information concerning the placees. In so doing, Standard Chartered Asia was providing information which it had received from its then subsidiary, Chintung. The SFC were concerned to ensure that all of the placees were independent of Tomson Pacific and its directors and had, accordingly, requested information on these placees. It is clear from an analysis of Standard Chartered Asia's letters in answer to the SFC's questions that the information provided by Chintung about the placees was misleading.
- 6.517 As discussed in Chapter 5, the information forwarded to the SFC was initially prepared by Mr Gary Wong, and then reviewed by Mr Raymond Lai.
- 6.518 Solicitors for Mr Gary Wong have submitted that "*he depended entirely on information provided to him by salesmen, principally, in this transaction Raymond Lai and Peter Mou*".
- 6.519 I have seen no evidence of any involvement of Mr Patrick Yeung.
- 6.520 In summary I find the following representations made misleading and deceptive:

### Hauxton

- 6.521 The SFC were informed that Hauxton was a member of the Kwong Fund Textile Company in Taiwan and a company used by their Taiwan affiliate, Rosenthal. I have found no evidence that suggests this is factual. In addition, I believe that Mr Peter Mou dealt directly with Madam Hsu Jye in relation to Hauxton. It is clear that Mr Peter Mou knew that Madam Hsu Jye was an employee of Tomson Pacific and that she was Mr David Tong's sister-in-law.

- 6.522 However, Mr Peter Mou has told me that Hauxton was his client only after the placement, and that the booking instructions had been given to him by Mr Arthur Lai. I am unable to conclusively determine who actually arranged the placement, but I am sure it was one of these two gentlemen, and I am confident that both know of the connections to Tomson Pacific.
- 6.523 Accordingly, I am critical of both Mr Peter Mou and Mr Arthur Lai for failing to ensure that accurate information about Hauxton was provided to the SFC.

#### Mandarin Development

- 6.524 The placement to Mandarin Development was not disclosed to the SFC. Mandarin Development was a company controlled by and used for the benefit of Mr Arthur Lai (although Mr Arthur Lai claims these WTCG placement shares were bought on behalf of Mr Patrick Poon) and there is evidence to support the view that Mr Arthur Lai, Mr Raymond Lai, Mr Peter Mou and Mr Gary Wong knew that Mandarin Development was allocated placement shares. There is further evidence to suggest that Mr Arthur Lai, Mr Raymond Lai and Mr Peter Mou knew that the allocation to Mandarin Development was in breach of the requirements concerning independence of the placees. In spite of this, none of these individuals at Chitung took steps to ensure that the SFC was forwarded this information by Standard Chartered Asia. I am critical of them in this respect.

#### Chiu Ming Hung Syndicate

- 6.525 The information provided to the SFC in relation to this syndicate was factually deficient in one critical aspect - no mention was made of the fact that the shares were acquired by a syndicate. There is evidence to support the view that Mr Peter Mou, Mr Raymond Lai and Mr Gary Wong were aware that at least one other individual, Mr Ma De-Ling, had an interest in these shares. In my view, such disclosure should have been made to the SFC. I am critical of Mr Raymond Lai and Mr Gary Wong in this regard.



### Commercial Success, Killenny and La Fayette

- 6.526 No mention was made by Chintung of the apparent connections between Commercial Success, Killenny and La Fayette, notably that these three placements were all arranged at the same time and that someone from WTCG had provided them with contact addresses.
- 6.527 In respect of Commercial Success, whilst Mr Raymond Ling did work for Arral Associates (HK) Limited (a firm of fund managers) it is clear that Chintung did not bother to determine from Mr Ling whether he was acting on behalf of Arral Associates or on his own account. I believe Mr Raymond Lai has been negligent in this respect.
- 6.528 In respect of La Fayette, Chintung only advised that the placee was to Pierson Asia and there was not any disclosure of the interest of La Fayette. It is apparent from an examination of the records at Chintung that Pierson Asia was directly substituted for La Fayette and that La Fayette had a Hong Kong contact address. I have not been able to determine whether this omission was made deliberately.

### Chiltern

- 6.529 Mr Albert Yeung should have been named as the person beneficially interested in these shares. I believe Mr Raymond Lai and Mr Peter Mou were at fault in this respect and accordingly I am critical of them.

### **CONCLUSION**

- 6.530 I believe it is reasonable to conclude that had Chintung, through Standard Chartered Asia, provided the SFC with accurate information concerning the placees, the SFC would have investigated the identity of the placees further, as their concerns about the independence of the placees would have been shown to be justified. I believe that this may well have led to Tomson Pacific, among others, being required to make an offer for all of the shares in WTCG, an event which it clearly wished to avoid.

## **MR ARTHUR LAI AND COMMISSIONS FOR THE PLACEMENT**

6.531 Mr Arthur Lai has told me that he introduced Mr David Tong to Mr Peter Lucas, a director of Bond Corporation International Holdings Limited ("BCIHL"), with a view to Tomson Pacific acquiring the WTCG shares owned by BCIHL held as security by Hongkong Bank. According to Mr Arthur Lai, in order for the acquisition of control of WTCG to be completed several complicated issues had to be resolved:

- How Tomson Pacific would fund the acquisition;
- How a parcel of land in Rome, Italy, previously purchased by WTCG, could be disposed of;
- How Hongkong Bank could be satisfied as mortgagee; and
- How the control of WTCG could be achieved without the need for Tomson Pacific to make an offer for all the issued shares of WTCG.

6.532 According to Mr Arthur Lai, in mid April 1990 he was told by Mr Peter Lucas that if he could put the deal together, he could personally act as the middleman.

### AUD 2,000,000 paid by BCIHL to Mandarin Development

6.533 It was agreed between Mr Arthur Lai and Mr Peter Lucas, that if the share sale and placement were a success, Mr Arthur Lai would be entitled to a "*negotiation and success fee*" from BCIHL of AUD 2,000,000 or the Hong Kong dollar equivalent inclusive of any out of pocket expenses. An arrangement was settled whereby BCIHL would pay the agreed commission to Wealthcorp Investments Limited ("Wealthcorp"), a Hong Kong registered company controlled by Madam Yvonne Lim, Mr Arthur Lai's wife. This was confirmed in a letter from Mr Peter Lucas to Wealthcorp dated 20 April 1990 (Appendix 36).

- 6.534 Wealthcorp is incorporated in Hong Kong. Its shareholders are Madam Yvonne Lim and two nominee companies, Corplex Limited and Lexnom Limited. Its registered office and company secretary and nominee directors were provided by a solicitor's office during 1990 and 1991. Mr Arthur Lai has admitted that he controls Wealthcorp's bank account although he is not registered as one of its directors.
- 6.535 By letter dated 14 May 1990 from BCIHL to Hongkong Bank, Mr Peter Lucas itemised the anticipated expenses to be incurred in respect of the sale of its shareholding in WTCG. Of the estimated \$31,505,159 in costs, \$12,000,000 was allocated for "Wealthcorp Limited - finder's fee" (Appendix 37).
- 6.536 Mr Michael McIntyre of Hongkong Bank responded to BCIHL's letter on 15 May 1990 stating in part:
- "the proposed payment to this company (Wealthcorp) of a finder's fee comes as a surprise and whereas we appreciate that such expenditure is not unusual in a transaction of this size and complexity, we feel that our agreement should have been obtained if you expected such a payment to be made from the proceeds of assets mortgaged to us. However in the circumstances and having discussed this with you, we are prepared to agree to such a payment once we have received confirmation from Tomson Pacific Ltd that they are aware of this payment. "*
- 6.537 Also on 15 May 1990, Mr Jackson Chang acknowledged in writing to Mr Peter Lucas Tomson Pacific's awareness of "a certain fee" to be paid by BCIHL to Wealthcorp "for services rendered in connection with the introduction of Tomson Pacific to BCIHL leading to the sales of 34.5% and 31.5% of BCIHL's holding in BCIL [WTCG]" (Appendix 38).
- 6.538 A similar letter dated 16 May 1990 to BCIHL from Chintung, signed by Mr Peter Mou and Mr Raymond Lai, also acknowledged awareness of "a fee of HK\$12,000,000 or an equivalent of A\$2,000,000". This letter was copied to Mr Michael McIntyre of Hongkong Bank (Appendix 39).

6.539 In a submission to me Mr Peter Mou's solicitors stated:

*"This letter was countersigned by our client upon the express assurance of Mr Arthur Lai that he had informed the members of the board of Chintung Holdings Limited of the proposed payment. Since our client was not a member of the board of Chintung Holdings Limited, he was not in a position to verify this statement but was relying in good faith on the implied assurance of his Company Chairman that no objection had been made to the payment. Our client also received comfort from the fact that this letter had, prior to his countersignature, been signed by Mr Raymond Lai. Mr Raymond Lai was our client's immediate superior and Managing Director of Chintung Limited."*

6.540 Mr Arthur Lai, Mr Raymond Lai and Mr Peter Mou have all stated in examinations that the commission was discussed at a Chintung board meeting and that as such Chintung was aware of the payment. There is however no documentation to suggest that it was raised at any of Chintung Holdings' board meetings which were attended by representatives of Standard Chartered Asia and others from Chintung.

6.541 I have examined Mr Christopher Wigan and Mr Patrick Yeung, who were both members of the Board of Chintung Holdings at this time and each has denied any knowledge of any commission ever being discussed. I have examined and been informed by Mr Gary Wong and Mr Dickson Ho and received written confirmation from Mr Eugene Yang, who were all directors of Chintung, that they were not aware of such commission arrangements.

6.542 Although Wealthcorp had been referred to throughout as the company to receive this commission on 28 June 1990, Hongkong Bank in fact arranged for a cashier's order to be drawn in favour of Mandarin Development for AUD 2,000,000. Mr Peter Lucas was unable to recall the reason for the change from Wealthcorp to Mandarin Development.

- 6.543 These monies were subsequently sent via Union Bank of Switzerland ("UBS) Hong Kong to Mandarin Development's UBS Australian dollar account in Luxembourg.
- 6.544 Mr Peter Lucas has told me that he was under the impression that Mr Arthur Lai at this time was not acting as the chairman of Chintung but rather in his own personal capacity. He believed that Mr Michael McIntyre may have also made a similar comment.
- 6.545 Mr Arthur Lai justified receiving the commissions on the following basis:

*". . . in my whole life in Chintung I never get commission for myself. I mean I was Chairman and I never do, but after the Standard Chartered Bank have taken over a lot of people say, 'Arthur, I don't want to give them 10 per cent commission, I want to give it to you, because why do you want to work so hard and get nothing?' Because you know my whole life's earning was taking away by Standard Chartered, anyway, because they got hold of everything that I had, I mean I basically was down to absolutely not a penny. So people always encourage me, and in a way I guess I have to look after myself. And my relationship with Standard Chartered is also quite clear that it will not be a very long term relationship, I help to rebuild the company, that is why I don't step in the day to day operation, I help them continue to build the infrastructure and I was maintained as the Chairman but I had already given up the Managing Director role in the company. And, as a matter of fact, Christopher Wiggins was very involved in a lot of the Standard Chartered related business and I was really left with nothing, but this is a very rare occasion I get involved in actually doing something on my own, and at that moment I don't feel that I had to talk to Standard Chartered or Chintung, provided that I have looked after their interest. My job is to make sure that Standard Chartered Bank is involved, and Chintung is involved, and that is my own sort of moral thinking, OK? So right or wrong, I don't know. "*

\$26,400,000 commission paid by Tomson Pacific to Mandarin Development

6.546 By letter dated 31 May 1990, Mr Jackson Chang of Tomson Pacific agreed to pay Mandarin Development \$26,400,000 for:

*". . . your company introducing to us and acting as agent for our acquisition of 34.5% of the issued share capital of Bond Corporation International Ltd. "*

6.547 This commission was to be paid *"seven days before the completion date"* of the acquisition.

6.548 The letter was acknowledged and signed by Mr Peter Mou on behalf of Mandarin Development and returned to Tomson Pacific. Mr Peter Mou has told me that although he had no beneficial interest in Mandarin Development, Mr Arthur Lai requested he handle all his personal matters, which included those relating to Mandarin Development. He denied however, any knowledge about the \$26,400,000 commission.

6.549 In a submission to me Mr Peter Mou's solicitors said:

*"Our client is obviously aware now of the nature of the HK\$26.4 million payment. Although he signed the acknowledgement of the letter referred to in paragraph 6.548, he did so upon the direction of his superior Arthur Lai and did not pause to consider the contents of the letter the receipt of which he was acknowledging. "*

6.550 On 20 June 1990, at a Tomson Pacific meeting of directors attended by Mr David Tong and Mr Jackson Chang, the directors *"resolved that the Company shall pay a cash commission of \$26,400,000 to Mandarin Development seven days before the completion date of the company's acquisition of 34.5% of the issued capital in Bond Corporation International Limited"* [WTCG] (Appendix 40). Mr Jackson Chang signed the minutes. The reason for this arrangement concerning the timing of the payment of the commission is discussed below.

- 6.551 On 22 June 1990, Tomson Investment drew a cheque on its account with the Ka Wah Bank payable to Mandarin Development for \$26,400,000. Mr Jackson Chang and Mr David Tong signed the cheque. According to Mr Peter Mou, as Mandarin Development did not have a bank account in Hong Kong it was necessary to arrange for Tomson Investment's cheque to be reissued in the name of Wealthcorp. By letter dated 28 June 1990, Mr Peter Mou and Mr Raymond Lai as signatories for Mandarin Development's account, directed UBS to issue a cashier's order for \$26,400,000 payable to Wealthcorp. (To facilitate this transaction UBS subsequently requested Ka Wah Bank to certify Tomson Investment's cheque and issue a cashier's order in their favour for \$26,400,000).
- 6.552 On 29 June 1990, Mandarin Development issued further instructions to UBS that it should transfer the funds to Wealthcorp's account at SPAB. I am curious who completed the mandate for the UBS bank account as the statutory documents of Mandarin Development show the first directors were not appointed until 1 September 1990.
- 6.553 As a signatory also for Wealthcorp's account, Mr Peter Mou drew a cheque from its account payable to Tomson Pacific for \$26,400,000 which was dated 22 June 1990 but not deposited into Tomson Pacific's account until 28 June 1990. Tomson Pacific's journal voucher dated 30 June 1990, records the deposit of \$26,400,000 as "*rights issue money to deposit*".
- 6.554 Mr Arthur Lai has told me that Mr David Tong suggested he accept 33,000,000 Tomson Pacific shares at 80 cents each in lieu of the \$26,400,000 commission. Mr David Tong denied any knowledge of this arrangement and was unable to offer an explanation as to the source of the 33,000,000 Tomson Pacific shares.
- 6.555 The notice sent to all shareholders by Tomson Pacific concerning the Rights Issue, stated the allotment of shares would be as follows:

*"Holders of Shares whose names appear on the register of members of Tomson [Pacific] on the Record Date will be provisionally allotted one Rights Share for every Share then held. Shareholders will be entitled to apply for excess Rights Shares. "*

- 6.556 Chintung Nominees Ltd ("Chintung Nominees") was a shareholder of Tomson Pacific. By way of an undated application for excess Rights, Chintung Nominees applied for 68,880,000 Tomson Pacific shares. Mr Peter Mou co-signed Chintung Nominees' cheque for \$55,104,000. The persons and entities applying for the shares were:

<u>Name of Applicant</u>	<u>Number of Shares</u>
Mr Lee Kwan Yuk c/o Mico Chung	1,500,000
Mr Freddie Kwan	500,000
Mr Peter Lo c/o Mico Chung	3,500,000
Mr Lau Chi Kong (Mr Spancer Lau)	30,000
Mr Chan Kwong Kee	200,000
Madam Wong Man Ling	200,000
Wealthcorp	33,000,000
Forty Enterprises Co	29,900,000
	<u>68,880,000</u>

- 6.557 Mr Peter Mou has advised that ordinarily the cheque would be signed by Chintung's back office staff.
- 6.558 The actual allotment to Chintung Nominees was 53,874,000 shares. Whilst it is known that 33,000,000 Tomson Pacific shares were deposited into Mandarin Development's margin account at Chintung on 25 July 1990, it is not known which of the other applicants were unsuccessful.



- 6.559 The \$26,400,000 paid to Tomson Pacific was placed out on deposit on 28 June 1990 and transferred together with interest on 12 July 1990 to Tomson Investment's account to reduce its overdraft.
- 6.560 Mr Raymond Lai has alleged that although he knew Mandarin Development maintained a trading account with Chintung, he did not know who gave instructions to Chintung on its behalf nor who controlled it. He also stated that he was unaware of the reason Mandarin Development was to receive \$26,400,000 from Tomson Pacific.
- 6.561 I have concluded above (in the section entitled Mandarin Development - the allocation of 8,050,494 shares) that at that time, Mandarin Development was controlled by Mr Arthur Lai.
- 6.562 According to Mr Arthur Lai, there was an understanding between himself and Mr Patrick Poon about Mandarin Development's shareholding. As Mr Patrick Poon had allegedly introduced Mr Arthur Lai to the Ho family who had in turn introduced him to Mr David Tong, Mr Arthur Lai agreed that he should be entitled to 40% of any commission received.
- 6.563 Mandarin Development's trading account shows that 13,496,000 (or approximately 40% of the shares held) Tomson Pacific shares were withdrawn in varying amounts over the period 30 July to 12 October 1990. Although Mr Arthur Lai stated that these shares were for Mr Patrick Poon, Mr Peter Mou who acknowledged receipt of the shares on each occasion by initialling the delivery order was unable to recall what happened to them. Mr Peter Mou has submitted that these shares were withdrawn upon the express instructions of Mr Arthur Lai. It is also evident from Mandarin Development's account statements that the balance of its Tomson Pacific shares were sold through Chintung over the period 2 January until 1 August 1991. I understand from Mr Arthur Lai that he suffered a loss on the sale of these shares. This evidence is further confirmation that at the time of this transaction, Mandarin Development was controlled by Mr Arthur Lai.

## CONCLUSION

6.564 I believe that Mr Arthur Lai's failure to advise the other directors of Chintung and Standard Chartered Asia of the receipt by him of two commissions was a deliberate act to conceal their existence. The following facts support this belief:

- (1) The Board of Chintung were not informed: only Mr Raymond Lai and Mr Peter Mou, who were clearly connected with Mr Arthur Lai, knew about the receipt of the money;
- (2) The acquisition of Mandarin Development, a Liberian company, just before the commissions were due;
- (3) The opening of the Mandarin Development's UBS account shortly before the receipt of the commission;
- (4) The directing of payment to Mandarin Development and Wealthcorp being companies with which Mr Arthur Lai would seem to an outsider to have no direct connection;
- (5) The failure to obtain any sort of letter from any Chintung board member concerning the \$26,400,000 commission;
- (6) Causing the AUD2,000,000 to be deposited in Mandarin Development's UBS bank account in Luxembourg; and
- (7) Mr Arthur Lai had never "*pocketed*" any such commissions previously whilst in Chintung's employ.

6.565 The separate withdrawal of approximately 40% of the Tomson Pacific shares by Mr Peter Mou upon the direction of Mr Arthur Lai suggests that these were the 40% entitlement of Mr Patrick Poon to the commission. This withdrawal is also consistent with oral evidence from Mr Arthur Lai that Mandarin Development was "*his company*", that is Mandarin Development would appear to be holding those shares on trust for Mr Patrick Poon. Whilst Mr Patrick Poon has sworn an Affidavit to the effect that he has 100% ownership of Mandarin Development, this claim was made in 1994 and no reference was made to the position in 1990, accordingly I discount this claim.

### **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"



## CHAPTER 7

### DEALINGS IN THE SHARES OF REGAL HOTELS INTERNATIONAL HOLDINGS LIMITED AND FIRST PACIFIC BANCSHARES HOLDINGS LIMITED

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## 7 INTRODUCTION

7.1 As stated at the commencement of Chapter 5, my Terms of Reference directed me to consider the circumstances leading to Tomson Pacific's acquisition of a controlling interest in WTCG. The transactions set out in this chapter are closely linked to this acquisition.

7.2 This series of transactions involve a share swap, a loan and what appear to be buyback arrangements. These transactions are important to this investigation as they were a significant source of funds for Rivera, allowing it to take up shares in the Tomson Pacific Rights Issue, and for Hauxton, allowing it to take up 60,000,000 shares in the WTCCG share placement. These transactions are discussed in detail in Chapters 18 and 6 respectively.

7.3 The major companies discussed in this chapter are:

- (1) South View Properties Limited ("South View") (discussed fully in Chapter 21), a Liberian company managed by Mr Hsu Sun, Mr David Tong's brother-in-law, in Hong Kong but one that appears to be significantly under the control or influence of Mr Jackson Chang and Mr David Tong in respect of the transactions in this chapter;
- (2) The Far East Group, a group of companies substantially under the control of Mr David Chiu and his father, Mr Deacon Chiu;
- (3) Regal Hotels International Holdings Limited ("Regal"), a publicly listed company of which Mr David Tong was a director; and
- (4) First Pacific Bancshares Holdings Limited ("First Pacific Bancshares"), a publicly listed company which is the holding company of the First Pacific Bank.

7.4 The transactions included in this chapter are:

- (1) A loan of \$100,000,000 to South View made by a company in the Far East Group;
- (2) The sale of 100,000,000 Regal shares by South View to a company in the Far East Group;

- (3) The sale of 3,000,000,000 shares in First Pacific Bancshares from a company controlled by Mr David Chiu to a company I believe was controlled by Mr Jackson Chang and Mr David Tong;
- (4) The subsequent disposal of the 100,000,000 Regal shares by the Far East Group;
- (5) The subsequent acquisition of the shares in First Pacific Bancshares by the Far East Group; and
- (6) The commissions paid to a company that Mr Eddie Lo works for as a consultant for alleged assistance in these transactions.

7.5 Documentation recovered in relation to these transactions suggests a plan to execute the majority of the above was conceived by Mr David Chiu and Mr Jackson Chang between 23 May and 30 May 1990.

7.6 The Far East Group made a profit of approximately \$40,000,000 on its disposal of the Regal shares only a month after they were acquired.

7.7 Many of the transactions to complete this deal were carried out at Chitung by Mr Peter Mou. I have been hampered by his inability to recall his role in the transactions and the persons from whom he took instructions.

7.8 It is evident from my investigation that Mr Jackson Chang was largely responsible for several of the transactions discussed below. His absence from Hong Kong and his refusal to answer any of my persistent attempts to obtain evidence from him have hampered my investigation into the matters discussed within this chapter.



## **THE TRANSACTIONS**

### Tomson Pacific's investment in Regal

- 7.9 In November 1988, Tomson Pacific acquired 232,000,000 Regal shares from Wormald Pacific Limited, as it was then known, for \$580,000,000. This represented approximately 20.5% of the company's issued shares. Mr David Tong became a director of Regal on 17 July 1989. Regal's principal activities were hotel ownership and management and other investments.
- 7.10 In its financial statements of the year ended 31 March 1990, Tomson Pacific valued the Regal shares it held at \$552,512,000.
- 7.11 By way of an Agreement dated 30 March 1990 Tomson Pacific appointed Paliburg International Holdings Limited ("Paliburg") as its agent to dispose of the 232,000,000 Regal shares. Paliburg was the major shareholder in Regal and it undertook to place the shares for no less than \$2.20 per share. The annual report dated 31 March 1990, said that the placing was to have provided funds for Tomson Pacific's other investments. The instructions to Paliburg lapsed on 31 March 1991 and Tomson Pacific retained its shares.
- 7.12 On 15 May 1990, Regal announced a dividend of 3.5 cents per share and a bonus issue of one share for every five. Both the dividend and bonus issue would go "ex" on 15 June 1990. As Mr David Tong was a director of Regal at this time I believe he would have been well aware of the dividend and bonus issue.

### The introduction of Mr Jackson Chang to the Far East Group

- 7.13 It appears from documents recovered from Cheng, Yeung & Co (discussed below), that whilst Tomson Pacific was actively looking to dispose of its shares, Mr Jackson Chang was actively marketing another parcel of 100,000,000 Regal shares to the Far East Group.

7.14 I have been advised by Mr David Tong's solicitor that Mr David Tong has no information as to the source of these 100,000,000 Regal shares.

7.15 The Regal shares appear to have been drawn from the margin account of Grand Ocean at Chintung. Grand Ocean appears to have acquired them in the following manner:

<u>Date</u>	<u>Transaction</u>	<u>Number of Shares</u>
3/4/90	Deposit	20,000,000
23/4/90	Deposit	9,694,000
7/5/90	Deposit	4,000,000
11/5/90	Purchase	20,000
18/5/90	Purchase	810,000
29/5/90	Deposit	19,922,000
30/5/90	Deposit	18,418,000
30/5/90	Deposit	21,078,000
1/6/90	Deposit	10,126,000
	TOTAL	<u>104,068,000</u>

7.16 Between 28 March 1990 and 22 May 1990, Martra, a Liberian company managed by Madam Hsu Jye, Mr David Tong's sister-in-law, had purchased 6,660,000 and sold 6,142,000 Regal shares using Cresvale as broker. I have seen no evidence concerning the purchase of large parcels of Regal shares as outlined above and therefore the source of the majority of the Regal shares deposited into Grand Ocean's margin account remains unknown to me.

7.17 Grand Ocean was only able to release the Regal shares held in its margin account by lodging additional security with Chintung. On 4 June 1990 100,000,000 shares in Regal were withdrawn. Immediately prior to that withdrawal Grand Ocean was holding the following stocks:

Stock	Number of shares	Market Value \$
Regal	104,090,000	244,611,500.00
Cathay City Int.	301,100	469,716.00
Tomson Pacific	27,246,000	27,592,700.00
WTCG	16,812,000	34,464,600.00
Rivera	168,347,220	121,209,998.40
Tomson Pacific Warrants	2,626,400	1,208,144.00
TOTAL		\$429,556,658.40

7.18 On 1 June 1990 Grand Ocean had margin available of \$82,318,249 on its account with Chintung, however a withdrawal of 100,000,000 Regal shares would have overdrawn the margin by \$11,681,751. Therefore, to alleviate this problem 90,000,000 Rivera shares were deposited into the account on 1 June 1990.

7.19 I have been unable to ascertain the source of these shares, however Madam Hsu Jye has advised that Grand Ocean lent approximately \$60,000,000 to Peace Forest and Peace Forest pledged approximately 90,000,000 Rivera shares as security.

7.20 This parcel of 90,000,000 Rivera shares would appear to be the security deposited.

7.21 Mr Eddie Lo of Fulldiamond claimed he introduced the sale of 100,000,000 Regal shares to the Far East Group in May of 1990. He stated that he was asked to help market these Regal shares by Mr Jackson Chang:

*"I remember at the time the Taiwanese David Tong and Jackson Chang told me that there were these 100 million Regal Hotel shares belonging to their friends and they asked me whether I could introduce a buyer to take up those shares . . ."*

7.22 He made no mention of discussing this with anyone else in Tomson Pacific.

The loan to South View by Far East Holdings International Limited

- 7.23 The sale of the 100,000,000 Regal shares to the Far East Group, whilst agreed to sometime earlier, actually took place on 12 June 1990. In the interim Far East Holdings International Limited ("FEHIL") lent money on the security of the 100,000,000 Regal shares.
- 7.24 FEHIL was a company jointly controlled by Mr Deacon Chiu and Far East Consortium.
- 7.25 By a Loan Agreement dated 30 May 1990 between FEHIL and South View, FEHIL agreed to lend \$100,000,000 as a term loan to South View. The money was to be drawn down in one lump sum on 1 June 1990 and repaid in one lump sum on 12 June 1990. Interest was to be at prime plus 1.75% per annum and security was to be provided by a first charge over 100,000,000 Regal shares. Mr David Chiu and Mr Hsu Sun (Mr David Tong's brother-in-law) signed the Loan Agreement on behalf of FEHIL and South View respectively. A copy can be seen at Appendix 41.
- 7.26 Mr Hsu Sun has stated that he had received an instruction from "*some Taiwanese*" that he should execute the Loan Agreement for South View. He could not recall if Mr Jackson Chang was involved with the transaction.
- 7.27 The loan was advanced on 1 June 1990 by the issue of a cheque from FEHIL. On 2 June 1990 \$100,000,000 was deposited into South View's bank account at Security Pacific Asian Bank ("SPAB") upon which Mr Hsu Sun was a sole signatory.
- 7.28 The 100,000,000 Regal shares appear to have been drawn from Grand Ocean's margin account on 4 June 1990. I have not seen evidence that confirms that these 100,000,000 Regal shares were delivered to FEHIL.
- 7.29 Mr Eddie Lo has told me that he only spoke to Mr David Chiu about a sale of the 100,000,000 Regal shares and that there was no mention of a loan.

- 7.30 Mr David Chiu has told me that he thought Mr Jackson Chang requested this loan. He said that he did not know the purpose of the loan as he was only concerned about the collateral. Mr David Chiu thought that the price of Regal shares at the time was around \$2.25 per share and was satisfied that he was adequately secured on this loan.
- 7.31 Between 23 and 30 May 1990, Regal shares traded on the Stock Exchange at between \$2.30 and \$2.40.
- 7.32 The disbursement of the \$100,000,000 by South View is discussed in detail in chapter 21. In summary however the funds were transferred to David Tong Company (\$68,488,500), Mr Tung Ming Hsun (\$30,601,500) and Madam Hsieh Hui Ching (\$910,000).
- 7.33 I have not been able to trace all the funds due to my inability to access personal bank accounts. It is evident however that almost all the money was disbursed through accounts for which Madam Hsu Jye was the sole signatory. In the cases where I have been able to trace the funds through accounts, the money was used to purchase Tomson Pacific, Rivera or WTCG shares and in particular to partially fund a placement of 110,000,000 Rivera shares, allegedly to parties independent of Rivera. This placement is discussed at Chapter 18.

The sale of the 100,000,000 Regal shares by South View

- 7.34 By an undated agreement between South View and FEHIL, South View agreed to sell and FEHIL agreed to purchase the 100,000,000 Regal shares for \$2.25 per share. Completion was to take place at Chitung on 12 June 1990. Mr David Chiu and Mr Hsu Sun signed the agreement on behalf of FEHIL and South View respectively. A copy of this agreement is at Appendix 42.
- 7.35 Mr David Chiu has said that he did not think the agreement to purchase the 100,000,000 Regal shares had been signed the same day as the agreement to lend \$100,000,000 on their security.

7.36 However, in a letter dated 1 June 1990 addressed to South View, care of Rivera and marked to the attention of Mr Jackson Chang, Cheng Yeung & Co wrote:

*"We refer to the above matter and send you herewith the original undated Agreement for Sale and Purchase for your further action. We understand that you shall attend the completion of the sale and purchase at Chin Tung Securities Company. We send you herewith our fee note for your kind attention."*

7.37 On 12 June 1990, FEHIL purchased the 100,000,000 Regal shares at \$2.25 per share. This transaction was carried out through Chintung. Mr Eddie Lo has said that he recommended Chintung as brokers for the transaction and that he spoke to Mr Arthur Lai and Mr Peter Mou, both of Chintung, in relation to it.

7.38 Mr Arthur Lai has stated that he could not recall how Mr David Chiu had obtained Regal shares but he knew that he had acquired a large parcel.

7.39 Mr Peter Mou has denied that he had arranged this transaction saying:

*"The deal is not done by me, maybe it's done by Arthur Lai or Raymond Lai and pass the deal to me so I just open the contract, open the deal slip."*

7.40 According to Chintung, the transaction fees of \$1,923,750 were paid directly by the buyer and seller. I have examined the records of South View and could not find any evidence of this payment. However, amongst the records of Grand Ocean is a payment of \$1,923,750 to Chintung dated 14 June 1990. This cheque was drawn on Grand Ocean's account at SPAB and signed by Madam Hsu Jye and I believe appears to be for the transaction fees.

7.41 Madam Hsu Jye recalled the sale of the 100,000,000 Regal shares and the loan of \$100,000,000. With respect to these two transactions she has said:

*"As far as I can remember, at the time, the owners of those shares, the few Taiwanese friends of mine, wanted to sell those 100 million Regal Hotel shares and, at the same time, they also wanted to make a loan. So they wanted to sell those Regal Hotel shares and they wanted to borrow some money at the same time. But, as far as I could remember, in the end only the sale of those shares was executed and the loan agreement didn't materialise because if you wanted to borrow some money you need to put down some collateral and they were not able to provide that. So, South View did not succeed in making that loan. Well, this is my recollection of what transpired at the time; I didn't sign the agreement myself."*

- 7.42 Following the execution of the sale agreement South View owed FEHIL \$100,000,000 plus interest. FEHIL owed South View \$225,000,000 exclusive of brokerage costs. These two amounts were set off (see below) and hence FEHIL owed South View \$125,000,000.

The sale of 3,000,000,000 shares in First Pacific Bancshares

- 7.43 On the same day that the Regal shares were sold by South View (12 June 1990), Chintung's records show that Parma Investment Limited ("Parma"), a company I believe was controlled by Mr David Chiu, sold 3,000,000,000 shares in First Pacific Bancshares at 4.1 cents per share. The total net value of the sale was \$121,648,350. According to Chintung the shares were purchased by a company called Supreme Enterprises Limited ("Supreme Enterprises").
- 7.44 At that time 3,000,000,000 shares in First Pacific Bancshares represented approximately 12.3% of the issued capital of that company. First Pacific Bancshares was the holding company of First Pacific Bank.

- 7.45 First Pacific Bank was formed following a merger with Far East Bank. Far East Bank was formerly controlled by companies associated with Mr Deacon Chiu and Mr David Chiu. Upon formation of the new bank, it became a wholly owned subsidiary of First Pacific Bancshares. As part of the merger arrangements the Chiu family was issued approximately 4,020,000,000 shares in First Pacific Bancshares which represented approximately 17.3% of the issued share capital at the time.
- 7.46 In January 1990, Mr Deacon Chiu was made Honorary Chairman of First Pacific Bank and a non-executive director of First Pacific Bancshares. Mr David Chiu was made a director of First Pacific Bancshares on the basis that the Chiu family held not less than 10% of the issued share capital of that company.
- 7.47 On 21 June 1990, the Sing Pao newspaper reported that the Chiu family had sold a large block of their shares in First Pacific Bancshares and the purchaser was the Tomson Group. The Business Standard on Friday June 29 1990 reported as follows:

*"Deacon Te-ken Chiu, head of the locally listed Far East group, yesterday confirmed reports that his family and companies have sold three billion shares of First Pacific Bancshares . . . Trading of First Pacific Bancshares Holdings Ltd, a locally listed banking institution, has been surging in the last few weeks.*

*Mr Chiu said that at 4.1 cents per share, the proceeds of the disposal amounted to \$123 million. The bulk of the shares came from the Chiu family and the rest or 150 million came from Far East Holdings, he added.*

*The shares sold represented about 12.5 per cent of Bancshares' issued capital and their disposal reduced the Chiu family's holdings to about 5 per cent, Mr Chiu said. Far East Holdings still controlled another 250 million shares, he added.*

*Mr Chiu, who did not disclose the identity of the buyer, said he would sell more Bancshares equity if the price was right. "*



The set-off requested by FEHIL

- 7.48 Chintung initially drew a cheque for \$121,648,350 made payable to Parma, however this was then cancelled. Typed at the top of the cheque was the name "South View" (see Appendix 43).
- 7.49 By a letter dated 14 June 1990 addressed to Chintung and marked to the attention of Mr Peter Mou, FEHIL requested the following set off in relation to the purchase of the 100,000,000 Regal shares and the sale of the 3,000,000,000 shares in First Pacific Bancshares. The letter stated:

*"We refer to the conversation with you and our Mr. Lam, we have pleasure to confirm our consent to effect the following transactions as:-*

<u>Name</u>	<u>Stock</u>	<u>Net Proceeds</u>
		\$
<i>Far East Holdings</i>	<i>Bought 100 million Shares of Regal Hotel @2.25</i>	<i>225,000,000.00</i>
	<i>US: Amount of Advance</i>	<i>100,000,000.00</i>
		<hr/>
		<i>125,000,000.00</i>
<i>Parma Investment Ltd</i>	<i>Sold 3,000 million Shares of First Pacific @0.041</i>	<i>121,648,350.00</i>
	<i>Amount due from us</i>	<hr/>
		<i><u>\$ 3,351,650.00 "</u></i>

- 7.50 Initially Mr Peter Mou denied any knowledge of the sale of the Regal shares or the sale of the First Pacific Bancshares. He could also not recall ever having received this letter from FEHIL nor any conversation about the matter with Mr Lam.

- 7.51 Mr Peter Mou subsequently advised me in writing that he thought it was possible that he had had a brief conversation with Mr Lam and then talked with either Mr Arthur Lai or Mr Raymond Lai. Mr Peter Mou has advised me that following that conversation he may have asked Mr Lam to send a written confirmation of the arrangements. Mr Peter Mou has qualified his statements by stating that he was not responsible for pursuing the outstanding amounts from clients. This was a matter for Mr Gary Wong or Mr Thomas Mak in the settlement department of Chintung. He has stated that he was not responsible for approving the set off arrangements.
- 7.52 Mr Peter Mou told me that if he had approved this request his initials would have been on the letter signifying approval. There were no initials on the copy I viewed.
- 7.53 Mr Edward Lam has confirmed that he knows Mr Arthur Lai, Mr Raymond Lai, Mr Gary Wong and Mr Peter Mou. Although he is unable to remember discussing the transaction with Mr Peter Mou he is confident that he would not have addressed the letter to Mr Peter Mou unless he had spoken to him previously.
- 7.54 Mr Gary Wong was a director of Chintung at this time and Mr Thomas Mak was the senior settlement manager.
- 7.55 In a subsequent interview Mr Peter Mou has admitted that he thought that he received instructions in relation to the purchase of 3,000,000,000 shares in First Pacific Bancshares from either Mr Jackson Chang or Madam Hsu Jye. This evidence was only given by Mr Peter Mou after I showed him Chintung's dealing slips which evidenced the fact that he had issued the dealing slips for these transactions.
- 7.56 Importantly, as the FEHIL set-off could be termed a "*third party set-off*", South View would have needed to give its permission prior to such a set-off taking place. There is no written authorization from South View on the files of Chintung.
- 7.57 Mr Hsu Sun claimed he could not remember anything about this set-off.
- 7.58 Mr Arthur Lai strenuously denied any part in approving the set off stating:

*"Well it is wrong, because sometimes you never got the proper author[ization], if that is really, it should be Parma signing off and Far East signing off, okay. Now that is something that I never agree. As a matter of fact, I remember one time at the Executive Committee Meeting I have always voiced that openly to Chris Wigan and Patrick [Yeung], I said I do not agree. But they said well that doesn't matter, if the bank [Standard Chartered Bank], if it is authorised, it is safe enough. But I said I never, even as a broker, I don't like people to contra accounts because I don't know what the deal is behind it. "*

7.59 He added that in relation to the set-off being arranged outside of Chintung:

*"Yes, you see this is crazy, anyway. I have no idea about this, I mean this is crazy. How can the Finance Department allow this sort of thing to happen?"*

7.60 I asked Mr Thomas Mak what authorization would be needed in order to effect a set-off involving large amounts of money from what would appear to be unrelated parties. He said:

*"I think normally on that type - I think the instructions should come from Peter [Mou] or Arthur [Lai], but I'm not sure whether this has come from because you know, Peter is one of the, I mean the General Manager of Chintung, but I do not exactly remember what that is for this deal. "*

7.61 When asked whether Mr Gary Wong could effect the set-off without the knowledge of Mr Peter Mou or Mr Arthur Lai, Mr Thomas Mak replied:

*"I don't think so, I don't think he has such authority, because you know, in our back office we do the support, we don't know the arrangement between the sales and the client. "*

7.62 Mr Thomas Mak added that he believed it unlikely for Mr Raymond Lai to be involved in a transaction of this type.

7.63 The set off was duly effected when Chintung received a cheque for \$3,351,650 from FEHIL.

Identity of the purchaser of 3,000,000,000 shares in First Pacific Bancshares

7.64 The contract notes for the purchase of the 3,000,000,000 shares in First Pacific Bancshares showed Supreme Enterprises as the purchaser. The purchase was booked through Chintung's "*Client Service: Cash Suspense Supreme Enterprises Ltd*" account (Appendix 29).

7.65 According to Mr Gary Wong, who was a director of Chintung at the time, a suspense account of this nature could only be used following authorization by a Director. A company using a suspense account did not have to complete account opening documentation or provide any details as to its ownership.

7.66 Mr Peter Mou issued dealing slips covering the acquisition of the 3,000,000,000 shares in First Pacific Bancshares by Supreme Enterprises and the sale of 100,000,000 Regal shares by South View to FEHIL. Mr Peter Mou said that either Mr Jackson Chang or Madam Hsu Jye had given him the booking instruction following the transaction.

7.67 I have located a company called Supreme Enterprises Limited which was incorporated in Hong Kong on 1 November 1962. Its owners however, claim to know nothing about this transaction. I accept their evidence.

7.68 It is possible that the Supreme Enterprises referred to in this transaction is a company incorporated overseas which is not registered as an overseas company in Hong Kong.

7.69 Mr David Chiu has stated that he could not recall specifically discussing the sale of the shares in First Pacific Bancshares with Mr Jackson Chang or Mr David Tong prior to their sale although he thought that subsequently he learnt that Mr David Tong bought them.

7.70 Madam Hsu Jye has denied any knowledge of Supreme Enterprises and the purchase of the 3,000,000,000 shares in First Pacific Bancshares.

7.71 I retrieved from the records of Chintung a handwritten note dated 9 August 1990 and signed by an employee of Chintung. It read:

*"Mr Lau  
Supreme Ent Ltd  
Tel: 845 6618  
9/8/90  
5.00 pm"*

7.72 The telephone number is that of Tomson Pacific. Mr Spancer Lau has denied any knowledge of Supreme Enterprises or of the above transaction. The note was found amongst documents relating to the settlement of Hauxton's placement of 60,000,000 WTCG shares in July 1990. Mr Spancer Lau is discussed in Chapter 4. His evidence given to me has frequently been inconsistent and I have reason to believe he has been at best economical with the truth.

7.73 I have therefore been unable to determine with certainty who controls Supreme Enterprises or who authorised the purchase of the 3,000,000,000 shares in First Pacific Bancshares.

7.74 However it is possible that the purchase of the 3,000,000,000 shares in First Pacific Bancshares were charged to Hauxton. I have located an unsigned memorandum from Mr Peter Mou to Madam Hsu Jye (Appendix 44) which reads:

"To : Hsu Jye  
From : Peter Mou

Re : **Hauxton Limited**

Sold 3,000,000,000 F P Bancshares at HK\$0.041 HK\$122,255,850.00

**Less :**

Purchased 3,000,000,000 #166 HK\$123,744,150.00

Payment on 15/6/90 60,000,000.00

HK\$63,744,150.00

**ADD :** Interest Charges (13/6-17/7/90) 901,770.78

**Less:**

Interest charges on (13/6/90 -  
17/7/90) & other expenses  
(Note 1)

2,262,982.31

Expenses of 1,900 million  
F P Bancshares

471,295.00

HK\$61,911,643.47 HK\$61,911,643.47

HK\$60,344,206.53

**Less :**

Payment on 60,000,000 BCIL [WTCG]

136,154,250.00

HK\$75,810,043.47

Partial payment on 60,000,000 BCIL

64,481,033.11

**Amount Payable:**

HK\$11,329,010.36"

[#166 is the code for shares in First Pacific Bancshares]

Analysis of the memorandum to Madam Hsu Jye from Mr Peter Mou

7.75 Mr Peter Mou denies preparing this memorandum although other evidence in Chapter 6 leads me to believe he did.

- 7.76 The Bought Note made out to "*Cash Suspense Supreme Enterprises Ltd*" dated 12 June 1990 showed that a settlement amount of \$123,744,150 was due 13 June 1990. This was the same amount as in the memorandum above, and interest was charged from 13 June 1990.
- 7.77 The Sold Notes issued to "*Cash Suspense - Supreme Enterprises Ltd*" on 18 and 20 July 1990 in respect of the sale of 1,900,000,000 First Pacific Bancshares were also reflected in this memorandum.
- 7.78 The payment of \$60,000,000 on 15 June 1990 are part of the proceeds of the disposal of the 100,000,000 Regal shares by South View. You will recall from earlier in this chapter that the sale of these shares generated gross proceeds of \$225,000,000. From this a gross amount of \$125,000,000 was set-off against the purchase of the 3,000,000,000 shares in First Pacific Bancshares and \$65,000,000 was paid directly to South View. The remaining \$60,000,000 is shown on the memorandum as being applied on 15 June 1990. Such an amount would equate that necessary to meet margin security requirements at Chintung.
- 7.79 Whilst there have not been any documents shown to me to establish that South View approved this diversion of funds it is evident that they did not complain.
- 7.80 Initially, I thought that this \$60,000,000 may have come from the Far East Group. Mr Gary Wong of Chintung advised me that the funds were diverted from "*proceeds payable to Far East Holdings in respect of their disposal of 3,000,000,000 shares*" in First Pacific Bancshares. This initial advice appeared to be supported by a cheque made out to Parma for \$121,648,350 marked "*cancelled*" with the words "*South View*" printed on the top (Appendix 43).
- 7.81 However, in considering both the sale of the 100,000,000 Regal shares and the sale and purchase of the 3,000,000,000 shares in First Pacific Bancshares, it is apparent that the First Pacific Bancshares transaction is effectively netted off and the remaining source of funds are the proceeds of the sale of 100,000,000 Regal shares. This sale being carried out in South View's name.

- 7.82 The interest charge of \$901,770.78 was derived from interest at 14% p.a. on \$123,744,150 for two days and interest at 14% p.a. on \$63,744,150 for 33 days. In other words, the 3,000,000,000 shares in First Pacific Bancshares were fully financed by Chintung for two days, and after the receipt of \$60,000,000 from South View on 15 June 1990 interest was charged, until the date of disposal of these shares, on the balance of \$63,744,150.
- 7.83 Therefore, immediately prior to the sale on 17 July 1990 of the 3,000,000,000 shares in First Pacific Bancshares, Supreme Enterprises still required \$64,645,920 to settle its account with Chintung being the balance of \$63,744,150 and the interest charge of \$901,770.
- 7.84 Deducted from this figure are interest charges of \$2,262,982.31 and expenses of \$471,295. In this respect the memorandum makes reference to "Note 1".
- 7.85 The \$2,262,892.31 is calculated in handwritten notes on a Chintung contract note showing Supreme Enterprises' purchase of the 3,000,000,000 shares in First Pacific Bancshares (Appendix 45). It is also referred to in a letter to Far East Holdings from Mr Thomas Mak of Chintung (Appendix 46) as "Other Expenses". It is apparent after considering the letter and the memorandum that Far East Holdings are reimbursing Supreme Enterprises, its costs relating to the purchase of 3,000,000,000 shares in First Pacific Bancshares from Parma including interest at 14% p.a. on the full amount of \$123,744,150 for 32 days.
- 7.86 In addition the figure of \$471,295 represents the brokerage, stamp duty and levy costs Supreme Enterprises would have been liable for in its disposal of 1,900,000,000 shares in First Pacific Bancshares to Far East Group. It is again apparent that Far East Holdings have paid this on behalf of Supreme Enterprises.
- 7.87 These deductions have the effect of actually crediting Supreme Enterprises interest at 14% p.a. on the \$60,000,000 it obtained from South View.



- 7.88 The memorandum then deducts the net amount owing from the purchase and sale of the shares in First Pacific Bancshares from the sale proceeds. At this point the memorandum shows that \$60,344,206.53 is owing from Chintung.
- 7.89 Reference is then made to the purchase of 60,000,000 WTCG shares at a cost of \$136,154,250. Deducted from this is a partial payment of \$64,481,033.11 discussed in Chapter 6.
- 7.90 The ultimate amount payable of \$11,329,010.36 was transferred to Hauxton's margin account at Chintung. This is also discussed in Chapter 6.
- 7.91 It is interesting to note that the 100,000,000 Regal shares that physically came from Grand Ocean's margin account, were sold by South View and part of the proceeds used by Supreme Enterprises and ultimately credited against Hauxton. Throughout these various transaction there is little, if any, documentation to support the proposition that those companies were dealing at arms length.

Press article

- 7.92 An article in the Business Standard dated 18 July 1990 stated:

*"First Pacific Bancshares confirmed yesterday that the Deacon Chiu family had sold most of its stake in the holding firm to the Taiwanese-controlled Tomson Pacific.*

*The Chiu family now controlled about 5 per cent of the firm, down from 12.5 per cent before the transaction, said FP Bancshares managing director and chief executive officer, Ricardo S Pascua.*

*He [Mr Pascua] said he was not surprised by the deal between the local entertainment tycoon Tomson Pacific. "*

7.93 I note that the Chiu family controlled approximately 17.5% of the shares in First Pacific Bancshares prior to the sale by Parma and not 12.5% as stated above.

Meetings to plan and negotiate the Regal and First Pacific Bancshares transactions

7.94 As discussed earlier, Mr David Chiu has recalled negotiating the loan by South View of \$100,000,000 with Mr Jackson Chang. It would appear that these discussions took place at various meetings at which Mr David Chiu, Mr Jackson Chang and Mr Clarence Cheng (a partner of the law firm Cheng, Yeung & Co) were present. The meetings took place between 23 and 30 May 1990. Notes taken of the meetings show that as part of the same series of transactions it was originally proposed that:

- (1) FEHIL was to have an option to repurchase the 3,000,000,000 shares in First Pacific Bancshares it sold;
- (2) Rivera was to purchase the 3,000,000,000 shares in First Pacific Bancshares that Supreme Enterprises actually bought;
- (3) An unnamed party would have an option to purchase the 100,000,000 Regal shares sold to FEHIL by South View;
- (4) Party A (undefined) would lend to a party B (undefined) \$80,000,000 on the security of not less than \$250,000,000 in the form of shares in WTCG, Tomson Pacific or Rivera;
- (5) The Far East Group would sell the land in China (see Chapter 11 on the Guangzhou Land acquisition); and
- (6) The Far East Group would sell an interest in the Far East Biscuit Factory (see Chapter 12).

7.95 All of the above transactions were to be subject to Tomson Pacific gaining effective control of WTCG.

7.96 Mr David Chiu has said he cannot recall any such discussions. He asserted that the transactions referred to at (5) and (6) above were negotiated separately and were not related to the sale of shares in Regal or First Pacific Bancshares. Mr David Chiu stated generally however:

*" . . . every businessman have what they call the honeymoon periods with each company and I think in those days we are talking about a lot of deals because David [Tong] and Jackson [Chang] always give me the impression they have unlimited amount of resources and funding from Taiwan, which obviously attract me and I think what attract them of me is they think they know I have a lot of interesting deals with China. So we must have talked of many, many deals. But not all went through but quite a lot did go through. "*

#### The settlement proceeds owing to South View

7.97 South View was still owed approximately \$125,000,000 by Chintung following the set-off of the \$100,000,000 borrowed from FEHIL. South View received \$65,000,000 from Chintung on 15 June 1990 and \$60,000,000 was withheld.

7.98 The \$60,000,000 would appear to have been kept as a margin for the purchase of the 3,000,000,000 First Pacific Bancshares by Supreme Enterprises (or Hauxton). The memorandum by Mr Peter Mou to Hsu Jye referred to above shows a sum of \$60,000,000 received on 15 June 1990. Unfortunately Chintung's records are not able to verify whether this was so.

7.99 I have asked Mr Arthur Lai, Mr Raymond Lai, Mr Peter Mou, Mr Hsu Sun, Madam Hsu Jye and Mr David Tong what they knew about the \$60,000,000 that was withheld from South View, however they have all claimed that they knew nothing of this.

7.100 Mr Gary Wong has told me that he believed that Mr Peter Mou had arranged the retention of the \$60,000,000. The dealing slips for the transaction were all signed by Mr Peter Mou which supports Mr Gary Wong's advice.

- 7.101 The instruction to Chintung to issue the cheque for \$65,000,000 appears to have come from Mr Thomas Mak.
- 7.102 Mr Thomas Mak recalled he was dealing with a Mr Alfred Wong of Tomson Pacific in relation to the settlement of the 100,000,000 Regal shares sold by South View and he thought Mr Alfred Wong reported to Madam Hsu Jye.
- 7.103 Mr Thomas Mak stated that he was unsure who had purchased the 3,000,000,000 shares in First Pacific Bancshares at the same time, although he did recollect that around this time Mr Peter Mou traded several large parcels of shares in First Pacific Bancshares.
- 7.104 Mr Peter Mou has conceded that he had been trading in shares in First Pacific Bancshares at the time.
- 7.105 I have analyzed the application of the \$65,000,000 by South View in Chapter 21. In summary however, South View transferred the \$65,000,000 to the account of Madam Hsieh Hui Ching at SPAB. Madam Hsieh Hui Ching's account is operated by Madam Hsu Jye. These monies formed part of the \$79,350,000 which was used to fund the Rivera placement, discussed in Chapter 18. The placement in turn, was used by Rivera to fund its participation in the Tomson Pacific Rights Issue which was the source of funds for the acquisition of WTCC.

The sale of the 3,000,000,000 shares in First Pacific Bancshares

- 7.106 Supreme Enterprises (or Hauxton) sold the 3,000,000,000 shares in First Pacific Bancshares within six weeks of their purchase as follows:

<u>Date</u>	<u>Number of Shares sold</u>	<u>Price (cents) per share</u>	<u>Net Total Value</u>
			\$
18/7/90	1,100,000,000	4.1	44,827,145
18/7/90	400,000,000	4.1	16,300,780
20/7/90	500,000,000	4.1	20,375,975
20/7/90	500,000,000	4.1	20,375,975
20/7/90	500,000,000	4.1	20,375,975
	<u>3,000,000,000</u>		<u>\$122,255,850</u>

- 7.107 On 18 July 1990, Supreme Enterprises sold 1,100,000,000 shares in First Pacific Bancshares to Humphreys Estate (Strawberry Houses) Limited ("HESH") using Chintung as broker. The transaction netted Supreme Enterprises \$44,827,145 and cost HESH a total of \$45,372,855. HESH is a wholly owned subsidiary of WTCG.
- 7.108 Due to brokerage and other transaction costs, Supreme Enterprises made a loss of \$1,488,300 on the sale of the 3,000,000,000 shares. This loss was transferred to the margin account of Hauxton and eventually settled by cheques signed by Madam Hsu Jye. The cheques are discussed in Chapter 6 in the area relating to Hauxton.
- 7.109 The 1,100,000,000 shares in First Pacific Bancshares purchased by HESH became part of a larger parcel of shares used as consideration for the Guangzhou Land acquisition discussed in Chapter 11. I understand that these shares were ultimately delivered to a company controlled by Mr David Chiu in the settlement of that transaction.
- 7.110 I believe the remaining 1,900,000,000 shares in First Pacific Bancshares were sold to companies within the Far East Group, although Chintung's records only show that the sales were made to a suspense account marked Far East Group.
- 7.111 The sale of shares in First Pacific Bancshares occurred at about the time that Hauxton took up 60,000,000 shares in the WTCG placement on or about 24 July 1990.

The sale of 120,000,000 Regal shares by FEHIL

- 7.112 On 15 June 1990, FEHIL acquired an additional 20,000,000 Regal shares following a 1 for 5 bonus issue. It also became eligible for a dividend of \$3,500,000 paid on the original 100,000,000 shares.
- 7.113 FEHIL sold 110,000,000 of its 120,000,000 Regal shares on 16 July 1990. I understand that the remaining 10,000,000 shares were sold on 17 July 1990.
- 7.114 The sale of these shares on 16 July 1990 was completed through Chintung and disclosed by FEHIL as a major transaction. The notice concerning this transaction published in the South China Morning Post on 17 July 1990 read:

*"The Board of Far East Holdings International Limited ("FEHIL") announces that FEHIL has sold on 16th July, 1990 by placement through Chin Tung Securities Limited 110 million shares of HK\$0.10 each of Regal Hotels International Holdings Limited ("Regal") at a price of HK\$2.275 per share, representing approximately 91.7 per cent of its entire shareholding in Regal amounting in aggregate to HK\$250,250,000. FEHIL still holds the balance of 10 million Regal shares as part of the investment portfolio. The placees are independent parties unconnected with FEHIL, its Directors, Chief Executive and substantial shareholders or any associates of them. The Regal shares were purchased on 12th June, 1990 at an adjusted price of approximately HK\$1.85 per share after taking into account the final dividend of 3.5 cents per share and bonus issue of one for five. The price of HK\$2.275 per Regal share was based on negotiation in respect of the placement for the size of such lot. It compares the closing price of Regal shares on 13th July, 1990 of HK\$2.50 per share represented a discount of 9 per cent.*

*. . . The net surplus on disposal of the Regal shares amounted to approximately HK\$39,875,000. The Board of FEHIL considers that the transaction which generated an exceptional profit for FEHIL is fair and reasonable. The proceeds will be reserved for contributing to any profitable investment opportunities.*

*. . . Mr Deacon Te-ken Chiu and Far East Consortium Limited being beneficial owners of over 50 per cent of FEHIL's issued share capital have given their consent to the disposal of Regal shares by FEHIL. "*

7.115 When asked what his motivation had been for purchasing the 100,000,000 Regal shares, Mr David Chiu stated, claiming qualified privilege, that:

*"Well, we thought that Regal shares, you know, we buy the shares based on the P/E ratios, you know, of a company and things like that and the asset backing for the shares, and first of all, I think I like Regal shares. . . there are shares that I don't like, and Regal, not necessarily are shares that I would buy them, you know, or don't buy them but, for example, for somebody comes to me and say, David, would you lend me 50 per cent on Hongkong Land shares, I would say, yes, because I always follow the company and I quite like the company. And there may be one or two companies in my mind, I can't think off hand, that I don't like and if you come to me and ask to lend me money, you buy the shares, I will say no. I guess the very fact that we agreed to lend them some money in the first place must obviously make me feel that I am confident about this company. And later on, I think maybe Jackson asked me, he said, will you consider buying the shares, I would say yes. "*

7.116 He explained this further by saying that whilst this was a significant transaction it was not uncommon for his group to acquire and dispose of large parcels of shares.

7.117 When pressed further he stated, claiming qualified privilege:

*"Well, I heard rumours in the market that Regal was going to give bonus shares and that's something that I might make some money on. I can't tell you where."*

7.118 Initially Mr David Chiu stated that he thought Mr Jackson Chang had asked him to buy the shares.

7.119 He subsequently stated that he persuaded Mr Jackson Chang to sell the shares to him. He said claiming qualified privilege:

*"Nothing personal against David Tong and Jackson. They are just a very lucky bunch of people. I mean, they seem to make a lot of money everywhere. They don't give me the impression they are that bright in their business decisions. Jackson always told me, I can't remember when, you know, saying that I can feel the reaction was that they probably want to sell the Regal shares from previous discussions because they always complain about they are stuck in this investment . . . You know, it is not a good investment for their friends in Taiwan and so forth, I don't care who they are, you know, and when I heard rumours that there may be a bonus shares, so I guess I wanted to buy it."*

7.120 Claiming qualified privilege again, Mr David Chiu said he thought he had heard the rumour from *"one of the Lo family."*

7.121 This evidence suggests that Mr David Chiu formed the view that the Regal shares would be a good investment before 15 May 1990, this being the date of the public announcement of the bonus issue.

7.122 Having bought the shares Mr David Chiu said that the share price remained relatively constant after the bonus issue closed, thus he enjoyed a considerable book profit. For this reason he said he decided to sell the shares. The sale was effected by means of a placement.



### The placees in the Regal placement

7.123 A list of placees prepared by Chintung is enclosed as Appendix 47. According to that list, the significant placees were:

	<u>Number of Shares</u>	<u>Total Cost</u>
		§
Wealthcorp Investment	29,122,000	65,524,500
Don't Fight Investment Limited	20,000,000	45,000,000
Mr Jackson Chang	10,000,000	22,500,000
Mr David Chiu	10,000,000	22,500,000
Madam Alice Lam	<u>1,000,000</u>	<u>2,250,000</u>
	<u>70,122,000</u>	<u>\$157,774,500</u>

7.124 These placees accounted for approximately 58% of the total placement of 120,000,000 Regal shares.

7.125 Following the placement, the price of Regal shares fell and the placees who retained their shares suffered significant paper losses.

### Placement to Wealthcorp

7.126 Mr Arthur Lai has told me that he controls Wealthcorp. This is discussed in Chapter 6. He explained why Wealthcorp had taken up shares in the Regal placement by saying:

*"At that moment, I remember we have a meeting with Dickson Ho, Raymond [Lai] and I think Peter [Mou] as to the ability to place out the share. And that's how it was being placed, but it didn't go so well, so we ended up deciding alright, we will take on some shares."*

7.127 He went on to say that he subsequently lost a lot of money on that placement.

### Placement to Don't Fight Investment Limited

- 7.128 Mr Arthur Lai told me that Don't Fight Investment Limited ("Don't Fight") is a company controlled by his friend Mr Shum Pui Kay ("Mr Johnny Shum"). Don't Fight's account was handled by Mr Peter Mou. I understand Don't Fight also made a loss on these Regal shares.

### Placement to Mr Jackson Chang and Mr David Chiu

- 7.129 Mr Jackson Chang and Mr David Chiu did not take up the shares as detailed in the list of placees. The 20,000,000 shares were subsequently rebooked into the name of HESH. Mr Jackson Chang's signature appears on the bought note as authorization.
- 7.130 A copy of the bought note is at Appendix 48. As can be seen from this Appendix the bought note has been typewritten not computer generated. I understand this was a common practice when there was a rebooking.
- 7.131 The cost of the 20,000,000 Regal shares including brokerage and other charges was \$45,775,275.
- 7.132 Mr David Chiu said he was unaware of the precise details of HESH taking 20,000,000 shares in the Regal placement, although he stated that subsequently Mr Jackson Chang had complained to him that he had to take some of the shares.

### Mr David Chiu's evidence concerning the Regal placement

- 7.133 Mr David Chiu stated that he dealt with Mr Arthur Lai directly concerning the placement of the Regal shares. With regard to the evidence that showed that he had taken shares in the Regal placement, he said, claiming qualified privilege:

*"Arthur asked at the end - first, you see, Arthur agreed to take on the whole amount of 100 million or whatever I had or 110 million or whatever, including the bonus and everything, I can't remember. All the shares I have. And then Arthur agreed that the deal is done and then normal placing in Hong Kong, they do it after 3.30, after the closing of the market. I can't remember whether this is the case of placing the shares after 3.30. I did remember that Arthur did call me back around four to five o'clock which I thought the placing is all gone, you see. You know, once you say the deal is done, with Wardley, Thompson or Arthur, ChinTung, it is quite a big company, the deal is done you see. I remember Arthur did call me around, later, around six or seven o'clock or some time, to say, David, am I prepared to take back some Regal shares for myself, you know, holding. I say, no, I can't. I said, what happened. He said he can't place all the shares but he placed 80 or 90 per cent, I don't know, of what he have and he said, was I prepared to help him. You know, he got 110 million shares and he just place out 80 million shares or 70 million shares, I can't remember, something like that. I said, I am sorry, you know, because the deal is done. You know, even if the share price went up to \$2.60 or \$2.70 I feel I have to honour my word."*

Brentford's 20,000,000 WTCG shares and HESH's 20,000,000 Regal shares

- 7.134 In Chapter 6 I discussed Brentford taking up 20,000,000 WTCG shares in the July 1990 WTCG share placement. These shares cost approximately \$45,300,000.
- 7.135 The provisional placing schedule prepared by Chintung in relation to the placement of the WTCG shares, and which indicated the days on which various placees made known their intention to take up shares, showed "*Far East Holdings Ltd*" as an additional placee of 20,000,000 WTCG shares effective from 17 July 1990. This allocation was subsequently booked into Brentford's name. According to the provisional placing schedule entry of 17 July 1990, this allocation brought the total number of WTCG shares placed to 419,400,000, only 550,494 shares short of the 419,950,494 needed to successfully conclude the placement.

7.136 I suggested to Mr David Chiu that HESH had taken up 20,000,000 Regal shares on 16 July 1990 for \$45,775,275 in order to fund Brentford's placement allocation or alternatively that Brentford took up the 20,000,000 WTTCG shares as a return favour to Mr Jackson Chang for his help in completing the Regal placement. When asked if he could recollect using the funds from the Regal placement to pay for the placing of 20,000,000 WTTCG shares, Mr David Chiu said, claiming qualified privilege:

*"Money is money. Money has no part to play in the sense that, we finish one deal and suddenly I am thinking about another deal. I do know Brentford . . . I mean Far East Holdings got money, various money in various bank accounts, so they finish one deal and maybe Arthur or Wardley/James Capell call them again, say, can you take 5 or 10 million shares of this, so they do it again."*

*"It doesn't make sense. I mean, frankly, all this money, Far East Holdings is a public company, right, we made money so why not do another deal?"*

#### Placement to Madam Alice Lam

7.137 Lam Pui Tsing Alice ("Madam Alice Lam") is Mr Eddie Lo's wife. Madam Alice Lam is shown as taking 1,000,000 Regal shares in the placement at a cost of \$2,275,000 gross. This is equal to the "*consultancy fee*" paid to Fulldiamond by Chintung in relation to that placement.

7.138 This fee and other commissions paid to Fulldiamond in relation to these transactions are discussed below.

#### Commission paid to Mr Eddie Lo and Madam Alice Lam's placement

7.139 Examination of Fulldiamond's records show that it received the following commissions in respect of the various transactions discussed in this chapter:

<u>Transactions</u>	<u>Commission</u> <u>§</u>	<u>Payee</u>	<u>Date</u>
1. Introduction of South View to FEHIL for sale of 100,000,000 Regal	2,250,000	Grand Ocean	14 June 1990
2. Placement fee for referring (1) above to Chintung	1,044,000	Chintung	20 June 1990
3. Consultancy fee for assisting Chintung place 100,000,000 Regal at \$2.275	2,275,000	Chintung on behalf of FEHIL	18 July 1990
4. Rebates from Chintung on Regal placement	682,500	Chintung	18 July 1990
	<u>\$6,251,500</u>		

7.140 Mr Eddie Lo claims that he introduced the sale of the 100,000,000 Regal shares to Mr David Chiu. For that introduction he was entitled to a commission of 1% from the vendor of the shares.

7.141 Grand Ocean paid the first commission by cheque dated 14 June 1990 which was signed by Madam Hsu Jye. Half of this commission was paid by Fulldiamond to a company called Kalgon Investment Limited ("Kalgon"). According to Mr Eddie Lo this company is controlled by a Mr Felix Wong, who assisted in finding a purchaser for the Regal shares. A copy of Kalgon's debit note to Fulldiamond is enclosed as Appendix 49.

7.142 As is evident from the transactions discussed in this chapter the introduction of Mr Jackson Chang to Mr David Chiu by Mr Eddie Lo led to several important deals. Mr Eddie Lo says that he spoke to Mr David Chiu about the sale of the Regal shares only. He asserted there was no reference to a loan, sale of shares in First Pacific Bancshares or placement of Regal shares on behalf of FEHIL.

- 7.143 Fulldiamond also received a payment from Chintung representing a portion of the brokerage on the deal. On 20 June 1990 Fulldiamond's bank account shows the receipt of \$1,044,000 from Chintung.
- 7.144 A copy of the payment voucher and supporting memorandum (Appendix 50) has recently been obtained from Chintung. This shows that Mr Peter Mou instructed Mr Gary Wong to rebate to Fulldiamond 0.3% of the commission in respect of both the sale of 3,000,000,000 shares in First Pacific Bancshares to Supreme Enterprises and the sale of 100,000,000 shares in Regal to FEHIL.
- 7.145 Mr Eddie Lo has claimed that Mr Arthur Lai had introduced him to Mr Jackson Chang and Mr David Tong. Mr Eddie Lo said he had recommended Chintung be used for the sale of the Regal shares because of his longstanding relationship with that company.
- 7.146 The third payment is for an amount equivalent to the cost of the shares allocated to Madam Alice Lam. Mr Eddie Lo has advised that Fulldiamond received this commission for introducing Chintung to FEHIL in respect of the placement of the Regal shares. It is not evident from the documentation I have seen why Fulldiamond was paid a commission and the circumstances under which Madam Alice Lam agreed to take those shares.
- 7.147 Two rebates of \$113,750 and \$568,750 (a total of \$682,500) were also received from Chintung on 18 July 1990. Fulldiamond's ledger described these receipts as *"commission for introducing Regal shares"*.
- 7.148 Neither Mr David Chiu nor Mr Arthur Lai mentioned any direct role that Mr Eddie Lo or Fulldiamond had in the Regal share placement conducted by Chintung, yet Fulldiamond received a commission of \$2,275,500 and rebates of \$682,500 for its role in the Regal share placement.

7.149 In a submission to me, Mr Eddie Lo's solicitors said that:

*"Mr David Chiu asked Mr Eddie Lo to help to place the shares and agreed to pay a commission to Fulldiamond. Mr Eddie Lo then introduced Chintung to carry out the placement".*

7.150 Fulldiamond's activities are discussed in detail in Chapter 24.

Payments from Fulldiamond to Mandarin Development

7.151 On 26 June 1990, Fulldiamond paid \$562,500 to Mandarin Development. The description in Fulldiamond's books is *"0.25% commission for procuring the sale of 100 million Regal shares (0.25% x \$225 million)."* Mandarin Development, as shown in Chapter 6, is closely connected to Mr Arthur Lai and Mr Peter Mou.

7.152 In Chapter 6 I have set out the terms of Mr Arthur Lai's employment with Chintung. At this time both Mr Arthur Lai and Mr Peter Mou were directors of Chintung.

7.153 On 25 July 1990, Fulldiamond paid Mandarin Development \$1,000,000. The description in Fulldiamond's books was *"Consultation with shares investment."* According to Mr Eddie Lo this description is inaccurate and the payment was not related to the Regal Share Placement.

7.154 The payment was alleged to have been made pursuant to an agreement dated 1 October 1989 between Mandarin Development and Fulldiamond. A copy of the agreement and payment voucher is shown at Appendix 51. The important terms of this agreement are:

*"The principal [Fulldiamond] is a consultancy firm specialised in procuring purchase and sales of real estate on behalf of the property developers over the world.*

*The agent [Mandarin Development] is a Liberian company specialised in finding purchasers and sellers of real estate, providing professional advice to property agents especially in the Republic of China.*

*The principal has agreed to pay to the agent a consultancy fee for HK\$1,000,000.00 to the Agent for the period from 1st October 1989 to 31st July 1990.*

*The principal hereby agree with the agent that the agent will provide a comprehensive professional real estate advice and provide services to the principal or nominate a professional of high calibre and competence to provide expertise advice on various orders of purchase and sale in property market and other investments opportunities such as trading of bullion, shares, commodities etc.*

*The consultancy fee shall be paid to the agent either on a monthly or on a lump sum basis which is calculated from 1st October 1989 to 31st July 1990, but at the sole discretion of the Principal.*

*This Agreement shall take effect as from the 1st day of October 1989 and shall expire on 31st July 1990 with an option to renew for a period to be agreed by both parties. "*

- 7.155 Mr Peter Mou signed the document on behalf of Mandarin Development and Madam Stella Hui on behalf of Fulldiamond.
- 7.156 I wrote to Mr Peter Mou in relation to this document and he replied that he could not recall when it was in fact executed or whether it was even approximately on the date stated.
- 7.157 Mr Arthur Lai said that he thought it must have been executed around 1 October 1989.



7.158 Mr Arthur Lai explained the circumstances that lead to the agreement and whether any real estate deals were referred to Fulldiamond by saying :

*"Mr Eddie Lo, who is an outstanding Real Estate Broker Cum deal maker, approached me during the second half of 1989 in various occasions asking if I can cooperate with him in the area of Real Estate Deals. I think it was Mr Lo's opinion that I have very good access to many properties deals in Hong Kong (Besides my normal business of stock broking) and that I am personal friend to a lot of wealthy individuals throughout South East Asia and Hong Kong. I think Mr Lo was particularly interested in my Taiwanese connections during that period of time. As a result we entered into an agreement whereas Mandarin Development would act as a consultant to him for a fee of One Million Dollars payable in accordance to his discretion for a period of some ten months. I was quite prepared for him to take advantage of my personal connections and to make his own judgement as to how much I contribute to his properties dealing business through my introductions. Mr Lo has no obligation to disclose to me the deals he eventually concluded successfully and how much he gain out of them. The sum must however to paid before 31st July 1990 when the contract expired.*

*During the relevant period Mandarin Development, through me, have introduced quite a few Real Estate transactions and wealthy individuals from South East Asia, including Taiwanese individuals, to Fulldiamond."*

7.159 He also said that Mandarin Development retained the money for its own use and that this agreement had nothing to do with the placement of the 120,000,000 Regal shares by Chintung.

7.160 Mr Peter Mou said that he did not know the circumstances leading to the signing of the agreement except that Mr Arthur Lai asked him to sign it.

## CONCLUSIONS

- 7.161 The transactions I have grouped together in this chapter appear to be part of a wider scheme aimed at providing funds to Tomson Pacific and their associates to assure the acquisition of WTCG. My reasons for this conclusion are set out below.
- 7.162 The notes of Mr Clarence Cheng at his meeting with Mr David Chiu and Mr Jackson Chang show that a series of sales of shares, buybacks, loans and other asset sales were all discussed with an overriding proviso that they were subject to Tomson Pacific gaining effective control over WTCG. Such control was obtained on 28 June 1990 at which point Mr Jackson Chang and Mr David Tong became directors of WTCG.
- 7.163 A further reason to indicate these transactions were part of a wider scheme was the way in which the \$225,000,000 from the sale of the Regal shares was disbursed.
- 7.164 \$65,000,000 was used by South View to fund part of a placement of Rivera shares, \$60,000,000 was used by Supreme Enterprises (or Hauxton) to partially fund Hauxton's placement of 60,000,000 WTCG shares and \$5,400,000 was used by David Tong Company to fund part of the placement of Rivera shares. A large portion of the remaining \$94,600,000 was applied to the purchases of Tomson Pacific and WTCG shares by various parties closely associated with Mr David Tong and Mr Jackson Chang.
- 7.165 The payments in respect of the Rivera placement directly alleviated a major shortage of cash that Rivera was experiencing in the lead up to the Tomson Pacific Rights Issue.
- 7.166 The payment of \$60,000,000 in partial satisfaction of Hauxton's commitments to the July 1990 WTCG share placement assured the success of that placement as Hauxton appears only to have been brought in after other potential places dropped out.

7.167 Of the transactions being contemplated by Mr David Chiu and Mr Jackson Chang in May 1990:

- \* the loan of \$100,000,000;
- \* the sale of the Regal shares and subsequent buyback;
- \* the sale of the shares in First Pacific Bancshares and subsequent buyback;
- \* the sale of the China Land;
- \* the sale of the interest in Far East Biscuits; and
- \* the \$80,000,000 loan;

only the \$80,000,000 loan did not eventuate.

7.168 I conclude that Mr Jackson Chang was involved in the negotiation and determination of the agreements which led to the sale of the Regal shares and that Mr Hsu Sun and Madam Hsu Jye were simply acting under both Mr David Tong's and his instructions. This is supported by the notes of the meetings held with Mr Clarence Cheng and the lack of understanding or recollection of the transactions by Mr Hsu Sun and Madam Hsu Jye.

7.169 I believe that as Mr David Tong was a director of Regal at this time he would have been well aware of the forthcoming dividend and of the volume of, and prices at which, sharetrading was being carried on. However without the evidence of Mr Jackson Chang it is difficult to determine the extent to which Mr David Tong was aware that negotiations were being conducted with Mr David Chiu.

7.170 At the same time as this transaction was being negotiated, the procedures to arrange funding for the acquisition of WTCG were also being put into place. This transaction was the source of a significant amount of the money required to assist in the completion of the Tomson Pacific Rights Issue. It is apparent from the evidence I have obtained in relation to the acquisition of control of WTCG (see Chapters 5 and 6) that Mr David Tong was substantially involved in this transaction. As a director of Rivera I believe he was well aware of its funding requirements so that it could fully participate in the Tomson Pacific Rights Issue that was to provide the funding for the acquisition of the controlling interest in WTCG. I do not accept Mr David Tong's evidence that he knew nothing of this transaction but rather I believe he was actively involved in the aforementioned negotiations.

The negotiations for the loan and the sale of shares

7.171 I do not accept Mr David Chiu's evidence that the loan of \$100,000,000 and the sale of 100,000,000 Regal shares were not negotiated concurrently. The notes taken by Mr Clarence Cheng at the meetings between Mr Jackson Chang, Mr David Chiu and himself support this conclusion.

7.172 The price paid by Mr David Chiu was below the market price at the time, however given the large number of shares sold it would appear that the price negotiated was not an unreasonable discount to market.

The involvement of Mr Arthur Lai and Mr Peter Mou in the sale of shares in Regal and First Pacific Bancshares

7.173 It has been difficult to determine the exact nature of the role of Mr Arthur Lai and Mr Peter Mou in arranging the settlement of the transactions negotiated by Mr David Chiu and Mr Jackson Chang. Mr Eddie Lo says that he dealt with Mr Arthur Lai and Mr Peter Mou, but both deny their involvement.

7.174 It is evident from the documentation that I have examined that Mr Peter Mou was extensively involved in authorization of various aspects of the transaction. I find it difficult to believe that Mr Arthur Lai would not have understood the basic purposes of the transaction and been aware that they were taking place, although he may not have been fully conversant with their details.

The use of South View in this transaction

7.175 The use of South View in this transaction is an anomaly. I do not understand why Grand Ocean should not have been a party to the sale of the Regal shares given that Grand Ocean physically held all the Regal shares that were sold on the date of execution of the sale agreement. It is possible that South View was simply inserted into this transaction to further distance the employees of Tomson Pacific and thus disguise the transaction's true purpose. Mr Hsu Sun, who controlled South View, was not an employee of Tomson Pacific at this time whereas Madam Hsu Jye, who claims she owned Grand Ocean, was.

Buyback arrangements for shares in First Pacific Bancshares

7.176 The evidence I have examined strongly suggests that a buyback of the 3,000,000,000 shares in First Pacific Bancshares to be sold by Parma was contemplated and discussed between Mr David Chiu and Mr Jackson Chang. I have sighted draft agreements for such a buyback that were prepared by Mr Clarence Cheng.

7.177 At the end of October 1990, companies associated with Mr David Chiu had either repurchased or reacquired all of the 3,000,000,000 shares in First Pacific Bancshares that were originally sold by Parma.

7.178 I have not been able to determine (nor has it been within the ambit of my investigation) why the Far East Group used this series of transactions to dispose of, and then reacquire the large parcel of First Pacific Bancshares.

The set-off of amounts due from FEHIL with South View

- 7.179 I believe that Mr Peter Mou was fully conversant with the circumstances surrounding the set-off between FEHIL, South View and Supreme Enterprises. The letter addressed to Mr Peter Mou from Mr Edward Lam of the Far East Group which details the set-off is sufficient evidence. Mr Edward Lam told me that he thought he spoke to Mr Peter Mou about the set-off.
- 7.180 The set-off involved three separate companies and without proper documentation, may not be binding on South View, whose debt from FEHIL was set-off against the debt owned by Supreme Enterprises to FEHIL.
- 7.181 Whilst Mr Arthur Lai's evidence that he had no knowledge of this set-off has been put most persuasively, I find it difficult to accept that Mr Peter Mou would have acted on his own. I do not believe that the back office staff of Chintung would have approved such an arrangement without specific directions from either Mr Arthur Lai or Mr Raymond Lai.
- 7.182 I accept Mr Thomas Mak's evidence that it would not be possible for Mr Gary Wong to put this transaction through himself and that Mr Raymond Lai was not involved in this transaction. I am therefore left with the conclusion that it was orchestrated by both Mr Arthur Lai and Mr Peter Mou.
- 7.183 The set-off itself is a crucial part of providing the funding that was required in order to complete the Tomson Pacific Rights Issue.
- 7.184 It is clear that \$65,000,000 of the proceeds from selling the 100,000,000 Regal shares was applied directly into a contrived placement of Rivera shares, allegedly made to independent third parties, that was used to fund the Tomson Pacific Rights Issue, due to expire on 19 June 1990.

- 7.185 The remaining \$60,000,000 of the proceeds from the sale of the Regal shares retained by Chintung, was approximately the amount required as a margin deposit to finance the 3,000,000,000 shares in First Pacific Bancshares. That requirement was approximately 40% of market value at the time.
- 7.186 I believe that Mr Peter Mou deliberately misled me as to the extent of his role in arranging the set-off. I have heard and seen substantial evidence to suggest that Mr Peter Mou's role in these transactions was considerable. Accordingly, I have concluded that his evidence which claims no involvement, is not credible.
- 7.187 From the evidence I have received I have been unable to ascertain conclusively the role of Mr Hsu Sun in this transaction.
- 7.188 Mr Hsu Sun has told me that he knows nothing of the set off. As I have not been able to examine the directors of South View or Mr Jackson Chang and there is no documentation showing South View's consent to the set off, I am unable to substantiate Mr Hsu Sun's evidence.
- 7.189 Mr Hsu Sun's evidence has in several instances been inconsistent and, accordingly, I have concluded that he may be endeavouring to disguise his involvement in this transaction to obscure its true purpose and intent.

#### The use of Supreme Enterprises

- 7.190 I accept the evidence given by the Hong Kong owners of the Hong Kong incorporated Supreme Enterprises Limited that it was not involved in this transaction.
- 7.191 I accept Mr Peter Mou's evidence that both Mr Jackson Chang and Madam Hsu Jye were involved in giving instructions on behalf of Supreme Enterprises. The press reports at the time indicate that the purchaser of the shares in First Pacific Bancshares was a Tomson Group company. I have not seen any documentation to determine whether in fact Supreme Enterprises was an incorporated company or simply a name used by Mr Jackson Chang and Madam Hsu Jye.

### The notes of Mr Clarence Cheng

- 7.192 I consider that the notes taken by Mr Clarence Cheng at his meetings with Mr Jackson Chang and Mr David Chiu held between 23 and 30 May 1990 are accurate versions of the discussions that were going on at the time. Mr David Chiu has denied that the range of transactions shown in Mr Clarence Cheng's notes were actually discussed at this meeting. However, I cannot ignore the evidence that by the end of 1990 the loan of \$100,000,000 had been made, the sale of 100,000,000 Regal shares had taken place, the sale of 3,000,000,000 shares in First Pacific Bancshares had taken place, the shares in First Pacific Bancshares had been reacquired by a company associated with Mr David Chiu, the interest in the Far East Biscuit Factory had been purchased by Tomson Pacific, and the land in China had been purchased by WTTCG. Finally, Mr David Chiu had provided through his companies considerable assistance in ensuring the success of the WTTCG share placement and therefore putting Tomson Pacific in a position where it effectively controlled WTTCG.
- 7.193 It appears that the disposal of the 3,000,000,000 shares in First Pacific Bancshares by Supreme Enterprises was necessary in order to fund Hauxton's commitment to the placement. As I stated in Chapter 6, Hauxton was a placee whose involvement in the placement appears to have been arranged hastily in order to successfully complete the placement. Given that the source of funds was from the sale of the shares in First Pacific Bancshares, it is reasonable to assume that that sale was hastily arranged as well.
- 7.194 By having a WTTCG subsidiary buy a portion of the shares WTTCG was able to indirectly fund a portion of Hauxton's commitment to the placement. I am critical of Mr Jackson Chang's role in this regard.
- 7.195 I believe that the transfer of the purchase and sale contracts entered into on behalf of Supreme Enterprises to Hauxton and in particular the acceptance for no consideration of the loss incurred by Supreme Enterprises is evidence that supports my view that these companies were all controlled and operated for the benefit of the same people.



7.196 In further support of this contention is the method by which this loss was in fact settled by Hauxton. The loss was paid for from money held in bank accounts controlled by Madam Hsu Jye that apparently had no direct relationship to the named directors or alleged beneficial owners of Hauxton.

The Regal placement

7.197 The profit made on the placement of Regal shares by Mr David Chiu was clearly a windfall for his companies.

7.198 The purchase by HESH of 20,000,000 Regal shares is inconsistent with the stated desire of its ultimate parent company, Tomson Pacific, to dispose of the interest in Regal. Subsequent to the acquisition of these shares WTCG has suffered substantial unrealised losses due to the fall in value of the shares.

7.199 I have not investigated the circumstances under which this profit was retained by FEHIL although I believe this is a matter that should be considered by the relevant authorities.

Conflict of interest between the sale of the Regal shares by South View and the instructions to Paliburg

7.200 I consider that there has been a conflict of interest between the actions of Mr Jackson Chang in endeavouring to realize the 100,000,000 Regal shares which were originally held in the name of Grand Ocean and the instructions to Paliburg around this time to realize 232,000,000 Regal shares on behalf of Tomson Pacific at approximately the same price.

7.201 It is my view that by proceeding with the sale of the 100,000,000 shares to Mr David Chiu, Mr Jackson Chang and Mr David Tong were adversely effecting the possibility that Paliburg would place the shares it had been instructed to.

The commissions paid to Mr Eddie Lo

- 7.202 The large number of commissions paid to companies associated with Mr Eddie Lo and the purchase of 1,000,000 shares in the Regal placement by his wife Madam Alice Lam, is inconsistent with the evidence he has given me about his role in the transactions.
- 7.203 Whilst it is known that Mr Eddie Lo and Mr Arthur Lai are close associates I have been unable to determine Mr Eddie Lo's actual involvement in the placement of Regal shares, if any.
- 7.204 I am concerned that Mr Arthur Lai may have breached his fiduciary duties to Chintung in accepting payments from Fulldiamond which appear to have emanated from Chintung. I am not aware of any steps taken to disclose these payments to the other directors of Chintung and these payments appear to have been accepted in the same manner as those accepted in the transaction referred to in Chapter 5.
- 7.205 Mr Arthur Lai has insisted that the agreement between Fulldiamond and Mandarin Development was drawn up in 1989, that several real estate transactions were referred to Fulldiamond and that the payment made by Fulldiamond to Mandarin Development had nothing whatsoever to do with the placement of Regal shares.
- 7.206 When asked for details of the real estate transactions referred by Mandarin Development to Fulldiamond, Mr Arthur Lai advised:
- "During the relevant period Mandarin Development, through me, have introduced quite a few Real Estate transactions and wealthy individuals from South East Asia, including Taiwanese individuals, to Fulldiamond."*
- 7.207 The timing of this payment from Fulldiamond is of concern to me. I have been unable to determine whether the agreement was signed on 1 October 1989 as dated, or at a later date.

## Summary

7.208 I am of the opinion that the series of transactions that are covered in this chapter were negotiated as a package and are all interrelated. I believe they were conceived by Mr David Chiu and Mr Jackson Chang in the last week of May 1990 and put in place with the objective of providing funds for the Tomson Group of companies to ensure the successful acquisition of control of WTTCG. In addition they assisted Mr David Chiu to publicly dispose of his shares in First Pacific Bancshares and to then reacquire them privately.

## **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"



## CHAPTER 8

### THE ACQUISITION OF WORLD TRADE CENTRE BUILDING

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## 8 INTRODUCTION

8.1 Pursuant to my appointment as Inspector of WTCG and Tomson Pacific I was directed by the Financial Secretary of Hong Kong to investigate and report on:

*"the events surrounding the acquisition by WTCG of a property known as "World Trade Centre" from Hongkong Land (World Trade Centre) Holdings Limited and whether there were any irregularities in the payment by WTCG of commissions in connection with that acquisition."*

8.2 On 2 August 1990, Mr Jackson Chang signed a Letter of Intent, on behalf of WTCG, to acquire the World Trade Centre from the Hongkong Land Company Limited ("Hongkong Land") for \$1,720,000,000.

8.3 The introduction of Mr Jackson Chang and Mr David Tong to the World Trade Centre as an investment opportunity and to Mr Robert Kwok ("Mr Bobby Kwok") of Jardine Matheson Holdings Limited ("Jardine Matheson") who would facilitate the ultimate sale by Hongkong Land, was orchestrated by Mr David Chiu and Mr Tan Soon Gin ("Mr George Tan").

- 8.4 The evidence of these and other parties to the transaction however, about their own and each other's involvement conflicts, in most respects. As the evidence given to me covering the circumstances of this transaction was largely oral, I have spent a considerable amount of time putting the evidence of one witness to another in a bid to ascertain the true facts. My primary concerns have been twofold. Firstly, I sought to determine the actual involvement of Mr Jackson Chang, Mr David Tong, Mr George Tan, Mr David Chiu, Mr Tam Cham Kai and Mr Bobby Kwok in this transaction. Secondly, I endeavoured to confirm the ultimate recipients of the two commissions totalling \$51,600,000 (3% of the purchase price) which were paid to Spinus Limited ("Spinus") as to 2% of the purchase price and Cheung On Fat as to 1% of the purchase price. Spinus is a Liberian company controlled by Mr David Chiu. Cheung On Fat is a Chinese gold dealing firm controlled by Mr Tam Cham Kai, a close associate of Mr George Tan.
- 8.5 There is nothing inherently wrong with WTCG agreeing to pay commissions so long as it is paying for work genuinely done for the benefit of the company. Commissions totalling 3%, are, according to evidence received, higher than normal for this type of transaction. The commercial rate, I understand, would range from to 1% of the agreed price, and could be paid by either the seller or the purchaser, or be shared by them.
- 8.6 No mention was made of these commissions at a WTCG Board Meeting, which was held on 7 August 1990, the same day the commissions were paid. I believe this was because several of the "pre takeover" directors of WTCG were present. These "pre takeover" directors resigned in the week following the payment of the commissions. There is nothing to suggest that these "pre takeover" directors had any knowledge of the payment of the commissions. Mr David Tong has told me that he was unaware of the commissions at that time. Ratification of the payment of the commissions occurred at a subsequent WTCG Board Meeting attended only by Mr David Tong and Mr Jackson Chang one week later.

- 8.7 Mr David Chiu has admitted receiving one third of the \$34,400,000 paid to Spinus and has stated that Mr George Tan received the balance of approximately \$22,933,332. Mr George Tan has denied receiving any commission or that he ever discussed commissions with Mr David Chiu or others. I have established that the \$22,933,332 was paid into the bank account of Mr Roy Loffill, an old friend of Mr George Tan. Mr Roy Loffill has claimed, that with respect to this bank account, he was the nominee of Mr Tan Kiem Tiau. I have received evidence that Mr Tan Kiem Tiau was a close friend of Mr George Tan. Amounts totalling \$20,000,000 were paid out of Mr Roy Loffill's account in cash. I have been unable to ascertain the identities of the recipients.
- 8.8 The other commission of \$17,200,000, 1% of the purchase price, was paid to Cheung On Fat. Although Mr Tam Cham Kai, (the proprietor of Cheung On Fat), has stated that he introduced Mr Jackson Chang to Mr George Tan, it is clear that Mr Tam Cham Kai played no role in the negotiations. I have traced the \$17,200,000 paid to Cheung On Fat to a client account designated "*12/F Cash Client*" account maintained with Cheung On & Co ("Cheung On"), a stockbroking firm owned by Mr Tam Cham Kai.
- 8.9 The \$17,200,000, though mixed with other deposits was withdrawn from the account in varying amounts and sent to 15 stockbrokers who deposited the funds into designated client accounts. These clients then used the funds to acquire WTCG and/or Tian Teck shares. I conclude in Chapter 10 that the 12/F Cash Client account is closely associated with the 12th floor of the Hong Kong & Macau Building, 156-157 Connaught Road Central ("Hong Kong & Macau Building"). The sole occupant of the floor is Widelines Investment Limited ("Widelines"), the family trust company of Mr George Tan's father-in-law.

## **THE INITIAL INTRODUCTIONS THAT LEAD TO THE ACQUISITION OF THE WORLD TRADE CENTRE**

### Mr David Chiu's recommendation to acquire the World Trade Centre

- 8.10 Following its successful purchase of 34.5% of the issued share capital of WTCG on 28 June 1990, Tomson Pacific was in control of a company holding large cash reserves.



- 8.11 Mr David Chiu has stated that he promoted the idea that WTCG should purchase a "landmark" property in Hong Kong to Mr Jackson Chang and that Mr Jackson Chang gave him "the impression" that he would be thankful if a deal could be arranged which would give WTCG a good image.
- 8.12 Mr David Chiu suggested that Hongkong Land be approached as it owned many of the prestigious buildings in Hong Kong and because it was well known in the market that it would sell if the price was right.
- 8.13 Mr David Chiu told me that he felt that he no longer had the necessary contacts at Hongkong Land to make such an approach. His close friend, Mr George Tan however, had a close personal friendship with Mr Bobby Kwok to whom Mr George Tan spoke regularly. According to Mr David Chiu, Mr Jackson Chang and he approached Mr George Tan to discuss the idea with him.

Meeting of Mr George Tan, Mr David Chiu, Mr Jackson Chang and Mr David Tong at Amigo's Restaurant

- 8.14 I understand from the evidence of Mr George Tan and Mr David Tong that they first met at a dinner at Amigo's Restaurant. Although a precise date cannot be given by any of the parties examined, I believe it probably occurred between April and July 1990. According to Mr David Tong, he was taken to the restaurant by Mr Jackson Chang specifically to meet Mr George Tan. He recalled that Mr David Chiu was also present and that Mr George Tan made many suggestions of properties worth purchasing including the World Trade Centre.
- 8.15 Mr George Tan's recollection of this dinner, however, is quite different. He has stated that Mr David Chiu asked him for dinner, "for old times sake". Mr David Tong and Mr Jackson Chang were subsequently introduced to him by Mr David Chiu and joined them for dinner. He denied that the proposed acquisition of the World Trade Centre was discussed but recalled that Mr David Tong was talking about his background.

### The alleged request for an introduction to Hongkong Land

- 8.16 Mr George Tan has recalled that, following the dinner, Mr David Chiu asked him for coffee at the Hilton Hotel Coffee Shop. Mr David Chiu apparently told him that there was a strong rumour that the World Trade Centre building was for sale. Shortly afterwards, he again met Mr David Chiu, Mr Jackson Chang and Mr David Tong at the Hilton Hotel Coffee Shop allegedly at the request of Mr David Chiu, and was asked whether he, Mr George Tan, could introduce WTCG to the vendors of the World Trade Centre building. Mr George Tan stated the reason being, *"because they've [WTCG] got the cash, they want to have rental income property"*.
- 8.17 Mr George Tan has explained to me that he told Mr David Chiu, Mr Jackson Chang and Mr David Tong to ask Dr Stanley Ho to make the introduction *"because he would be the most appropriate person"*, and that he told Mr David Chiu that he, Mr David Chiu, who knew *"Hongkong Land very well . . . should talk to them direct"*. Although Mr George Tan could not recall the responses to his suggestions, he has told me that he *"didn't want to listen to all this irrelevant gibberish"* because he had *"withdrawn . . . from the world of business"*.
- 8.18 Mr George Tan has asserted that, following that meeting, Mr Jackson Chang and Mr David Tong contacted him *"at least half-a-dozen times"* by telephone asking him to contact Hongkong Land on their behalf. Mr George Tan has contended that he took no notice of their requests until he was approached by his good friend, Mr Tam Cham Kai.

### Alleged involvement of Mr Tam Cham Kai

- 8.19 Mr Tam Cham Kai is the sole proprietor of Cheung On, a member of the Stock Exchange. He is also involved with his family's company, Cheung On Fat, a member of the Chinese Gold and Silver Exchange Society. These businesses were situated on the 9th floor, Hong Kong & Macau Building, 156-157 Connaught Road, Central in 1990. They are now situated on the 11th floor of the same building.

8.20 According to Mr Tam Cham Kai, Mr Jackson Chang, who he had known for some years, spoke to him about whether *"there were any good offers in the market"* because he, Mr Jackson Chang wanted to purchase a building in Hong Kong for price in excess of \$1,000,000,000. Mr Tam Cham Kai has told me that apart from being a stockbroker and gold dealer, he is also a broker of commercial property. He has added that he was previously involved in the sale of the apartment building known as Regent on the Park to Hong Kong and Macau Holdings Limited.

8.21 Mr Tam Cham Kai has told me that Mr Jackson Chang knew that he was well acquainted with Mr George Tan who in turn had good contacts within Hongkong Land. He therefore asked Mr Tam Cham Kai whether he could be introduced to Mr George Tan. Mr Tam Cham Kai has asserted that as far as he was concerned, his role was to ask Mr George Tan to help Mr Jackson Chang and to make the arrangements for Mr George Tan and Mr Jackson Chang to meet.

8.22 Mr George Tan's evidence is consistent with that of Mr Tam Cham Kai. Mr George Tan has confirmed that Mr Tam Cham Kai approached him and that they had a conversation as follows:

*"He addressed me by the term "Uncle". He said, "Uncle, please help, I have a property deal and a client of mine wishes to purchase the World Trade Centre and since you know Hongkong Land very well, that is why I have come to ask you to help". And I asked him, "Isn't it already enough for you to be in the bullion and securities industry, are you also now into the property industry as well?" . . . He then explained to me that he needed to make money because he had lost very heavily in the "1987 crash". His clients who purchased the Futures Index lost the money and defaulted and the stocks which he purchased also went down in price and therefore he was in a really desperate position, so I told him, "OK, I'll think about it".*

8.23 Mr George Tan apparently did nothing in relation to this request until he was *"reminded"* again by Mr Tam Cham Kai at which time he telephoned Mr Bobby Kwok.

8.24 During the telephone conversation, Mr George Tan enquired about the rumour that the World Trade Centre was for sale, stating that he *"had a friend who was interested in buying"* it.

8.25 Mr Bobby Kwok allegedly responded:

*"Everything is for sale subject to price . . . you know Hongkong Land well enough, we always deal on a principal to principal basis when we do business, we never use any middleman. And he asked me who was the interested buyer. I said, "No, it was just a casual enquiry, I don't even know at this stage who the interested buyer is".*

8.26 Mr George Tan stated that at this time, he thought Mr Tam Cham Kai's client was in competition with WTCG. He subsequently ascertained that Mr Jackson Chang was his client.

8.27 Mr George Tan could not recall whether he advised Mr David Tong and Mr Jackson Chang that Mr Tam Cham Kai had approached him. Mr David Tong has confirmed however that he had never heard of Mr Tam Cham Kai and had *"absolutely no knowledge of Jackson Chang asking Tam to introduce him to George Tan"*.

8.28 When Mr George Tan ascertained from Mr Tam Cham Kai that Mr Tam Cham Kai's client was WTCG he, Mr George Tan, called Mr Bobby Kwok and informed him of the identity of WTCG, making arrangements for the parties to meet. He then advised Mr Tam Cham Kai that he would contact Mr David Tong directly.

The introduction to Mr Bobby Kwok - 26 July 1990

8.29 According to Mr Bobby Kwok, on 26 July 1990, Mr George Tan brought Mr David Tong and Mr Jackson Chang to his office at Jardine Matheson for the purpose of introducing them and later the group went to lunch.

8.30 The evidence of Mr Bobby Kwok and Mr David Tong is that the meeting was *"social in nature"*, with no specific property being discussed. Mr Bobby Kwok added however that:

*"George did mention about they are well-to-do, cash rich, they would like . . . they were looking to buy . . . whether there is anything for sale. The stock answer was no."*

8.31 Mr George Tan on the other hand, stated that the World Trade Centre was specifically discussed for about three-quarters of an hour, although there was no mention of price. Mr George Tan also recalled that Mr Bobby Kwok arranged for a list of the lessees to be given to Mr David Tong. No evidence of this has been produced to me. Mr George Tan told me:

*"The two gentlemen [Mr Bobby Kwok and Mr David Tong] put forward principal with principal deal direct, they are doing the talking. At first they are saying, "Ha-Ha, how is the Taiwan business? How the Taiwan property is?" . . . This type of wishy washy. Then, come to the point, "We are very serious, we want to consider this . . . Mr. David Tong was talking, he was doing the talking with Mr. Bobby Kwok. Then coming up the subject of the acquisition of World Trade Centre, spending about three-quarters of an hour, then they all left."*

8.32 According to Mr Bobby Kwok, at the instigation of Mr David Tong, the two met again on Saturday, 28 July 1990. Mr Bobby Kwok recalled that as they both spoke Shanghainese fluently, *"we were more relaxed speaking Shanghai and he was telling me a little bit about his upbringing and how he come to where he is"*. Again, there was apparently no direct reference to the World Trade Centre.

## FROM 26 JULY 1990 TO 2 AUGUST 1990

### Mr David Chiu's recollection of events

- 8.33 Although not present at the meeting with Mr Bobby Kwok, Mr David Chiu has asserted that he was the "*middleman*" for Mr Jackson Chang, and that Mr George Tan was acting for Hongkong Land throughout the negotiations for World Trade Centre.
- 8.34 He stated that following the meeting on 26 July 1990 until 2 August 1990 there were "*intense negotiations*" between himself, Mr Jackson Chang and Mr George Tan. During his first examination in February 1993, Mr David Chiu described how he and Mr Jackson Chang negotiated against Mr George Tan:

*". . . must be about 20-30 meetings in phone calls, but it became very intensified because it was quite clear after Jackson and myself discussed this issue with people like David Tong and Stanley Ho, it was clear to me that he was a keen buyer but except that the price wasn't right . . . so in the last few days before completion, Jackson and I would have to go typically to George's office and we'll say, "Look, we [will] only [pay] 1.7 billion and that's it!" If no deal, we will walk out. And George says, "Wait a minute" and go out to another room and I think he must have talked to somebody in the Land Company and comes back and says, "No way, minimum price is 1.78 billion", that's how things went on for one or two days. We walked out once or twice."*

### Mr George Tan's recollection of events

- 8.35 Mr George Tan's recollection of the events, however, totally contradicts that of Mr David Chiu. According to Mr George Tan, following the meeting with Mr Bobby Kwok on 26 July 1990 Mr David Chiu arranged a further meeting at the Hilton Hotel Coffee Shop at which Mr David Tong and Mr Jackson Chang were also present. Mr George Tan recalled Mr David Tong asking him:

*"Please, George, please check up with Jardines how is the World Trade Centre property situation." I said, "You are communicating direct with Mr. Kwok and from what Mr. Bobby Kwok told me" - I talked to David Tong - "You are communicating with him direct, so I don't know what is going on, so why don't you check up". . . . He said, "I am sorry to bother you but please help. Make an enquiry for us."*

8.36 Mr George Tan has stated that he telephoned Mr Bobby Kwok to enquire whether there was any progress in relation to the World Trade Centre. He was advised by Mr Bobby Kwok that the Board of Hongkong Land had *"not yet made a decision"*.

8.37 *"Some weeks later"*, according to Mr George Tan, he received a telephone call from Mr Bobby Kwok who said:

*"Alright, the board have considered to sell the World Trade Centre, so can you please ask them to come up - this day, this hour - and put the matter on the table and discuss?"*

8.38 Mr George Tan then allegedly telephoned Mr David Tong and told him of the arrangements he had made. Mr David Tong retorted that he had planned to go to the U.S.A. with his family and, therefore, wanted the date of the meeting changed. Mr George Tan refused to do this, telling him this was not the way to do business with Hongkong Land.

#### Mr Bobby Kwok's recollection of events

8.39 The evidence of Mr Bobby Kwok provides a further version of the facts and is in most respects at odds with the evidence of Mr David Chiu and Mr George Tan.

8.40 Mr Bobby Kwok has told me that he has known Mr David Chiu for a long time as Hongkong Land had previously been a joint venture partner with the Far East Group. He confirmed to me that he and Mr David Chiu had the sort of relationship whereby Mr David Chiu could telephone him with investment opportunities. As far as he could remember, however, *"David Chiu was never involved"* in this transaction.

8.41 Mr Bobby Kwok stated that as there was no *"definitive approach"* by WTCG to acquire the World Trade Centre and that, accordingly, there was no reason to raise it specifically with Mr Alasdair Morrison, then the Managing Director of Hongkong Land, other than to say there had been an *"enquiry"*.

8.42 Mr Alasdair Morrison has advised me that prior to 2 August 1990 information was provided to Mr Bobby Kwok about the World Trade Centre:

*"we provided a brief fact sheet on the World Trade Centre Building to Mr R.C. Kwok to pass onto BCIL [WTCG] representatives together with an indication of a total annual net income figure for the building. The fact sheet contained basic information on the lease term, site area, gross floor area, net floor area, etc. of the building but did not include full tenancy schedules."*

8.43 During the period 26 July 1990 to 2 August 1990, Mr Bobby Kwok also became aware that Jones Lang Wootton ("JLW") was *"in discussion"* with another interested party for the sale of the World Trade Centre and that Hongkong Land had confirmed that they would receive a commission from Hongkong Land if the sale materialised.

8.44 Mr Bobby Kwok recalled receiving one or two telephone calls from Mr George Tan at this time and believed if the latter had made an enquiry in relation to the World Trade Centre, he would have told him:



*"when people ask is Land Company properties for sale, the answer is "no, not for sale." But anything has a price, if you really want something you have to come to me, what you want and I'll tell you whether "Yes, it's for sale or no, whatever". The standard answer is it is not for sale . . . "*

8.45 He agreed that in light of this *"standard answer"* Mr David Tong may have been disillusioned about the prospects of a sale occurring.

8.46 Mr Bobby Kwok has stated that it was not until early on the morning of 2 August 1990 that he received a telephone call from Mr George Tan wanting to *"come up and talk about the World Trade Centre"*. He apparently said, *"we'll be up in 15, 20 minutes"*.

8.47 According to Mr Bobby Kwok:

*"I think if I remember correctly, going back, on the 2nd August when they came they said we would like to talk specifically the sale of World Trade Centre and that's the definitive approach. I don't think any time before that there was any preliminary negotiation whether it's possible, not possible. I don't remember that. Because if it had been I would have reported to both Nigel [Rich] and Alasdair Morrison"*.

#### Mr David Tong's recollection of events

8.48 According to Mr David Tong, he never attended any meetings with Mr David Chiu to discuss the acquisition of the World Trade Centre, although he believed Mr Jackson Chang may have done so. He specifically denied attending a meeting at the Hilton Hotel Coffee Shop with Mr David Chiu, Mr Jackson Chang and Mr George Tan and requesting Mr George Tan to telephone Mr Bobby Kwok.

8.49 In relation to Mr George Tan's assertion that he had made arrangements with Mr Bobby Kwok for a meeting to take place on 2 August 1990, Mr David Tong replied:

*"I can't remember the exact time or date, but I can say for sure that prior to my going to the States, George Tan had indeed mentioned to me about the possible sale of the World Trade Centre Building. But for an asset worth more than \$1 billion we simply would not take certain action or make a decision simply because George Tan recommended that we do so. As for the meeting with Jardines, I absolutely have no idea. "*

8.50 In addition, Mr David Tong emphasized that it was because he had not seen rent schedules, details of the current leases or other material upon which he could base a decision, that he did not consider buying the World Trade Centre.

8.51 When asked what he believed Mr David Chiu's role to have been, Mr David Tong replied:

*"I learned afterwards that . . . David Chiu was like George Tan, they both played the role of an intermediary, an agent who introduced the parties together. "*

#### **NEGOTIATING THE PRICE OF THE WORLD TRADE CENTRE - 2 AUGUST 1990**

8.52 According to Mr George Tan, he met Mr Jackson Chang and "another co-director" in the lobby of Jardine Matheson at 9:00 a.m. or 10:00 a.m. on 2 August 1990. Although Mr George Tan could not recall the name of the "co-director" I believe he could have been referring to Mr Mico Chung although Mr Mico Chung has told me that when he arrived at Jardine Matheson's offices, Mr George Tan and Mr Jackson Chang were already present in Mr Bobby Kwok's office. Mr George Tan stated that he was surprised Mr David Tong was not present and questioned Mr Jackson Chang:

*". . . I said, "Where is Mr Tong?" "He went to U.S.". I said, " This is an important day and Mr Tong didn't come up?" "No, he gave me the full authority to deal with it. Anything I can discuss with him on the long distance call." I said, "Okay".*

8.53 Negotiations took place in Mr Bobby Kwok's office. Mr George Tan stated that those present at the meeting were himself, Mr Jackson Chang, Mr Bobby Kwok and "*a tall European*", who I understand was Mr Greg Terry, Hongkong Land's Legal Counsel.

8.54 According to Mr George Tan, he did the "*listening*" and "*they [Mr Jackson Chang and Mr Bobby Kwok] do the talking.*"

8.55 Mr Bobby Kwok on the other hand stated that Mr George Tan was involved in the negotiations:

*"It stayed in my office until we struck a price and eventually Jackson and George Tan said, "This is it". And usually when I know from the old days when George said "This is it", he won't go any further and that's when Greg and I came out and talked to Nigel [Rich] and Alasdair Morrison to see whether the price was acceptable."*

8.56 When asked who had conducted the negotiations, Mr Bobby Kwok responded:

*"It was between Jackson and George, and on our side it was me with Greg sitting in."*

8.57 During the meeting on the morning of 2 August 1990, it appears that others also joined the negotiations.

8.58 Mr Mico Chung, the General Manager of WTCG, stated that he received a telephone call in the morning of 2 August 1990 from Mr Jackson Chang who told him to bring a blank cheque to Mr Bobby Kwok's office to show that WTCG was serious about buying the property.

8.59 Mr Mico Chung believes he arrived at Jardine Matheson at around 10.00 am. Already present in Mr Bobby Kwok's office was Mr Bill Catley and other lawyers from Fairbairn Catley Low & Kong ("Fairbairns") together with Mr George Tan, Mr Jackson Chang and Mr Bobby Kwok. Shortly afterwards, Mr Greg Terry also joined the meeting.

8.60 Mr Bill Catley advised me that he thought either Mr Jackson Chang or Mr Mico Chung had contacted him to request he attend the meeting. The latter has denied doing so, claiming that WTCG's corporate lawyers were Baker & McKenzie and Richards Butler. Mr Mico Chung advised me through his solicitors that he had:

*"never met or spoken with or contacted Mr Catley prior to being introduced to him by Jackson Chang in the Jardine's office in the morning of 2 August 1990. Mico Chung was at that time told by Jackson Chang that he was acting for BCIL."*

8.61 I understand that Mr Bill Catley and Fairbairns regularly acts for Mr George Tan in various civil litigation and personal matters. Mr Bill Catley is also discussed in Chapter 10.

8.62 According to Mr Greg Terry, who confirmed that he joined the negotiations when they were already in progress, Mr George Tan was negotiating on behalf of WTCG and "waving" the blank cheque brought to the meeting by Mr Mico Chung. Mr Bill Catley negotiated other terms.

8.63 During the morning, the negotiations concluded with WTCG verbally agreeing to acquire World Trade Centre for \$1,720,000,000, subject to the approval of Hongkong Land.

## **THE AFTERNOON OF 2 AUGUST 1990 - FINALISATION OF DETAILS**

### The Letter of Intent

8.64 As the negotiations at this point had been verbal only, it was agreed between the parties that they should meet again in the afternoon at the offices of Hongkong Land to negotiate the contracts. Neither Mr Bobby Kwok nor Mr George Tan attended that meeting.

8.65 Set out below are the principal terms of the Letter of Intent dated 2 August 1990 and signed by Hongkong Land and WTCG:

- (1) WTCG to acquire from Hongkong Land (World Trade Centre) Holdings Limited ("WTC Holdings") all the issued share capital of Hongkong Land (World Trade Centre) Limited, the owner of the leasehold of World Trade Centre for \$1,720,000,000;
- (2) \$500,000,000 deposit payable immediately;
- (3) WTCG may satisfy \$593,600,000 of the purchase price by the allotment of 212,000,000 new WTCG ordinary shares on condition that those shares be placed with a third party for cash at \$2.80 per share on or before 31 October 1990, being the completion date;
- (4) If WTC Holdings does not receive on 31 October 1990, \$593,600,000 in cash from the places of the new shares, its agreement to accept those shares instead of cash would be cancelled and WTCG would be required to pay the full amount in cash;
- (5) The agreement to be conditional upon WTCG obtaining approval from its shareholders at an Extraordinary General Meeting to be held no later than 29 August 1990 and delivering to WTC Holdings irrevocable and binding undertakings from the holders of more than 50% of its share capital to vote in favour of the resolution to approve the acquisition.

8.66 Mr Christopher Wigan, the then Chief Executive of Standard Chartered Asia, was requested to join the afternoon meeting by Mr Mico Chung. He stated that he was concerned by the discussion of WTCG raising funds for the acquisition of World Trade Centre by way of a share placement. Mr Arthur Lai had apparently raised this possibility with Mr Christopher Wigan prior to his attendance at the meeting but the latter said he had quashed the suggestion on the grounds that he felt *"that the market could only take so much . . . there had been a hell lot of activities. I just felt no."* Indeed the share placement did not proceed.

8.67 A WTCG Board Meeting was held on the 8th Floor, One Exchange Square, the offices of Hongkong Land, on 2 August 1990 at 5:30p.m. (Appendix 52). Mr Jackson Chang, Mr Mico Chung (as an alternate to Mr David Tong) and Dr Stanley Ho (by telephone) were named in the minutes as being present. The minutes stated in part:

*"The directors present agreed that the proposed acquisition of the building would be an excellent opportunity for the Company to acquire a prestigious building at a reasonable price. It was agreed that this acquisition would be in the best interests of the Company".*

No reference is made in the Minutes of the meeting to the payment of commissions.

8.68 When I asked Dr Stanley Ho what arrangements had been made for this board meeting to take place and the details of his conversation with Mr Jackson Chang, Dr Stanley Ho replied through his solicitors:

*"No notice of the board meeting was given nor was there any agenda. Dr Ho was telephoned by Jackson Chang."*

*"Dr Ho cannot recollect precisely what was discussed with him [Mr Jackson Chang]. The conversation consisted of an attempt by Jackson Chang to brief Dr Ho on the proposed acquisition of World Trade Centre."*

### The valuation of World Trade Centre

- 8.69 As at 2 August 1990, WTCG had not conducted a valuation of the World Trade Centre. According to Mr Mico Chung, Hongkong Land previously had a valuation prepared by JLW but refused to allow WTCG to look at it. Mr Mico Chung stated that he was concerned at proceeding without a valuation having been undertaken.
- 8.70 At approximately 8 pm on 2 August 1990, whilst still at the offices of Hongkong Land, Mr Mico Chung telephoned his future father-in-law, Mr F Y Kan, a senior partner of Knight Frank Kan & Baillieu, Real Estate Agents and Valuers, to obtain his advice on the purchase price in light of details of the price per square foot and rental schedules which had now been provided. On the basis of Mr F Y Kan's oral opinion that the price was reasonable in the circumstances, Mr Jackson Chang agreed to sign the Letter of Intent and the \$500,000,000 deposit was paid. Knight Frank Kan & Baillieu subsequently provided WTCG with a written response that the market value of World Trade Centre *"should exceed \$1,720,000,000"*

### Dr Stanley Ho's involvement

- 8.71 Dr Stanley Ho has told me that the acquisition was finalised before he knew about it and as such he was *"very annoyed"*. When asked why he was so annoyed, other than for not being consulted, he stated:

*"Well, it is such a big deal and it consumes all the cash; that's the whole intention of the takeover to make use of the cash, and that is taking up . . . nearly 80% of cash. So I complained also to David Tong who claims, "Oh, I happened to be in Taipei looking after the burial of the bones of my father".*

- 8.72 This statement is inconsistent with his earlier comments relating to the board meeting to discuss the proposed acquisition of the building. Although Dr Stanley Ho was informed in the afternoon, it was still prior to the execution of the Letter of Intent.

### Mr David Tong's involvement

- 8.73 Mr David Tong, like Dr Stanley Ho, has also alleged that he learnt that WTCG had agreed to purchase the World Trade Centre after the Letter of Intent had been signed. He stated that the first time he was made aware of it was when he read about it in the press whilst in the USA. Mr Jackson Chang he stated, had taken the initiative and decided himself to acquire the property:

*"I did not really actually monitor the operations of the company's business and he [Jackson Chang] was the man who would make the decision. I was very displeased . . . because we had all this cash in our hands and Jackson Chang simply took the initiative to buy the World Trade Centre Building without my consent, and by the time I heard about the transaction the deposit had already been made. So there was nothing else we could do and for the sake of the company we had to honour the agreement and buy the asset".*

### Public Announcement of Acquisition

- 8.74 On 3 August 1990, following the announcement by WTCG of its acquisition of World Trade Centre, trading in WTCG shares and warrants was suspended at the request of the Company, resuming on 6 August 1990.

### Undertakings from WTCG shareholders

- 8.75 On 4 August 1990, letters were sent to WTCG's shareholders seeking their undertaking to vote in favour of the proposed acquisition of World Trade Centre and the issue of 212,000,000 new shares at \$2.80 per share.



8.76 Undertakings were received from the following shareholders:

<u>Shareholder</u>	<u>No. of Shares</u>
Brentford	20,000,000
* Cathay General	67,000,000
Onshine Investment	37,375,000
Chiltern	12,000,000
* Hauxton	68,050,494
Cresvale Far East Nominee	24,000,000
Chiang Pei Ling	16,400,000
Tung Ming Hsun	13,064,000
Commercial Success	37,375,000
Chang Yueh Chun	13,180,000
Shih Hsiao Kuei	8,832,000
	<hr/>
Total	<u>317,276,494</u>

- \* Of note is that Cathay General and Hauxton are referred to as holding 67,000,000 and 68,050,494 shares respectively. As discussed in Chapter 6, Cathay General actually took up 60,000,000 shares, with 7,000,000 shares being rebooked to Saxton. Similarly, Hauxton received 60,000,000 shares with 8,050,494 shares being rebooked to Mandarin Development. Further, Mr Li Chi Keung of Onshine Investment forwarded his undertaking to Mr Ambrose So at Shun Tak. The latter stated that he believed Mr Li Chi Keung had done this because he wanted to ask his personal opinion. Mr Ambrose So denied that it had been sent to him in his capacity of representing STDM.

WTCG Board Meeting - 7 August 1990

8.77 At the meeting of WTCG's Board of Directors on 7 August 1990 the following persons were named in the minutes as being present:

Directors

Mr David Tong  
Mr Jackson Chang  
Mr Godfrey Blott  
Mr David Davies  
Mr John McGuigan

In Attendance

Mr K.H. Yeung  
Mr Mico Chung  
Mr Ambrose So

- 8.78 Mr Godfrey Blott, Mr David Davies and Mr John McGuigan (the "pre-takeover directors") were directors of WTCG prior to Tomson Pacific acquiring its majority shareholding. At the time of this meeting I understand each of them was in the process of resigning from the Board. I have been advised that they were not involved in the negotiations regarding World Trade Centre and were only made aware of it when it was announced on 3 August 1990.
- 8.79 The Minutes stated that after a brief report on the proposed acquisition of World Trade Centre was tabled and reviewed by the Board, it was resolved by the Board that the proposed acquisition of World Trade Centre be confirmed (Appendix 53).
- 8.80 No reference is made in the minutes of the meeting to the payment of any commissions.
- 8.81 In a submission to me by Mr David Tong's solicitors they state that it is *"Mr Tong's evidence that he was unaware of any agreement as to commissions at the time of such meeting"*.

**THE PAYMENT OF THE COMMISSIONS BY WTCG**

- 8.82 On 7 August 1990, WTCG received two debit notes in respect of commissions payable on the acquisition. The first was from Spinus for \$34,400,000 representing 2% of the purchase price and the other (which was actually a receipt) from Cheung On Fat for \$17,200,000 representing 1% of the purchase price (Appendix 54). Spinus is discussed in Chapters 4 and 23 and Cheung On Fat is discussed further in Chapter 10. Both debit notes were paid in full on 8 August 1990 by cheques drawn on WTCG's account with Hongkong Bank.

8.83 I have received a considerable amount of conflicting evidence from those involved in this transaction as to who actually benefited from these two commissions.

\$34,400,000 paid to Spinus

8.84 Mr David Chiu has stated that as he and Mr George Tan had been the "middlemen", it had been made clear to Mr Jackson Chang from the beginning that a 3% commission would be payable if the transaction was a success.

*"George told me that we must make that clear to Jackson Chang before we proceed any more".*

8.85 Although Mr David Chiu referred to receiving a 3% commission, he was "surprised" and "confused" when he was told during his examination that in fact Spinus had only received 2% of the purchase price and that Cheung On Fat received a 1% commission. His evidence about the division of those funds, though prefaced on receipt of a 3% commission, is important in any event.

8.86 When asked how the 3% commission was to be divided between he and Mr George Tan, Mr David Chiu replied:

*"In fact George and I had a bit of an argument there because there's two problems . . . I was supposed to arrange 3 per cent from World Trade and George was supposed to collect, they say Hongkong Land is very difficult but we expect them to pay at least one per cent, so we were expecting four per cent for the deal . . . George told me very clearly Hongkong Land refused to pay, because the price came down by one or two hundred million because of our hard negotiation. And I don't want to challenge George and embarrass him and me in a confrontation . . . so we only got our three per cent. . . . George said that he did more so George took two per cent and I took one per cent. It was always agreed that he takes 65 per cent, approximately two-thirds of the proceeds. . . . the only thing I agree with George to take more than me is because he's older than me and secondly he painted a picture*

*Hongkong Land was more difficult to handle than World Trade/Jackson Group . . . but generally speaking, most deals we cut it half-half . . . in fact I negotiated with George and we had a fight over that afterwards because I tried to renegotiate because I thought that you would get something from Hongkong Land, since you've got nothing out of Hongkong Land, I want one and a half per cent. I want half-half . . . and he said, no way. "*

8.87 Mr George Tan has stated that Mr David Chiu's evidence "*was not accurate - nonsense*".

8.88 Mr David Chiu has stated that he arranged for Madam Eva Hui, an employee of Far East Holdings, to issue the debit note to WTCG from Spinus, a Liberian company because:

*". . . in those days we were thinking of maybe try to be low profile and try not to have a Hong Kong company to issue the debit note that we might be liable for tax. "*

8.89 Although not a director of Spinus, Mr David Chiu was a signatory of its bank account with First Pacific Bank. He justified this by stating:

*". . . you know 34 million [dollars] is a lot of money and if Eva [Hui] have kindly agreed with me that I can use it [Spinus] to issue a debit note, to keep it low profile for our tax planning purposes, I presume I would require my power to sign the cheques also".*

8.90 The solicitors for Madam Eva Hui, who claims to control Spinus, have submitted:

*"Mr Chiu was given cheque signing rights because he used Spinus Limited to deposit monies. It was anticipated that Mr David Chiu would require access to the monies at a time when our client [Madam Eva Hui] was away from Hong Kong between 2nd and the 7th of August 1990. To allow David Chiu access to his monies deposited in the account of Spinus Limited at a time when our client was away he was granted sole cheque signing rights."*

8.91 It is evident from Spinus's cashbook submitted by Madam Eva Hui that the \$34,400,000 commission was deposited into its account on 9 August 1990. Two cheques were subsequently drawn on that day, each for \$11,466,666, payable to Mr Roy Loffill. Mr David Chiu signed both cheques. He told me that they were drawn in such a way because *"George [Tan] asked me to do that or somebody in George's office"*, told him to do it that way.

8.92 When asked how he knew of Mr Roy Loffill, Mr David Chiu told me that this was through Mr George Tan and that he had used him before for changing money. He said:

*". . . you know one time one of my friends want some cash, you know two or three . . . and then I got some of my secretaries to go to the bank, they say it takes about five days and my friend is from overseas . . . so I think of him [Mr Roy Loffill] and then I call George [Tan] and give him a cheque and he give me the cash."*

8.93 In addition, when asked whether he had enquired with Mr George Tan why the cheques were to be drawn payable to Mr Roy Loffill rather than to himself he said:

*"Frankly, I thought it was for tax purposes too but I never ask. Like you say, I mean why did I split up the two cheques? It was a good question. I never think about it, he [Mr George Tan] asked me to make out two cheques, so I gave him two cheques"*

- 8.94 Mr George Tan has denied asking Mr David Chiu to draw the cheques, stating that if he was to receive \$22,933,332 he would have been "*happy*" to issue a cheque to himself direct.
- 8.95 Mr Roy Loffill did not have any recollection of receiving the two cheques for \$11,466,666 each.
- 8.96 However, Mr Roy Loffill's bank statement shows that on 8 August 1990, \$22,933,332 was deposited. On that day, two cash withdrawals of \$5,000,000 each were also made. Mr Chung Chi Wah ("Mr Dennis Chung") another signatory for Mr Roy Loffill's account, was questioned about these withdrawals. He stated that he had received instructions from Mr Tan Kiem Tiau, an Indonesian, to draw two cheques for \$5,000,000 and have them cashed at the Wing Hang Bank. Mr Dennis Chung was a director of Widelines on the 12th floor of the Hong Kong & Macau Building at this time. Widelines was during 1990 and continues to be, controlled by Mr George Tan's wife, and two brothers-in-law.
- 8.97 Mr Dennis Chung explained that two or three men, who were unknown to him would arrive at his office. They would all go to the Wing Hang Bank. The cheques would be cashed, and the monies counted by each person. The unknown persons would then take the money.
- 8.98 Mr Dennis Chung was unable to provide the names of the persons who collected the monies or an explanation for withdrawing two lots of \$5,000,000. He did comment however that Mr Roy Loffill had signed blank cheques initially and that he had kept them. He was unable to explain the necessity for this, when both he and Mr Roy Loffill were signatories for the account. Mr Dennis Chung and Mr Roy Loffill are also discussed in Chapter 10 where I have found them to be connected with the 12/F Cash Client account.

- 8.99 Mr Roy Loffill has told me in evidence that he is the nominee of Mr Tan Kiem Tiau. Mr George Tan denied knowing Mr Tan Kiem Tiau. However, Mr Bobby Kwok stated that Mr Tan Kiem Tiau was introduced to him by Mr Dennis Chung. He stated that Mr Tan Kiem Tiau was a friend of Mr George Tan's and that Mr George Tan had, on one occasion, asked him to step in to entertain Mr Tan Kiem Tiau at a dinner party when Mr George Tan was otherwise engaged. Mr Dennis Chung also told me that he had met Mr Tan Kiem Tiau when he joined Mr Roy Loffill and Mr George Tan for dinner when Mr Tan Kiem Tiau was in Hong Kong. I do not accept Mr George Tan's evidence that he did not know Mr Tan Kiem Tiau.
- 8.100 Mr Dennis Chung denied depositing the two cheques into Mr Roy Loffill's account. He stated that he would receive oral instructions from Mr Tan Kiem Tiau in Indonesia that monies were to be deposited or withdrawn from the account. He would receive the pay-in slip and keep a ledger recording the entries.
- 8.101 Mr Roy Loffill's statement of account also shows that on 9 August 1990 a further cash withdrawal of \$10,000,000 was made. Mr Dennis Chung stated that he again acted on the instructions of Mr Tan Kiem Tiau. The money was withdrawn from the Wing Hang Bank in accordance with the procedure outlined above. Again, he did not question the reason for the withdrawal, stating that there was "*nothing special*" about such a transaction.
- 8.102 The Wing Hang Bank has clarified that on 8 August 1990 Mr Dennis Chung received \$10,000,000 in cash following the production of the two \$5,000,000 cheques.
- 8.103 I wrote to the Wing Hang Bank with respect to the cash withdrawal of \$10,000,000 on 9 August 1990 and it responded that:

*"the cashing of the cheque was not used to purchase a cashier order . . . we believe that the cash drawn were deposited to other accounts of our bank. Owing to lack of evidence, it is not possible for us to state which accounts were the cash deposited to."*

8.104 I then wrote to the Chairman of the Wing Hang Bank and requested his further assistance. I received a response which stated in part:

*". . . there are so much cash transactions in our bank each day that it is almost impossible to identify the accounts into which the cash in question was deposited; furthermore, we believe that the further tracing of the accounts will necessarily disclose the affairs of our customers other than the companies under investigation . . . "*

8.105 Accordingly, I have been unable to trace the ultimate recipients of two thirds of the \$34,400,000 commission paid to Spinus.

8.106 When Mr David Chiu was told that Mr George Tan had denied receiving any part of the commission, he replied claiming qualified privilege:

*"I don't know about George's [Tan] personal income but I think George did participated in the negotiations with World Trade on this deal. Whether he gave the money to who, I don't know . . . I remember there was some discussion about commission . . . To give you straight out, I didn't get all the commission. What he do with the commission later on, I don't know."*

8.107 When questioned whether Mr David Tong and Mr Jackson Chang received two-thirds of the commission Mr David Chiu replied, claiming qualified privilege:

*"No, that for sure, . . . because in fairness to David Tong and Jackson, especially to David Tong in all fairness, he argued bitterly to say the commission was too high, so did Jackson at the end argue with George and me but say we agreed. You don't have to pay but that's what was agreed . . . and Jackson one day came back to me and said he has a problem with his partner, David [Tong], the commission he agrees is too high and I was again very unhappy and I believe he and me met. I believe I brought him to see George and George and I was both very furious about try to re-negotiate on the commission."*



8.108 According to Mr David Chiu, the remaining one third balance of \$11,466,666 retained by him was used to acquire a share in a commercial property situated at 570 Dunsmuir Street, Vancouver, Canada. The other shareholders were Mr Clarence Cheng, Mr Felix Wong and Fulldiamond Limited. The application of this money is discussed at Chapter 23.

\$17,200,000 paid to Cheung On Fat

8.109 When Mr David Chiu was asked whether he was aware of a 1% commission paid to Cheung On Fat he stated:

*"I'd be very angry if I know, I don't think so. . . . I thought all the money came to me . . . the best of my recollection understanding is that I might have asked Jackson [Chang] for three percent but obviously I never got three percent, I got two percent . . . I was very confused . . . "*

8.110 He has added that he believed Mr George Tan was *"quite close"* to Cheung On Fat but did not believe it was his company.

8.111 According to Mr Lau Cheung Man, the Deputy Manager of Cheung On, Mr Tam Cham Kai requested that he type out a receipt to WTCG for \$17,200,000, which represented 1% of the purchase price, on behalf of Cheung On Fat. This receipt was to be taken to WTCG so that a cheque could be collected.

8.112 Mr Tam Cham Kai has stated that he needed to earn the commission to pay for his *"expenditures"* and *"other businesses"*. He added however that:

*"there was an understanding that George Tan was entitled to part of the commission received . . . as far as I was concerned I was prepared to share part of that with him . . . according to my understanding he was entitled to a larger share of the commission than me".*

8.113 Mr Tam Cham Kai has, however, denied coming to an arrangement with Mr George Tan stating:

*"I asked him to help out because I needed the money to help out with respect to my other businesses, and accordingly I would give him some presents or give his daughter some presents, but I didn't really settle with him in the sense of paying him the commission . . . we didn't talk, make any such prior arrangements because I have attempted to put through similar deals before with him but many of them didn't succeed. So I didn't tell him beforehand what sort of arrangement there should be."*

8.114 I have located a remittance of US\$60,000 made by Mr Tam Cham Kai to daughters of Mr George Tan, Madam Ginny Tan Siow Ling and Madam Vicki Tan Wan Ling on 1 June 1990. Mr Tam Cham Kai has advised me by a letter through Mr Lau Cheung Man that:

- (i) *"...the source of the monies was come from receipt of commission for the World Trade Centre deal."*
- (ii) *"The reason for the remittance was for personal gifts."*

It is, however, difficult to see how the source of the funds for this payment could have been money from the World Trade Centre commission as it was paid two months before the commission was received.

8.115 Mr George Tan also denied making any arrangements with Mr Tam Cham Kai to share in the commission paid to Cheung On Fat. He asserted:

*". . . [I] never expect [a commission] at any time in my mind whatsoever. To me, one telephone call to fix up an appointment and introduce somebody: willing buyer, willing seller and costs me nothing".*

- 8.116 On 8 August 1990, WTCG's cheque for \$17,200,000 was deposited into Cheung On Fat's account at the Wing Hang Bank. On that date, Cheung On Fat drew a cheque for \$17,200,000 payable to Mr Tam Cham Kai which was deposited into his account also at the Wing Hang Bank.
- 8.117 On 9 August 1990, Mr Tam Cham Kai withdrew \$17,200,000 in cash and deposited it into Cheung On's current account at the Wing Hang Bank. On 16 August 1990, these funds were transferred to Cheung On's largest cash client account, known as the 12/F Cash Client. The operations of 12/F Cash Client account and the persons who were connected with it are discussed in detail at Chapter 10.
- 8.118 Mr Lau Cheung Man of Cheung On was unable to explain to me why the \$17,200,000 had been transferred through four different bank accounts.
- 8.119 Subsequently his solicitors advised that:

*"Mr Tam's explanation for the transfer of fund through four bank accounts is as follows.*

*The fund was placed in the saving account of Mr Tam in order to earn interest albeit for a day or two. Thereafter he was advised that the account at Cheung On & Company was severally (severely) overdrawn. In order to enable the business to have a large cash flow, the money was then transferred to the 12/F cash client's account to reduce the overdraft"*

- 8.120 He gave no reason why the 12/F cash client account was credited and not an account in his own name.

8.121 When asked to explain the "12/F cash client" account, Mr Lau Cheung Man stated:

*". . . 12th floor is actually a code name, a code used by own accounting department to represent a number of . . . a group of overseas speculators who speculate in stock . . . that account is looked after by Mr Tam's [Tam Cham Kai] relatives and friends. I don't know the exact identity of those speculators . . . but I know that they are more than ten such people . . . I know there is a Mr Tse, for example, and others who would simply phone in and give instructions to our accounting department to make, say, withdrawals . . . "*

8.122 When questioned about the names of the authorised signatories and whether account opening documentation existed Mr Lau Cheung Man told me:

*". . . It was a very competitive industry at the time and when we were dealing with cash clients . . . [they] were not required to sign any documents as long as they traded in cash and settled, then it would be all right, everything was on the basis of trust. "*

8.123 Mr Lau Cheung Man has denied that "12/F" meant 12th floor of the Hong Kong & Macau Building which is occupied solely by Widelines, although he accepted that "12/F" refers to "12th floor".

8.124 When examined Mr Tam Cham Kai also denied that "12/F" referred to the 12th floor of the Hong Kong & Macau Building stating that it could be interpreted "to be 12 persons or 12 Taiwanese . . . Formosan".

8.125 His solicitors have now submitted to me that:

*"Mr Tam deny (denies) any knowledge of the meaning of "12/F". The day to day book-keeping entries was carried out by the accounts clerk Mr But. Furthermore, Mr Tam does not engage himself totally in the affairs of Cheung On & Company. He travels extensively at that time as he is now".*

8.126 However Mr But Yuk Yiu of Cheung On has stated that:

*"12/F is a code which includes people in this building. This building means the Hong Kong & Macau Building."*

*"12/F could include people on the 12th floor of this building, but it could also include others on the 8th and the 10th floor I don't know."*

8.127 Mr Tam Cham Kai has stated that, the \$17,200,000 was deposited into the 12/F Cash Client account to settle a transaction on behalf of a number of Taiwanese persons through the use of his father-in-law, Mr Tse Kwok Tak ("Mr Peter Tse") who he classified as a "runner". I understand that a "runner" introduces clients and acts as the contact person. Mr Tam Cham Kai said:

*"Now what happened was that the runner's clients owed my company some money because of some previous transactions undertaken. They were due to settle but they haven't settled yet. That's why I advanced the money to settle those overdue payments . . . Now what I did was to, that in the account, in the ledgers of my own company, I used that sum of money to offset the amount they owed . . . and they might have owed my company less than \$17.2 million and I had advanced them the - I have also advanced them the balance of the remaining sum."*

8.128 When asked whether these Taiwanese investors had paid him back, Mr Tam Cham Kai told me:

*"Well, they repaid me by another method . . . I have many transactions with this Peter Tse. I have investments in Taiwan, Australia and so on. So I have other transactions with him . . . Sometimes he would remit money from Taiwan or Australia to me in Hong Kong and sometimes I will remit money to him in Taiwan or Australia. . . . this is one way of paying for such transactions. It is actually, myself and Peter Tse actually settling our accounts with each other."*

8.129 Mr Tam Cham Kai has subsequently advised me through his solicitor that:

*"The sum of \$17.2 million was paid into the account of his father-in-law [which] was in part repayment of advances and in part fund for investment on behalf of our client . . ."*

8.130 Apart from the \$17,200,000 being deposited into the account on 16 August 1990, a further six deposits were made on that day and the next, totalling \$27,483,846.19.

8.131 Following these deposits, 20 cheques were drawn and paid by Cheung On (15 of which were payable to stockbrokers) debiting the 12/F cash client account on 16 and 17 August 1990 for the amounts set out in the schedule below. I have been unable to obtain any information about three of the five individuals who directly received payments as Cheung On does not have their details. The third individual, Mr Ng Kin Wah, received a cheque for \$6,840.86. Mr Ng Kin Wah has told me that at this time he was an employee of Widelines on the 12th floor of the Hong Kong & Macau building. I have traced this payment to his account at the Wing Hang Bank. I have investigated Mr Ng Kin Wah's account and found numerous payments from it to Cheung On and Cheung On Fat which have been traced to the 12/F cash client account. I concluded in Chapter 10 that like Mr Roy Loffill, Mr Ng Kin Wah operated his bank account at the Wing Hang Bank and conducted large scale trading in WTCG shares as a nominee for others who I believe were connected with the 12/F Cash Client account. Further discussion on this matter is in Chapter 10. The fourth individual, Mr Ng A Moy, received a cheque for \$2,610,776. I understand that Mr Ng A Moy is Mr Jackson Chang's brother-in-law. A copy of the cheque for \$2,610,776 (with the name of the payee left blank) was found in Mr Jackson Chang's safe at his former residence in Hong Kong. The use of Mr Ng A Moy as a nominee is discussed in Chapter 4.

8.132 The 15 cheques payable to stockbrokers were paid into their client's accounts and used to purchase WTCG and Tian Teck shares as follows:

<u>Name</u>	<u>Amount</u> \$	<u>Beneficiary</u>	Shares Purchased
Smith New Court Far East	1,138,096.32	Mr Tan Yakobus Suryopranoto	WTCG
Harvester Stock Investment Co.	536,729.32	Mr Poon King Kei	WTCG
Wader Investment Company	344,886.10	Mr Roy Loffill	WTCG / Tian Teck
Koo & Company	301,181.31	Mr K Y Chu / Mr Chan Tai Tak	WTCG
Koo & Company	201,701.94	Mr K Y Chu / Mr Chan Tai Tak	WTCG
Prudential Securities Company	221,331.00	Mr Poon King Kei	WTCG
Ban Hin Securities Company	2,812,545.11	Madam Loo Kwee Huay	WTCG
Harvester Stock Investment Company	88,532.40	Mr Poon King Kei	WTCG
Best Securities Co.	35,415.36	No response	No response
Karl Thomson Securities Co.	552,321.45	Mr Cheung Pek Ping	Tian Teck
On Wah United Securities Co. Ltd	1,662,499.13	Mr S. K. Koo	WTCG / Tian Teck
Wader Investment Company	2,041,529.19	Mr Roy Loffill	WTCG / Tian Teck
Smith New Court Far East Limited	2,819,710.40	Mr Tan Yakobus Suryopranoto	WTCG / Tian Teck
Ban Hin Securities Company	1,971,810.88	Madam Loo Kwee Huay	WTCG
Koo & Company	1,210,882.98	Mr K.Y. Chu / Mr Chan Tai Tak	WTCG
Chan Kyhe Wah	1,182,108.75	Reason for payment not known	
Mr Lee	402,673.74	Reason for payment not known	
Mr Ng Kin Wah	6,840.86	deposited into hisaccount at Wing Hang Bank	Reason for payment not known

Mr Ng A Moy	2,610,776.00	copy of cheque found in Mr Jackson Chang's safe	Reason for payment not known
Mr Chan	129,078.37	Reason for payment not known	
TOTAL	\$ 20,270,650.61		

- 8.133 Mr Roy Loffill has advised me through his solicitor that he is *"totally unaware"* of these share transactions and gave no instructions whatsoever to purchase any shares in WTCG. Mr Roy Loffill's share trading activities are detailed in Chapter 10.
- 8.134 Mr Poon King Kei, has a remarkably similar name to Mr Poon King Ki the former chauffeur of Tomson Pacific. Mr Poon King Ki has confirmed that he used to drive for Mr David Tong, his wife, Madam Hsu Feng and Mr Jackson Chang. He has denied purchasing WTCG shares through Harvester Stock, Prudential Securities Company or receiving any monies from Cheung On. He told me that did not know whether anyone had used his name. I have been unable to locate a Mr Poon King Kei.
- 8.135 In Chapter 10, I have also detailed the share trading of other persons who received monies from the 12/F Cash Client account. Mr Tan Yakobus Suryopranoto is a 31 year old Indonesian. He acquired in excess of 36,000,000 WTCG shares from 23 July 1990 to 7 August 1990 through Smith New Court Far East Limited ("Smith New Court") and Mok Ying Kie Limited. Mr Ng Kin Wah was named as the contact person in respect of Mr Tan Yakobus Suryopranoto's sharetrading at Smith New Court. I have endeavoured to contact Mr Tan Yakobus Suryopranoto, however he has failed to respond.
- 8.136 Madam Loo Kwee Huay, a Singaporean, acquired in excess of 107,000,000 WTCG shares and sold 74,122,000 of them from 23 July 1990 to 7 August 1990, through Ban Hin Securities Co. I have contacted Madam Loo Kwee Huay, however she has refused to meet with me or provide me with details of these share dealings.



8.137 Mr George Tan has denied any direct or indirect involvement with Cheung On or Cheung On Fat and any knowledge of the 12/F cash client account or whether "12/F" referred to Widelines. I concluded in Chapter 10 that I have found Mr George Tan to be integrally linked to the persons connected to the 12/F Cash Client account and as such I do not accept his denial of knowledge.

Mr George Tan's view of his involvement

8.138 Mr George Tan has summarised his own involvement in the acquisition of World Trade Centre by stating:

*"Very little, just two telephone calls with Mr Bobby Kwok ... and were put forward to his Board, and they are willing to sell, so therefore I can produce a willing seller and willing buyer and I never involve on discussion of the terms, payment, on agreement or anything at all."*

Signing of Sale and Purchase Agreement - 7 August 1990

8.139 On 7 August 1990, the Sale & Purchase Agreements in respect of the acquisition of the issued share capital of Hongkong Land (World Trade Centre) Limited and WTCG (Club) Limited were signed. It was noted that completion of the Agreements was conditional upon the approval by shareholders. WTCG had however, already obtained irrevocable undertakings in respect of more than 50% of the issued share capital of the company to vote in favour of the relevant resolutions.

WTCG Meeting of the Board of Directors - 15 August 1990

8.140 At WTCG's meeting of the Board of Directors held on 15 August 1990 (Appendix 55) it was noted in the Minutes that the following persons were present:

Mr David Tong	-	Director
Mr Jackson Chang	-	Director
Mr Mico Chung	-	General Manager
Mr K H Yeung	-	Company Secretary

8.141 The minutes of this meeting were confirmed at a meeting of directors on 8 October 1990 at which Dr Stanley Ho, Mr David Tong, Mr Mico Chung, Mr K H Yeung and Mr Ambrose So were present.

8.142 Amongst the matters raised at the meeting were:

(1) The resignation of Mr Blott, Mr Davies & Mr McGuigan as directors and

(2) The appointment of :

Dr Stanley Ho	-	Chairman
Mr David Tong	-	Managing Director
Mr Jackson Chang	-	Executive Director
Mr Mico Chung	-	General Manager

(3) It was further noted that commissions totalling \$51,600,000 had been paid to two agents acting on behalf of WTCG in the acquisition of World Trade Centre. The Board resolved that the payments be ratified and confirmed.

8.143 According to Mr David Tong's oral evidence, he only learnt about the payment of the commissions and the amount involved subsequent to the transaction. He denied having any knowledge about those who had benefited from the proceeds of either commission.

8.144 In Mr David Tong's submission to me his solicitors advised that:

*"Subsequently, after the commissions had been paid on the instructions of Mr Jackson Chang and without the knowledge of Mr Tong, he was informed of the commission agreement on being asked to sign a board minute ratifying the payment of such commission. He immediately complained to Mr Jackson Chang that he considered a commission of 3% to be too high. However, he was persuaded by Mr Jackson Chang that it was a proper amount given the work done by the intermediaries in negotiating a discounted price for the building and in securing the acquisition in the face of a potential competing bid from the Kowloon Wharf Group.*

*Mr Tong's experience of commission rates in Hong Kong at the time was not extensive and he was more conversant with rates in Taiwan, where, as he told you, commissions of 2% to 3% or even more were relatively common at the time. Accordingly, Mr Tong accepted, albeit reluctantly, that the 3% commission should be ratified on being told by Mr Jackson Chang that it had already been agreed and paid, was a proper amount given the work done and was in line with the level of commission usually paid in Hong Kong. Mr Tong was also conscious that to seek to recover the commission would involve costly litigation which would prove embarrassing to WTCG and might well not succeed given Mr Jackson Chang and Mr Mico Chung's ostensible authority as Managing Director and General Manager of WTCG to bind it in agreeing to pay the commissions. "*

8.145 Dr Stanley Ho has expressed surprise to me at the size of commissions and the fact that they were paid by WTCG without being fully explained to its Board of Directors. He has also denied any knowledge of those who benefited from the commissions other than to say that he had heard subsequently that Mr George Tan had been connected in some way.

8.146 At the Extraordinary General Meeting held on 5 September 1990, the shareholders of WTCG approved the acquisition of World Trade Centre.

- 8.147 At the meeting of WTCG's Board of Directors on 31 October 1990, it was noted that the terms and provisions of the Sale and Purchase Agreement dated 7 August 1990 had been reviewed. It was further noted and resolved that \$640,404,534 be lent to Melville Limited ("Melville"), a subsidiary of WTCG, to enable it to pay the necessary consideration to WTC Holdings to encourage it to procure the allotment by WTC Holdings of 9,998 new shares to Melville.
- 8.148 The agreement relating to Hongkong Land (World Trade Centre) Limited was executed by WTC Holdings, WTCG and Hongkong Land on 31 October 1990.
- 8.149 On or about 13 October 1992, WTCG agreed to sell World Trade Centre to a mainland consortium for \$2,500,000,000, but that sale was not completed.
- 8.150 The World Trade Centre was finally sold to Sun Hung Kai Properties Ltd in February 1993 for \$2,215,000 plus an amount to be calculated as a proportion of any future sales by Sun Hung Kai Properties Limited which Tomson Pacific's directors estimate is likely to realise a further \$300,000,000.

#### Audit considerations

- 8.151 The audit workpapers of Deloitte show that their staff inspected the invoices relating to amounts paid by WTCG and the minutes of the WTCG board meeting approving the payments of the commissions.
- 8.152 Notwithstanding that these commissions were approved by the directors, I find it unusual that the auditors did not request some explanation from the management of WTCG as to the propriety of the payments, for the following reasons:
1. The size of the commissions which in total exceeded the auditors "materiality" levels set for this audit.
  2. Total commissions of 3% are much greater than would be expected on a transaction of this size.

3. The recipients of the commissions did not appear to be real estate agents.

8.153 Solicitors acting for Deloittes in a submission to me have stated:

*"Our clients do not believe they were obliged to question the propriety of the payment of the commissions because this was a business decision approved by the board of directors. It would appear that the amount paid enabled WTCG to do business with Hongkong Land at a price which was significantly lower than Hongkong Land's initial asking price. The fact that the recipients of the commission did not, as you suggest, 'appear to be estate agents' is, in our view, irrelevant. We are not aware of any requirement or custom in Hong Kong that commissions for commercial transactions such as this must be paid to 'estate agents'.*

*Our clients maintain that, in circumstances such as these, where the commissions had clearly been approved by the directors, there was no need for them to obtain a representation from management because they already had sufficient relevant and reliable audit evidence from the board minutes which they had inspected."*

## **CONCLUSIONS**

- 8.154 Although Mr David Tong attended two meetings with Mr Bobby Kwok, I do not believe he actively played any further role in this transaction. Mr Jackson Chang appears to have been the driving force on behalf of WTCG.
- 8.155 I have concluded that it is more than likely that Mr David Chiu and Mr George Tan agreed with Mr Jackson Chang (Mr David Tong being made aware subsequently) that a 3% commission would be payable once an agreement was reached between WTCG and Hongkong Land.

- 8.156 Mr David Chiu has acknowledged, and I accept, that he used Spinus to receive his share of the 2% WTCCG paid as commission. He alleges that two thirds of this commission was paid from Spinus upon the direction of Mr George Tan.
- 8.157 I believe that Mr George Tan's involvement has been proven to be substantially more than he has admitted. I have heard evidence from a number of individuals involved to suggest that Mr George Tan was to benefit from this transaction. I believe it unlikely that, given Mr George Tan's active involvement in this transaction, he received no benefit. I am uncertain, however of the reason he has denied receiving any benefit.
- 8.158 Given that Mr Tam Cham Kai played no active role in this transaction it is difficult to see why a commission of \$17,200,000 was paid to Cheung On Fat. I have received no evidence from Mr Tam Cham Kai that he was one of the beneficiaries of the 12/F Cash Client account and as such have inferred that he was acting on behalf of another. I believe this to have been Mr George Tan. Details of the operation of the 12/F Cash Client account, and discussion of who benefitted from it, are dealt with in Chapter 10.
- 8.159 I largely reject the evidence of Mr Tam Cham Kai and Mr Lau Cheung Man with respect to the 12/F Cash Client account. The assertion that the \$17,200,000 was used to settle outstanding debts between Mr Tam Cham Kai and his father-in-law, Mr Peter Tse is inconsistent with the payment of cheques to 15 stockbrokers and the acquisition of WTCCG shares.
- 8.160 The involvement of Mr Roy Loffill through the use of his bank account and to acquire WTCCG and Tian Teck shares, leads me to believe that he is readily used as a nominee. I accept that Mr Roy Loffill may not have been personally involved in these matters although I believe he was aware that persons were using his name for dealings with which they did not wish to have their names associated.

- 8.161 Mr Dennis Chung, is clearly more involved in the actual handling of large sums of money moving through Mr Roy Loffill's bank account than Mr Roy Loffill himself. I believe that would necessitate a greater knowledge of the overall operation with which he is involved. Mr Dennis Chung was, however, determined to provide me with as little information as possible in relation to it.
- 8.162 Although Mr George Tan has denied knowing Mr Tan Kiem Tiauw the evidence of Mr Bobby Kwok and Mr Dennis Chung that they have met him through Mr George Tan suggests otherwise. I understand through Mr Roy Loffill's solicitor that Mr Tan Kiem Tiauw died in September 1992. Mr Roy Loffill has told me that he was unaware of the activities with which Mr Tan Kiem Tiauw was involved and as such I have not been able to take this enquiry further.
- 8.163 As directors of WTCG, Mr David Tong, and Mr Jackson Chang had responsibilities and duties with respect to the arrangements to pay the two commissions. I am critical of their failure to question the payment of these commissions per se, the failure of Mr David Tong to obtain a plausible explanation from Mr Jackson Chang as to the agreement to pay the commissions and the names of those who were to receive them and his failure to question the size of the commissions paid. Evidence has been produced that these payments were unusually large; at least three times higher than the normal market practice.
- 8.164 I have found no evidence to suggest that Mr Jackson Chang and Mr David Tong directly received any part of the commissions. The involvement of Mr Ng A Moy, Mr Jackson Chang's brother-in-law, however should be investigated further.
- 8.165 In addition, I have not been made aware of any evidence which suggests that executives of Jardine Matheson or Hongkong Land benefitted from the commissions paid.
- 8.166 I am not critical of WTCG for the price paid for the acquisition of the World Trade Centre Building in 1990, as it appears to have been negotiated at arms' length with Hongkong Land.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 9

### THE ACQUISITION OF 145,000,000 SHARES IN TIAN TECK LAND LIMITED

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## 9 INTRODUCTION

9.1 In relation to this transaction my terms of reference from the Financial Secretary directed me to investigate and report on all the events surrounding the acquisition by Humphreys Estate (Strawberry) Houses Limited, an indirect subsidiary of WTCG, of 145,000,000 shares of Tian Teck Land Limited, including the involvement of Spinus Limited and Hauxton Limited and their relationship with the directors and shareholders of WTCG.

9.2 Tian Teck Land Limited ("Tian Teck") is a listed investment holding company. Its subsidiaries are engaged in property development and hotel operations. In 1990, Tian Teck had an issued capital of 474,731,824 shares, of which 244,197,980 shares or (51.44%) were controlled by its Chairman, Mr Cheung Hooi Hong and his family. Tian Teck's major asset is the Hyatt Hotel, Kowloon.

- 9.3 On 10 August 1990, local newspapers reported that Great Eagle Holdings Limited ("Great Eagle") had sold its holding of 32% of Tian Teck's issued share capital at \$2.60 per share to a third party. HK Daily News and Tin Tin Daily reported the buyer was WTCG, Ming Pao said the buyer was a Taiwanese businessman. The HK Economic Times in a column dated 13 August 1990 reported that the buyer was Mr George Tan.
- 9.4 Great Eagle is a listed public company engaged in property development and investment, hotel management and share trading.
- 9.5 Following the release of Great Eagle's results for the 1990 financial year, there was further discussion in the press relating to Great Eagle's disposal of Tian Teck shares. An extract from the South China Morning Post of 21 January 1991 read:

*". . . 145 million [Tian Teck] shares were sold for an aggregate cash consideration of \$326.3 million.*

*The price of \$2.25 a share represented a discount of 10 per cent from the closing price of August 7.*

*The sale was made on August 8, the same day that [a] BCIL [WTCG] stake was picked up for \$326.2 million.*

*The price paid [for WTCG shares] was \$2.80 a share - a premium of 14 per cent over the August 7 closing price.*

*Great Eagle's directors say the disposal of Tian Teck shares, which netted them a gain of \$146 million, and the purchase of the BCIL shares were suggested to them by a business broker."*

- 9.6 There was no specific mention of the acquisition of the 145,000,000 Tian Teck shares in the published accounts of WTCG.

- 9.7 On 31 January 1991 Great Eagle published a statement to shareholders as the acquisition of shares in WTTCG was a disclosable transaction. An extract is reproduced below:

*"In early August, 1990, the Company received an unsolicited offer from parties not related to the substantial Shareholders and Directors of the Company and their respective associates to buy 145 million shares ("the Disposal") in Tian Teck Land Limited ("TTL"), on the condition that the Company had to purchase 116.5 million shares ("the Acquisition") in BCIL [WTTCG]. The offer was made through a business broker. . . the Company was not and is not aware of the identity of the offeror . . . on 8th August, 1990, Ditton Investments Limited, a wholly-owned subsidiary of the Company, sold 145 million shares in TTL at an aggregate cash consideration of about HK\$326.3 million, representing a price of HK\$2.25 per share (a discount of 10% to the closing market price per TTL share on the Stock Exchange on 7th August, 1990). On the same date, the Company, through another wholly-owned subsidiary Hung Cheong Limited, purchased 116.5 million shares of HK\$1.00 each in BCIL ("the Acquired Shares") at a price of HK\$2.80 per share which represented a premium of about 14% to the closing market price per BCIL share on the Stock Exchange on 7th August 1990, amounting to an aggregate cash consideration of about HK\$326.2 million. The Acquired Shares represented approximately 8.7% of the then issued share capital of BCIL."*

- 9.8 My investigation has shown that the transaction was conducted in the manner described below.
- 9.9 On 8 August 1990, Spinus Limited ("Spinus") purchased 145,000,000 Tian Teck shares from Ditton Investments Limited ("Ditton") a wholly owned subsidiary of Great Eagle for \$2.25 per share.
- 9.10 Spinus is a Liberian company allegedly owned by Madam Eva Hui, a Far East Group employee at the time.

- 9.11 Either later that day or on the following day, a subsidiary of WTCG, Humphreys Estate (Strawberry) Houses Limited ("HESH"), purchased those same shares from Spinus for \$2.60 per share.
- 9.12 Spinus realized a gross profit of \$50,750,000 before brokerage and other charges.
- 9.13 To effect the sale, however Great Eagle had agreed to what amounted to a share swap. With the proceeds from its sale of 145,000,000 Tian Teck shares, it purchased 116,500,000 WTCG shares from Hauxton at \$2.80 per share. All these share transactions were handled through the stockbrokers, Cheung On.
- 9.14 Hauxton is a Liberian company managed by Madam Hsu Jye, Mr David Tong's sister-in-law, allegedly on behalf of her Taiwanese friends. Hauxton was a placee of 60,000,000 WTCG shares as discussed in Chapter 6.
- 9.15 I have endeavoured to trace the profit earned by Spinus and my investigations have shown that an amount of \$50,400,000 was transferred from the account of Spinus at Cheung On to Hauxton. Hauxton then remitted \$46,600,000 back to Spinus and \$3,800,000 to David Tong Company.
- 9.16 From its \$46,600,000, Spinus paid \$31,066,666 to the account of Mr Roy Loffill. It appears that \$30,000,000 was then transferred to the 12/F cash client account at Cheung On and \$1,000,000 paid to unknown parties by way of a cash cheque.
- 9.17 At least 105,000,000 of the 116,500,000 WTCG shares tendered by Hauxton had been purchased by Grand Ocean from vendors who appear to be associated with the 12/F Cash Client account at Cheung On and may have participated in a price support operation for WTCG shares. Further there is evidence of a price support operation for Tian Teck shares by WTCG after the purchase.

## **SUMMARY OF THE TRANSACTION**

### The Sale of 145 million Tian Teck shares by Great Eagle

- 9.18 Dr Lo Ka-Shui ("Dr K S Lo"), the Managing Director of Great Eagle, has told me that Great Eagle acquired 152,000,000 shares in Tian Teck on 17 April 1990. Between 23 April 1990 and 4 August 1990, Great Eagle purchased a further 13,906,000 Tian Teck shares for the purpose of obtaining a controlling interest in the company. Following these purchases Great Eagle's stake was approximately 34.95% of the issued capital.
- 9.19 These shares were held in the name of Ditton, a wholly owned subsidiary of Great Eagle.
- 9.20 After failing to obtain representation on the Board of Tian Teck, Dr K S Lo decided to sell the Tian Teck shares.
- 9.21 According to Dr K S Lo, he approached various brokers to realise his shares however the price offered was not acceptable.
- 9.22 Dr K S Lo has stated that in the latter part of July 1990 he told Mr Eddie Lo that he wanted to sell a large block of Tian Teck shares.
- 9.23 Mr Eddie Lo is a consultant to a company by the name of Fulldiamond Limited ("Fulldiamond"). Fulldiamond is discussed in further detail in Chapter 24.
- 9.24 According to Mr Eddie Lo, he passed this information on to Madam Stella Hui, an employee of Fulldiamond. Madam Stella Hui allegedly approached several friends including Madam Eva Hui (an employee of the Far East Group) to find a buyer. I understand that Madam Eva Hui is not related to Madam Stella Hui.
- 9.25 Mr Eddie Lo told me that Madam Stella Hui contacted him shortly thereafter with an interested buyer. The transaction however was subject to certain conditions:

*"One or two days before the deal was struck Stella [Hui] told me that there was this client who was prepared to pay the then market price of \$2.25 to buy those shares and asked me whether Great Eagle would be interested in selling. So I talked to K S Lo and he very quickly said okay. "*

*". . . Stella told me this buyer in question had some Bond Corporation [WTCG] shares which he wanted to sell to Great Eagle, so I told K S Lo about it and he said okay, if that were the case I accept. "*

9.26 Dr K S Lo on the other hand has told me that the transaction was put to him on the basis that Great Eagle, through Ditton, could only sell the number of Tian Teck shares which at a price of \$2.25 per share, were equivalent in value to 116,500,000 WTCG shares at \$2.80 each. That amounted to approximately 145,000,000 Tian Teck shares at \$2.25. At that time, Ditton held 165,906,000 Tian Teck shares.

9.27 Madam Stella Hui's evidence was not as precise as that given by Mr Eddie Lo. She stated:

*". . . as far as whether there was any mention of a swap arrangement I think there should have been. "*

9.28 Dr K S Lo has said he was required to sell his Tian Teck shares at \$2.25 when the market price was \$2.60 and to purchase 116,500,000 WTCG shares at \$2.80, when the market price was \$2.70.

9.29 A condition imposed on Dr K S Lo in respect of this share swap was that Cheung On be used as the broker. Mr Eddie Lo told me that he had never used that broking firm before. The buyer had apparently insisted however that Cheung On be used in this transaction.



- 9.30 Dr K S Lo has told me that he accepted the share swap because WTCG shares were more liquid than Tian Teck shares. Although he asked Mr Eddie Lo to disclose the name of the buyer of Great Eagle's Tian Teck shares, the latter refused to do so.
- 9.31 According to Dr K S Lo, as he had not used Cheung On before, he insisted on being paid for the company's Tian Teck shares with a cashier's order and paying by ordinary cheque for the WTCG shares. Great Eagle actually paid for the WTCG shares by way of a company cheque for \$200,000,000 and 3 cashier orders totalling \$128,173,510.
- 9.32 Madam Eva Hui has told me that she, through Spinus, was acting on behalf of a friend residing in Japan, Mr Tsoi Mow Hung. Whilst he was visiting Hong Kong, she had discussed the acquisition of the 145,000,000 Tian Teck shares with him:

*"He [Tsoi Mow Hung] said he would consider buying [the Tian Teck] shares after he has gone back to Japan and asked his friends to conduct some research to see whether such an investment would be a viable one or not before he would make any decision."*

*"By the time he said the Japanese consortium was interested, the price for Tian Teck shares was about \$2.25 in the market. He said he would buy as long as the price did not exceed \$2.25."*

- 9.33 I asked Madam Eva Hui how many shares Mr Tsoi Mow Hung wanted to buy and she alleged that Mr Tsoi Mow Hung told her that *"his Japanese client would like to buy shares up to the value of \$350,000,000."*

9.34 Madam Eva Hui has alleged that she controls Spinus (see Chapter 23). Spinus is a Liberian company with one bearer share in issue. Accordingly it has been impossible to establish conclusively the ownership of Spinus. I have examined Spinus's accounting records. Of the 71 transactions carried out, none appear to be for the beneficial interest of Madam Eva Hui. She is a joint signatory on its bank account with Mr Edward Lam Din Cheong ("Mr Edward Lam"), a Far East employee. Mr David Chiu has the capacity to sign as a sole signatory.

9.35 At the time of this transaction, Madam Eva Hui was an assistant to Mr David Chiu.

9.36 When Mr David Chiu was asked whether he was involved in the Tian Teck transaction he replied:

*"The answer is that I was not involved in that deal and, I was a bit upset with Eva Hui, later on, that I wasn't involved.*

*I did not introduce who to who in this specific deal but all the players in this deal, in fact, I all know them.*

*I could have done this deal with a few telephone calls."*

9.37 Mr David Chiu acknowledged in the evidence presented in Chapter 8 that he used Spinus for his own purposes in the receipt of a commission relating to the sale of The World Trade Centre Building. In Chapter 23 I examine Spinus's transactions and conclude that there is little evidence of Spinus being used for the benefit of Madam Eva Hui.

9.38 According to Madam Eva Hui, Mr Tsoi Mow Hung had suggested to her that the Tian Teck shares be bought through Cheung On. She then contacted Madam Stella Hui to confirm that the shares were still available.

### Involvement of Mr Tsoi Mow Hung

- 9.39 I have interviewed Mr Tsoi Mow Hung in Japan. He has confirmed that he had known Madam Eva Hui for 10 years and had been involved with her in prior sharetrading.
- 9.40 Mr Tsoi Mow Hung told me that his intention was for the Tian Teck shares to be held as an investment in conjunction with his Japanese partner who had an interest in the operation of other hotels.
- 9.41 Mr Tsoi Mow Hung told me that his Japanese partner had referred him to Cheung On as his Japanese partner had used that stockbroking firm many times before. Although requested to, Mr Tsoi Mow Hung would not provide me with the name of his alleged Japanese partner, without first obtaining his consent. My letter to Mr Tsoi Mow Hung reminding him of my request remains unanswered.
- 9.42 According to Mr Tam Cham Kai, the proprietor of Cheung On, he had been told by Mr Y S Chan (the owner of the Hong Kong & Macau Building) that if Cheung On received an order from Mr Tsoi Mow Hung, Cheung On should not hesitate to act in accordance with such an order.
- 9.43 Mr Tam Cham Kai gave an instruction to Mr Lau Cheung Man, the Deputy Manager of Cheung On that such an order from Mr Tsoi Mow Hung should be acted upon. Of this instruction and the timing of when it was given, Mr Lau Cheung Man said:

*"I cannot recall the exact time interval in between but there was certainly a length of time -- it was certainly some time after Mr Tam had given the instruction to us before the order was received on the 8th. Mr Tam told us that, you know, if such a person placed such an order we should handle it accordingly."*

9.44 Mr Tsoi Mow Hung initially denied any knowledge of Mr Y S Chan. Subsequent to his discussions with me Mr Tsoi Mow Hung said he did in fact know a Mr Chan Yim Sang who was a friend of Mr Tsoi's undisclosed Japanese partner. I understand Mr Y S Chan is the person who may also be an associate of Mr Tam Cham Kai.

9.45 Mr Tsoi Mow Hung could not recall whether he had dealt with Cheung On directly or through Madam Eva Hui.

The purchase by Spinus of 145,000,000 Tian Teck shares and the purchase by Great Eagle of 116,500,000 WTCCG shares

9.46 According to Mr Lau Cheung Man, he received instructions from Madam Eva Hui on 8 August 1990 after the market closed. Madam Eva Hui apparently indicated to him that she was purchasing the 145,000,000 Tian Teck shares at \$2.25 per share on behalf of Mr Tsoi Mow Hung. The contract note however was issued in the name of Spinus for a gross amount of \$326,250,000.

9.47 Cheung On allege that around this time they received an instruction from Hauxton to sell 116,500,000 WTCCG shares at \$2.80 to Great Eagle. The contract note issued by Cheung On named Hauxton as the seller for a gross amount of \$326,200,000. Cheung On advised the SFC in a letter dated 5 September 1990 that Madam Chiang Pei Ling (a Taiwanese director of Hauxton) gave the instructions to sell the 116,500,000 WTCCG shares.

9.48 The 116,500,000 WTCCG shares were purchased by a wholly owned subsidiary of Great Eagle, Hung Cheong Limited ("Hung Cheong").

9.49 Hung Cheong settled the transaction by a cheque for \$200,000,000 drawn by Great Eagle Finance Co Ltd, and 3 cashier orders which totalled \$128,173,510.

9.50 I have been unable to contact Madam Chiang Pei Ling. I believe she resides in Taiwan and is a former employee of Tomson Development Limited in Taiwan. The contact telephone number of Madam Chiang Pei Ling given to me by Cheung On is that of the firm of accountants who maintain a "letter box" address for Hauxton in Hong Kong.

9.51 Madam Hsu Jye, the sister-in-law of Mr David Tong, said she only contacted Fulldiamond to sell the shares and didn't believe she had given the instruction to sell the shares to Cheung On. She has also said that she cannot recall whether she contacted Mr Eddie Lo or Madam Stella Hui of Fulldiamond.

9.52 Cheung On failed to notify the Stock Exchange of the sales. When the error was discovered two days later, the floor trader responsible allegedly telephoned the Stock Exchange for advice. Mr Lau Cheung Man explained to the SFC:

*"We were given an impression that there was no hard and fast rule and that traditionally any omitted entries into the trading system would be acceptable as long as the transactions were properly invoiced and stamped."*

9.53 I understand that the Stock Exchange would require notification even if late.

The source of the 116,500,000 million WTCG shares purchased by Great Eagle

9.54 Madam Hsu Jye has denied that the WTCG shares were sold by Hauxton, although the Sold Note issued by Cheung On was in that name. Madam Hsu Jye insisted they were sold by Grand Ocean, in whose margin account Chintung held the shares.

9.55 Grand Ocean is a Liberian company, the affairs of which I was appointed to investigate following my initial appointment to investigate Tomson Pacific and WTCG.

9.56 Madam Hsu Jye has claimed that she controls Grand Ocean for the benefit of herself and Mr Hsu Bin, her younger brother. I have been unable to interview Mr Hsu Bin as he does not reside in Hong Kong and has not responded to my letters sent to him at an address given by Madam Hsu Jye. Grand Ocean is discussed further in Chapter 22.

9.57 As at 1 August 1990, Grand Ocean had \$12,977,785.88 margin available in its account at Chintung in addition to a \$25,000,000 credit limit. 203,053,220 Rivera shares had been lodged with Chintung as security. Those shares represented approximately 16% of the issued capital of Rivera.

9.58 Madam Hsu Jye, through her solicitors, advised:

*"With regard to the 203 million shares in Rivera (Holdings) Limited lodged in the margin account of Grand Ocean Corporation, our client [Madam Hsu Jye] understands that the shares were obtained in the following manner :-*

<u>No. of shares</u>	<u>Source</u>
<i>approximately 90 million shares</i>	<i>shares personally owned by Mr. Tong Cun Lin [Mr David Tong]</i>
<i>approximately 90 million shares</i>	<i>shares pledged by Peace Forest Limited in connection with a loan of approximately HK\$60 million lent by Grand Ocean Corporation.</i>

*Ms. Hsu Jye cannot now remember the source of the remaining 23 million shares in Rivera (Holdings) Limited. "*

9.59 On 1, 2 and 6 August 1990, three parcels of WTCG shares totalling 118,200,000 shares were acquired. This represented approximately 8.8% of the issued capital of WTCG at that time. In a return to the SFC, Chintung showed these shares as being acquired by Martra, however Grand Ocean's margin account statement showed the following details:

<u>Trade Date</u>	<u>Record Date</u>	<u>Average Number of Shares</u>	<u>Price per Share *</u> \$	<u>Total Cost **</u>
1/8/90	2/8/90	38,200,000	\$2.7104	104,163,903.43
2/8/90	7/8/90	50,000,000	\$2.7000	135,816,750.00
6/8/90	7/8/90	30,000,000	\$2.7000	81,490,050.00
		<u>118,200,000</u>		<u>\$321,470,703.43</u>

\* Exclusive of brokerage and other charges

\*\* Inclusive of brokerage and other charges

9.60 Closer examination of this margin account and the relevant contract notes show that the purchases were originally booked in Grand Ocean's name with respect to trades on 1 and 6 August 1990 and in the client service cash suspense account with respect to the trade on 2 August 1990. The return to the SFC (Appendix 56) showed the purchaser as Martra. It is apparent that the return to the SFC was incorrect. I have not investigated who prepared this return.

9.61 When asked about the discrepancy, Chintung advised in writing:

*"The bookings were subsequently charged to Martra upon the request and confirmation by the responsible salesman."*

9.62 The salesperson code for all these transaction was "555" which was Mr Peter Mou's code.

9.63 Martra is a Liberian company allegedly managed by Madam Hsu Jye in Hong Kong (discussed at Chapter 19).

9.64 Chintung appear to have been instructed by Mr Jackson Chang in relation to the purchase of 50,000,000 WTCG shares and by Madam Hsu Jye in relation to 68,200,000 WTCG shares. This is evident from the letters below.

9.65 On 7 August Mr Gary Wong of Chintung wrote to Mr Jackson Chang, care of WTCG and said:

*"In connection to your purchase of 50 million Bond Corporation International Limited [WTCG] shares for HK\$135,816,750.00 on 2 August 1990 due for settlement on 3 August 1990, we have yet received your payment to date.*

*As this trade is now overdue, please take note that unless prompt payment in full is received by us by 4:00 pm today, failing which we will have no alternative but to liquidate the above position to protect our interest. "*

9.66 Separately that day Madam Hsu Jye had also received a letter for Grand Ocean from Mr Gary Wong which read:

*"We wish to advise that at the close of business on 6 August 1990, your share margin account showed a loan balance of HK\$147,604,260.27 against a limit of HK\$25 million, and also a cash purchase of 30 million shares Bond Corporation International Limited on 6 August 1990 for HK\$81,490,050.00 is due for settlement today.*

*Please take note that unless prompt settlement payment is received by us by the close of business today, we will have to take corrective measures for your account without further notice to you. "*

9.67 It is evident that the 50,000,000 WTCG shares referred to in the letter to Mr Jackson Chang had not been associated with the shares purchased by Madam Hsu Jye, as later on 7 August Madam Hsu Jye received a second letter from Mr Gary Wong which read:

*"Further to our letter to you earlier today, we wish to advise that there was another cash trade done for your account on 2 August 1990 being purchase of 50 million shares Bond Corporation International Limited for HK\$135,816,750.00 for settlement 3 August 1990, which remained not settled to-date.*



*Please take note that we will transfer the above trade together with accrued interest to your margin account value today and the following is the summary of your account balance:*

	<u>HK\$</u>
<i>Balance at 6 August 1990</i>	<i>147,604,260.27</i>
<i>Purchase of 50 million shares</i>	
<i>BCIL on 2 August 1990</i>	<i>135,816,750.00</i>
<i>Purchase of 30 million shares</i>	
<i>BCIL on 6 August 1990</i>	<u><i>81,490,050.00</i></u>
<i>Total</i>	<u><i>\$364,911,060.27</i></u>

*We reaffirm that unless prompt settlement payment is received by us by the close of business today, we will have to take corrective measures for your account without further notice to you. "*

- 9.68 The letter was copied to Mr Jackson Chang.
- 9.69 The presence of such a large unauthorized debt was a serious concern to Chintung as is evidenced by the above letters. Mr Gary Wong has said, however that whilst he signed the letters he did not speak to Mr Jackson Chang or Madam Hsu Jye and thought any follow up with those people would have been done by Mr Peter Mou.
- 9.70 Documentation from Chintung shows that Mr Jackson Chang was noted as the person who managed Grand Ocean's margin account. Mr David Tong personally guaranteed its margin account at Chintung and gave instructions to close the account on 20 November 1991. This is discussed further in Chapter 22.

The reason for the acquisition of the WTCG shares by Grand Ocean

- 9.71 Madam Hsu Jye told me that she had bought the 118,200,000 WTCG shares (representing 8.8% of the issued capital) because:

*"At that time, my brother [Hsu Bin] told me that some people in Taiwan wanted to buy some shares, and before that my brother told me the approximate number of shares they wanted to buy.*

*Then I told Chintung about this, I told them that I wanted to buy a certain number of shares at what price.*

*After I had bought the shares I told my brother in Taiwan: When the money would arrive?, because it involves quite a big sum of money. And only afterwards he told me that the money might not be able to be remitted to me at that time because there were some problems.*

*Well later on, since I could not pay for them, then I sold the shares again. Well, because the money could not arrive in time and I also did not know when it would arrive, so the easiest way out was to sell them. "*

9.72 Madam Hsu Jye has been unable to recall the names of her brother's friends. She said:

*"Well because this happened quite some time ago I could not remember whether my brother really told me about these people, but even if he had, I cannot remember now. "*

9.73 According to Madam Hsu Jye, she approached Fulldiamond to assist her to sell the shares:

*". . . I had to look for a buyer, so after some effort I found a company by the name of Fulldiamond Company. I contacted them and said to them that I have in my hands that number of shares. I remember the other party also requested for a commission. Well, I told him that if the price was above \$2.80 then I would pay him a commission. Then very soon, I remember it was about the next day, they told me that they had found a buyer. That was how that lot of shares was sold. Because they were sold at the price of \$2.80, so I did not pay any commission afterwards. "*

9.74 At a subsequent examination, Madam Hsu Jye stated *"Fulldiamond is Eddie Lo, it was Eddie Lo's company"*. Mr Eddie Lo however has denied that he spoke to Madam Hsu Jye in respect of the sale of these WTCG shares. As stated earlier Madam Hsu Jye cannot recall whether she spoke to Madam Stella Hui or Mr Eddie Lo.

Grand Ocean's \$50,000,000 loan from Far East Holdings International Limited

9.75 Mr David Chiu told me that Mr Jackson Chang approached him in August 1990 and asked for a loan to buy back some WTCG shares. Mr David Chiu drew a Far East Holdings International Limited ("FEHIL") cheque dated 8 August 1990 for \$50,000,000 made payable to Chintung. As security for the loan he was given a cheque post-dated to 15 August 1990 for \$50,125,000 drawn on the account of Mr Koo Tai Ne ("Mr Danny Koo") (a director of Martra discussed at Chapter 19) and signed by Madam Hsu Jye (Appendix 57). Madam Hsu Jye has stated that she did not know about this loan.

9.76 Mr David Chiu said that whilst the cheque may have been delivered to Madam Hsu Jye he only negotiated the loan with Mr Jackson Chang. He said that by lending Mr Jackson Chang the money Mr Jackson Chang could *"buy back more shares in the market, so the share can rise and it is better for me . . ."*.

9.77 The \$50,000,000 cheque was credited to Grand Ocean's account at Chintung on 8 August 1990. After this payment, Grand Ocean's margin account was still facing a call of \$143,322,927.63. Grand Ocean could not withdraw the WTCG shares from its account with Chintung without further payment or lodging further security.

The source of 115,000,000 of the 118,200,000 WTCG shares acquired by Grand Ocean

9.78 In the light of Mr David Chiu's evidence that the loan of \$50,000,000 was needed to finance a buyback I examined the source of the WTCG shares acquired by Grand Ocean at this time. I have found 115,000,000 of the WTCG shares were purchased through Chintung from the following parties:

Date of Purchase	Number of shares	Name of Seller	Selling Broker	Remarks
1/8/90	10,000,000	Mr W S Ng	Ban Hin	Madam Loo's Syndicate
1/8/90	5,000,000	Madam Loo Kwee Huay	Ban Hin	Madam Loo's Syndicate
1/8/90	10,000,000	Mr Leung	Ban Hin	Madam Loo's Syndicate
1/8/90	10,000,000	Mr Lai	Ban Hin	Madam Loo's Syndicate
2/8/90	10,000,000	Mr Tsang	Ban Hin	Madam Loo's Syndicate
2/8/90	20,000,000	Madam Loo Kwee Huay	Ban Hin	Madam Loo's Syndicate
2/8/90	2,000,000	Madam Trina Adiasa	Wader	
2/8/90	4,000,000	Mr Abraham Adiasa	Wader	
2/8/90	4,000,000	Madam Soelamah	Wader	
2/8/90	5,000,000	Mr Ng Wing Yu	Cheung On	12/F Cash Client A/C
2/8/90	5,000,000	Mr Luk Chun Nam	Cheung On	12/F Cash Client A/C
6/8/90	30,000,000	Madam Loo Kwee Huay	Ban Hin	Madam Loo's Syndicate
TOTAL	115,000,000			

- 9.79 Madam Loo Kwee Huay was the head of a syndicate of traders according to the evidence of Mr Ong Ban Chye, the sole proprietor of Ban Hin Securities which purchased WTCG shares in July and August 1990. The names of the Syndicate members which have been given to me are Mr W S Ng, Mr Leung, Mr Lai, Mr Tsang, Mr Chung and Mr Tong. These people along with Madam Loo Kwee Huay, are collectively referred to by me as "Madam Loo's Syndicate". Mr Ong Ban Chye has told me that the Mr Tong is not Mr David Tong and that Mr Lai was not associated with Chintung. I have not been able to positively establish the identity of the syndicate members, except for Madam Loo Kwee Huay. Solicitors for Madam Loo Kwee Huay have told me that Mr Ong Ban Chye is a friend of her husband, but that she neither purchased any of these shares, nor authorised him to transact any such shares on her behalf, and that she does not know any of the other persons.
- 9.80 The share trading carried out by this syndicate is indicative of price support or price manipulation operation for on the same day, one syndicate member would sell and another would buy. 95,000,000 of the 118,200,000 shares purchased by Grand Ocean came from Madam Loo's Syndicate members. Madam Loo Kwee Huay and Ban Hin are discussed further in Chapters 10 and 26.
- 9.81 Mr Lau Cheung Man has confirmed that Mr Ng Wing Yu and Mr Luk Chun Nam who sold WTCG shares to Grand Ocean through Cheung On used the 12/F Cash Client account but could not provide any further details as to the identity of these traders.
- 9.82 I have not been able to establish the identity of the three sellers from Wader other than that I understand they are Indonesians.
- 9.83 The sellers from Wader and Cheung On and the 12/F Cash Client account are discussed further in Chapters 10 and 26.
- 9.84 The balance of 3,200,000 WTCG shares purchased by Grand Ocean were acquired in various small lots.

The evening of 8 August 1990

9.85 Mr Tsoi Mow Hung has told me that on the evening of 8 August 1990 he was contacted by Mr Sun Tao Tsun, a director of Tomson Pacific by telephone:

*"Mr Sun Tao Tsun of Taiwan called me asking if I would give the [Tian Teck] shares to him because he knew the price, and after talking with a Japanese partner, I decided to sell because the profits were realized."*

9.86 Mr Tsoi Mow Hung added that he and Mr Sun Tao Tsun were friends. Mr Tsoi believed he had given Mr Sun Tao Tsun, Madam Eva Hui's name to contact in Hong Kong. Mr Tsoi Mow Hung could not recall whether it was him or Madam Eva Hui who told Mr Sun Tao Tsun to use Cheung On as brokers.

9.87 Mr Sun Tao Tsun, on the other hand, told me that Mr Tsoi Mow Hung contacted him asking whether he was interested in the Hyatt Hotel in Hong Kong. Mr Sun Tao Tsun allegedly told Mr Tsoi Mow Hung that he was not particularly interested in that hotel but that his friend, Mr David Tong, who had a public company in Hong Kong, may be. Mr Sun Tao Tsun has emphasised to us that he referred Mr Tsoi Mow Hung to Mr David Tong but could not recall the date of this discussion. Mr Sun Tao Tsun has told me that at the time he himself was in Taiwan. He also told me that he had met Mr Tsoi Mow Hung through banking contacts in Japan in 1987-88, but had not subsequently had any contact with him until the telephone call.

9.88 The day following the acquisition of the 145,000,000 Tian Teck shares by Spinus, Madam Eva Hui recalled that Mr Tsoi Mow Hung telephoned her to check the price of the Tian Teck shares:

*"Mr Tsoi called me up after the shares were bought on the following day and to check on the price of the shares on the following day and seeing it was quoted at the price \$2.60 on that day, he asked me how much profit he would be making and I calculated the sum to be 40 odd million dollars."*

9.89 According to Madam Eva Hui, Mr Tsoi Mow Hung telephoned her later that day (9 August 1990) advising that someone was willing to buy the Tian Teck shares at \$2.60 and that he (Mr Tsoi) would take the profit. She added that it was Mr Tsoi Mow Hung who was to inform the buyer that settlement was to take place through Cheung On. Madam Eva Hui has asserted that she did not know who the buyer was.

Mr David Tong's evidence on WTCG's purchase of the Tian Teck Shares

9.90 Mr David Tong in his first series of examinations explained that WTCG wanted to purchase the Tian Teck shares by saying:

*"It was mainly the idea of one of our directors, Mr Sun, a Taiwanese, because he had always been interested in hotels in Hong Kong. He is now the major shareholder of the Conrad hotel and he holds fifty percent of the shares of that hotel . . . he hoped that the hotel business would form the core of our business."*

9.91 Mr David Tong also said that both he and Mr Jackson Chang approved the transaction. He stated that he did not know anything about a share swap involving the sale of WTCG shares to the Great Eagle Group saying:

*". . . at that period of time my health was very poor so there were very few things which I was personally in charge of. I recall that Mr Sun was recommended the deal to buy Tian Teck shares through a Mr Tsoi. But as for the details concerning the sale of the World Trade Centre Group shares to Great Eagle, I did not know anything about it but I learn about it shortly after they have been sold, as to whether it was a swap arrangement. In my opinion it wasn't such an arrangement . . ."*

9.92 He elaborated on his understanding of the transaction by saying:

*"Mr Sun, at that time, was a well-respected person within the company, because his Pacific Wires Company was a very big company. He had consulted Jackson Chang and myself regarding the purchase of Tian Teck shares because he thought that the Tian Teck shares were sold for a price which was well below its asset value. And, furthermore, if we were able to hold such a large quantity of that shares then we would be able to exercise considerable influence over that company. But it was Jackson Chang who organised the details for the transaction. I knew about the purchase of those Tian Teck shares but as to the reason why Great Eagle took those World Trade Centre Group shares, perhaps it was because after they have received payment for the sale of the Tian Teck shares they wanted to invest the money into the World Trade Centre Group because many people at that time were very optimistic about the prospects of World Trade Centre Group. This is only my personal opinion of what happened, but at that time even Jardine's was applying for a placement of our shares at [S]2.80."*

9.93 In addition Mr David Tong claimed that he did not know that the Tian Teck shares were originally owned by Great Eagle saying again that it was Mr Sun Tao Tsun and one of his Japanese friends who arranged the transaction.

9.94 Subsequently in his second round of examinations Mr David Tong was told by me that Mr Sun Tao Tsun denied he had advocated proceeding with this transaction. Mr David Tong responded:

*"I did not participate directly in the transaction itself. Mr Sun wanted to buy these shares because he owned the Conrad Hotel and he was very keen. After he had asked me about the possible sale I referred the matter to Jackson Chang because he was the Managing Director at the time. They then proceeded to sort out everything and I wasn't involved in any way after that."*



- 9.95 Mr David Tong claimed that Mr Sun Tao Tsun was actively involved in the management of WTCG at this time, adding that he himself was not involved until 1992.
- 9.96 Mr David Tong said he thought that stock transactions generally were handled by Mr Jackson Chang. He said that, after considering the evidence presented to him concerning this transaction, he thought Mr David Chiu and Mr George Tan were involved.

Sale by Spinus of 145,000,000 Tian Teck shares to WTCG - 9 August 1990

- 9.97 According to Mr Lau Cheung Man, the Deputy Manager of Cheung On, Madam Eva Hui of Spinus telephoned Cheung On at about 11.00 am on 9 August 1990. She apparently stated that Humphreys Estate (Strawberry Houses) Limited ("HESH"), a subsidiary of WTCG, would buy the 145,000,000 Tian Teck shares at \$2.60 each. Mr Sun Tao Tsun was to be contacted on telephone number 8481668 to confirm the sale. The telephone number provided to Cheung On was that of WTCG in Hong Kong. Mr Sun Tao Tsun resides in Taiwan.
- 9.98 I have found two "Bought Notes" which cover the purchase by HESH of the 145,000,000 Tian Teck shares. Both show the consideration as \$379,280,850, but one is dated 8 August 1990, for settlement 9 August 1990; the other is dated 9 August 1990 for settlement 10 August 1990. Both are shown at Appendix 58.
- 9.99 The Bought Note dated 8 August 1990 has a Bond Corporation International Ltd [WTCG] chop containing payment authorization and payment details. Payment was authorised by Mr Jackson Chang. This Bought Note contains the words "*Incorrect. To be replaced*" with an arrow pointing to the words "*Humphreys Estate (Strawberry Houses) Ltd.*"

- 9.100 Mr Patrick Lau, the WTCG Financial Controller at this time, told me that it was their policy to book all long term investments of shares into a separate shelf company subsidiary, and that he had asked for the shares to be rebooked. However this was not done. He stated that he remembered the second "*Bought Note*" but had not noticed that it was dated 9 August 1990.
- 9.101 Mr Lau Cheung Man expressed surprise when shown the two HESH Bought Notes. In relation to the Bought Note dated 8 August 1990, he stated that he could not recognise the initial next to the Cheung On chop and noted that the Bought Note:
- "could not be issued by Cheung On because the transaction levy and brokerage were put in full figures. Normally only percentages would be typed in the boxes".*
- 9.102 It is evident from Cheung On's records that on 9 August 1990, WTCG paid \$379,280,850 for the 145,000,000 Tian Teck shares. Messrs Jackson Chang and Patrick Lau signed the cheque. Special clearance was requested and the funds cleared at 12.26 pm on the same day.
- 9.103 Cheung On then arranged for Wing Hang Bank to draw a cashier's order in favour of Chintung. The cashier's order was for an amount of \$324,226,490.00. This cashier's order was necessary to obtain delivery of the WTCG share certificates from Chintung, and was credited to Grand Ocean's margin account by Chintung.
- 9.104 Mr Thomas Mak, the then Senior Settlements Manager at Chintung, has advised me that he arranged with a Mr Alfred Wong of Tomson Pacific for the latter to collect the share certificates on behalf of Grand Ocean.
- 9.105 The share certificates were apparently delivered to Cheung On who then delivered them to Great Eagle. Cheung On did not keep any record of delivery of the WTCG shares.

- 9.106 According to Mr Lau Cheung Man, Great Eagle delivered the Tian Teck shares to Cheung On at around 3 pm on 9 August 1990. The WTCG cheque was cleared by 12.26 pm that day but WTCG did not receive delivery of these shares until 13 August 1990.
- 9.107 There are two important issues arising from this. Firstly that WTCG provided the funds which allowed Cheung On to finance the series of transactions. Notably Spinus did not provide any funding, and if, as represented to me, the WTCG purchase was only affected on 9 August 1990, then WTCG paid the consideration one day earlier than required. Secondly by doing so before delivery of the shares was effected, WTCG took the risk that the broker may not complete the transaction. WTCG pointed out in a submission to me that such risk is mitigated by the Stock Exchange indemnity fund provisions and whilst they may well be correct, I do not accept that such reliance is prudent business practice given the sums involved.
- 9.108 The WTCG cheque for \$379,280,850 was funded by the maturity of an international deposit of \$388,665,000 on 9 August 1990.
- 9.109 This deposit was called by way of a letter dated 9 August 1990 signed by Mr Jackson Chang and Mr Patrick Lau. This letter referred to a telephone instruction from Mr Patrick Lau to Hongkong Bank on the morning of 9 August 1990 to arrange to have the funds which were held on overnight deposit available on 9 August. A copy of the letter received by the Hongkong Bank shows that it was received at 10.53am on 9 August 1990 (Appendix 59).
- 9.110 At a meeting of the Board of Directors of WTCG on 15 August 1990 at which Mr David Tong and Mr Jackson Chang were present and Mr K H Yeung and Mr Mico Chung were in attendance, securities trading for the period 17 July 1990 to 9 August 1990 was ratified. The total value of securities purchased over this time was \$770,858,131 including the Tian Teck shares. A copy of those minutes are enclosed as Appendix 55.

9.111 Mr David Tong's submission stated that Mr Mico Chung had tabled a report on WTCG's investment in Tian Teck at the board meeting of 13 August 1990. A copy of the report is shown at Appendix 60. It states that Tian Teck share price was substantially undervalued and that over time he expected the share price to be in the region of \$4.50. According to Mr David Tong he did not query the price of \$2.60 per share paid by WTCG for this reason.

The profit of Spinus transferred to Hauxton

9.112 Spinus made a gross profit of \$50,750,000 on the sale of the Tian Teck shares to HESH; a net profit of \$46,495,337.50 after brokerage and other costs.

9.113 However on 9 August 1990, Cheung On drew a cheque in favour of Hauxton against the account of Spinus for an amount of \$50,400,000. This left the account of Spinus, overdrawn to the extent of \$3,904,662.50.

9.114 In a submission to me, Mr Tam Chan Kai and Mr Lau Cheung Man stated that this overpayment was the result of a miscalculation on the part of Cheung On, adding that once the mistake was discovered, Cheung On pressed the client for a refund.

9.115 According to Madam Eva Hui, after the transaction:

*"Cheung On told me that there is no need for Mr Tsoi [Mr Tsoi Mow Hung] to remit the money to settle, so there was a cheque and Cheung On asked me to whom should the cheque be addressed.*

*Mr Tsoi said that the cheque could be addressed to Hauxton.*

*Mr Tsoi had told me on one occasion that he intended to use this money to speculate on stocks in Taiwan . . . He indicated that the money after he has made a profit he would use it to speculate in stocks in Taiwan.*

*On the very next day Mr Tsoi told me that the stock market in Taiwan had collapsed and therefore he changed his mind and was not going to speculate on Taiwanese stocks any more and therefore the money would be sent back to Hong Kong. It would be deposited into the Spinus account. "*

9.116 My enquiries have revealed that the stock market index for Taiwanese shares was falling before the transfer of the \$50,400,000 by Cheung On to Hauxton, as the table below illustrates:

August 1990	Index	Event
Wednesday, 1st	5771.28	
Thursday, 2nd	5450.42	
Friday, 3rd	5128.73	
Monday, 6th	5008.21	
Tuesday, 7th	4668.24	
Wednesday, 8th	4534.56	
Thursday, 9th	4232.21	\$50,400,000 deposited into Hauxton's Bank Account by Cheung On
Friday, 10th	4094.78	\$46,600,000 withdrawn from Hauxton's Bank Account and paid to Spinus
Monday, 13th	3884.89	
Tuesday, 14th	4038.73	

9.117 Mr Tsoi Mow Hung's evidence is inconsistent with that given by Madam Eva Hui in that in a letter to me he stated:

*"I requested Cheung On to remit part of my money to Taiwan through Miss Chiang Pei Ling's account (Hauxton), and pay balance to Miss Eva Hui's Account (Spinus). He [contact at Cheung On] misunderstood me and by mistake remit all to (Hauxton) account. Cheung On even overpaid some money to (Hauxton) account. Finally, (Hauxton) had fully repaid my money through (Spinus) account. I knew that (Hauxton) had refunded the overpaid sum to Cheung On."*

- 9.118 A voucher issued by Cheung On and dated 9 August 1990 showed a withdrawal from Spinus's account of \$50,400,000. The voucher also stated that a cashier's order would be drawn by Wing Hang Bank.
- 9.119 This was deposited into Hauxton's account at First Pacific Bank on 10 August 1990.
- 9.120 The reason for the discrepancy between the amount of \$50,400,000 paid to Hauxton and the \$46,495,337.50 net profit realised by Spinus has not been satisfactorily explained, but is discussed later in this chapter.
- 9.121 In conflict with the evidence of Mr Tsoi Mow Hung, Madam Hsu Jye said that on 10 August 1990, she received a telephone call from Madam Chiang Pei Ling, a director of Hauxton, who asked her to check the Hauxton bank account to see whether the \$50,400,000 had been deposited.
- 9.122 Two of the three directors of Hauxton had resolved to open a bank account at First Pacific Bank Limited ("First Pacific Bank") on 17 July 1990 and nominated Madam Hsu Jye to operate the account.
- 9.123 Hauxton's account had been opened on 17 July 1990 by Madam Hsu Jye. The first deposit was made on 2 August 1990 by a cheque for \$3,000 drawn on David Tong Company. The bank account was only ever operated for the Tian Teck transactions.

- 9.124 After confirming that the \$50,400,000 had been deposited, Madam Chiang Pei Ling allegedly asked Madam Hsu Jye to draw a cheque for \$46,600,000 in favour of Spinus, leaving a balance of \$3,800,000.
- 9.125 Mr David Tong said he did not know that the profit of \$50,400,000 was paid to Hauxton.

Disbursement of the \$46,600,000 by Spinus

- 9.126 It is significant that Spinus also resolved to open its bank account with First Pacific Bank on 2 August 1990, although Madam Eva Hui and Mr David Chiu claimed it was opened to facilitate receipt of a commission from the World Trade Centre transaction (Chapter 7).
- 9.127 Madam Hsu Jye could not recall to whom the cheque from Hauxton for \$46,600,000 was made payable to, or where it was delivered, although she did acknowledge that she signed the cheque on behalf of Hauxton.
- 9.128 I requested production of the books of account of Spinus, shortly after my appointment was made on 23 October 1992. At that time, a schedule of receipts and payments was all that was produced to me ("the first cashbook") (Appendix 61). There were no other formal books and records other than some supporting vouchers. Madam Eva Hui subsequently provided me with another schedule which was more detailed and which was prima facie consistent with the evidence given in her examination ("the second cashbook") (Appendix 62). The two cashbooks are discussed further in Chapter 23.
- 9.129 The receipt of the Hauxton cheque for \$46,600,000 was described in the first cashbook as "*Commission Rec*" and in the second as "*profit on sharetrading*".
- 9.130 The second cashbook showed the following disbursements were made by Spinus from the \$46,600,000 receipt:

	<u>₹</u>
Sharetrading (various)	7,483,349.64
Remittance M\$1,462,500	4,221,213.75
Drawings	<u>31,066,666.00</u>
	<u>\$42,771,229.39</u>

- 9.131 I was told my Madam Eva Hui that the sharetrading was conducted on behalf of Mr Tsoi Mow Hung.
- 9.132 This sharetrading is discussed in Chapter 23, but in essence, there is little evidence to confirm it was carried out for Mr Tsoi Mow Hung's benefit.
- 9.133 The remittance of \$4,221,213.75 was in fact a payment of the Hong Kong dollar equivalent of \$1,462,500 Malaysian dollars to Shearn Delamore Co in respect of a Malaysian property (Appendix 63). Madam Eva Hui stated that Mr Tsoi Mow Hung wished to purchase a Malaysian property, and that the remittance was made on his instructions. The remittance request was signed by Mr Edward Lam and Madam Eva Hui. My title search of the property shows that it is held by a Malaysian company and makes no reference to Mr Tsoi Mow Hung (Appendix 64). It is not clear if Mr Tsoi Mow Hung has any interest in this company. I have received no evidence that these funds were remitted for the benefit of Mr Tsoi Mow Hung.
- 9.134 The payment of \$31,066,666 is exactly two thirds of \$46,600,000. The cheque dated 11 August 1990 was signed by Mr David Chiu on behalf of Spinus and made payable to Mr Roy Loffill (Appendix 65). It was banked to Mr Roy Loffill's account at the Wing Hang Bank.
- 9.135 Madam Eva Hui has explained the payment of \$31,066,666 to Mr Roy Loffill by stating:



*"At first Mr Tsoi [Mow Hung] wanted to make a cash withdrawal of \$31 million but First Pacific [Bank] didn't have that much cash. I just recall at the time that David Chiu had a money exchange transaction with Roy Loffill. That is why I told Mr Tsoi he could go to Mr Loffill and exchange cash. "*

9.136 Mr Roy Loffill was a director and a consultant for a company called Joint Sincerity Limited which occupied premises on the 13th floor of the Hong Kong and Macau Building. He is discussed further in Chapter 10.

9.137 Mr David Chiu described the role of Mr Roy Loffill as a "money changer":

*"If you go to a bank to get a cash cheque for five, ten million, it takes, even Hong Kong Bank it takes maybe a week or longer, but Mr Roy Loffill had given me the impression that you can always change money with him quickly. You know, you give him a cheque of ten million, he can produce that in cash fairly quickly, one or two days. "*

9.138 Mr David Chiu said he had never met Mr Roy Loffill but knew of him through Mr George Tan. He said that he had used Mr Roy Loffill's services before the World Trade Centre transaction (Chapter 8):

*"For changing money and you know one time one of my friends want some cash, you know two or three million, or four million, I can't remember the amount, a long time ago, and then I got some of my secretaries to go to the bank, they say it takes about five days and my friend is from overseas and I said well - so I think of him, and then I call George [Tan] and give him a cheque and he give me the cash. "*

9.139 When asked how much Mr Roy Loffill charges for his services he said:

*"Depends on your knowledge. I mean sometimes, depends really I mean, depends on Danny [Mr Dennis Chung] or George Tan. Can be anything between one to five percent for the money exchange. That is my experience, I don't know about other companies."*

9.140 In Chapter 8 Mr David Chiu stated that he had paid Mr George Tan's share of the commission relating to the World Trade Centre transaction to Mr Roy Loffill at the suggestion of Mr George Tan.

9.141 Mr George Tan has denied this.

9.142 Mr Roy Loffill has denied receiving the cheque for \$31,066,666 and any knowledge of Madam Eva Hui.

9.143 According to Mr Dennis Chung, the other signatory for Mr Roy Loffill's account, the \$31,066,666 was placed on deposit in Mr Roy Loffill's name for two days. This allegedly was done on the instruction of Mr Tan Kiem Tiau, an Indonesian, who allegedly used Mr Roy Loffill as his nominee in Hong Kong. Mr Tan Kiem Tiau is discussed further in Chapter 10. I have been told that he died during 1992.

9.144 My own view is, after considering the evidence, that it is likely that Mr George Tan controls Mr Roy Loffill's bank account at the Wing Hang Bank, which was operated under his direction by Mr Dennis Chung.

9.145 The \$31,066,666 deposit with accrued interest was transferred to Mr Roy Loffill's current account on 13 August 1990 and mixed with other monies. Two cheques were then drawn: one for \$30,000,000 payable to Cheung On, and the other for \$1,000,000 which was cashed. It is probable that these two cheques were drawn from the amount of \$31,066,666 received from Spinus as Mr Dennis Chung did not claim that the funds were held for longer than two days.

- 9.146 I have examined the other withdrawals from Mr Roy Loffill's current account, and have not been able to identify any payments which could have been made to Mr Tsoi Mow Hung's alleged Japanese partner.
- 9.147 Mr Dennis Chung said both transactions were carried out following the telephone instruction of Mr Tan Kiem Tiau. Mr Dennis Chung admitted to cashing the cheque for \$1,000,000 but he cannot remember to whom he gave the cash nor was a receipt issued. He told me that Mr Tan Kiem Tiau often sent two or three unknown men to collect cash on his behalf.
- 9.148 The \$30,000,000 cheque payable to Cheung On, was applied against one of its accounts known as the *"12/F Cash Client"* on 15 August 1990.
- 9.149 Mr Tam Cham Kai through his solicitor has advised me that the \$30,000,000 was *"a loan obtained by Cheung On & Co"*.
- 9.150 The 12/F cash client account is discussed in detail in Chapter 10. The commission of \$17,200,000 from the purchase of World Trade Centre paid to Cheung On Fat, discussed in Chapter 8, was ultimately credited on 16 August 1990 against the same account. As was, I believe, a further amount of \$22,933,332 from the commission in respect of the World Trade Centre transaction which was paid to Spinus, then Mr Roy Loffill, and then credited against the 12/F Cash Client account at Cheung On.
- 9.151 Mr But Yuk Yiu, an employee of Cheung On has given evidence, that:

*"12/F is a code which includes people in this building. This building means the Hong Kong & Macau Building."*

*"12/F could include people on 12th Floor of this building, but it could also include others on 8th Floor and 10th Floor."*

- 9.152 Prior to the receipt of \$30,000,000 from Roy Loffill the 12/F Cash Client account balance was \$72,088,779.11 in debit, however on the same day, three further deposits totalling \$42,161,092.84 were also credited. These included a cheque for \$7,161,092.84 from the account of Mr Ng Kin Wah, and a further \$20,000,000 from Mr Roy Loffill.
- 9.153 Mr Ng Kin Wah was employed by Widelines Limited ("Widelines") at that time, a company located on the 12th Floor of the Hong Kong & Macau Building, whose current directors are all relatives of Mr George Tan. This company is also discussed in Chapter 10.
- 9.154 Also on 15th August 1990, 21 debit entries were made against the 12/F Cash Client account; 13 cheques were made out to stockbrokers, 7 debit transfers to the accounts of individuals on Cheung On's ledger and one cheque to Eagleco Enterprises. The schedule below shows these debits and in the case of cheques to brokers, a description of the shares purchased is shown where this information has been provided:

Name	Amount \$	Beneficiary	Shares Purchased
On Wah	4,546,898	Mr S K Koo	WTCG
Agincourt	54,330	Mr Ng Kin Wah	WTCG Tian Teck
Ban Hin	4,155,243	Madam Loo Kwee Huay	WTCG
Smith New Court	444,014	Mr Tan Yakobus Suryopranto	Tian Teck
Ban Hin	218,328	Madam Loo Kwee Huay	WTCG
Karl Thomson	716,812	Mr David Cheung	WTCG
The Best Securities Co	30,686	No response	No response
Eagleco Enterprises	600,000	Reason for payment not known	
Triple A & Co	70,928	Mr Ng Kin Wah	WTCG
Koo & Co	2,276,190	Mr A C Tang	WTCG
Koo & Co	5,593,638	Mr S T Yu	WTCG
Koo & Co	3,093,604	Mr Chan Tai Tak	Tian Teck
Wader	4,351,674	Mr Roy Loffill	WTCG
Wader	24,901	Mr Roy Loffill	WTCG
Mr Hsieh	1,207,260	Mr Hsieh	WTCG
Mr Lok	724,356	Mr Lok	WTCG
Mr Ng	1,158,970	Mr Ng	WTCG
Mr Wong	983,516	Mr Wong	WTCG
Mr Lim (Leiu) S W	709,265	Mr Lim (Leiu) S W	WTCG
Mr Chan	1,315,663	Mr Chan	WTCG
Mr Chan Kyhe Wah	61,874	Mr Chan Kyhe Wah	Tian Teck
TOTAL	\$32,338,150		

- 9.155 After the deposits were credited, and the entries debited, the balance on the 12/F Cash Client account was \$32,765,834.56 debit. This means that the holders of this account owed Cheung On \$32,765,834.56.
- 9.156 It is of note that Mr David Chiu and Madam Eva Hui both thought Mr Roy Loffill was a "*money changer*". There was no mention of Mr Tan Kiem Tiau in their evidence.

The account of Spinus at Cheung On

- 9.157 The ledger account in the books of Cheung On for Spinus, shows that after the payment of \$50,400,000 to Hauxton on 9 August 1990, it was overdrawn by \$3,904,662.50 (Appendix 66).
- 9.158 A credit of \$1,758,125 was raised against the account on 31 August 1990. This was reversed on 4 September 1990 and is considered below under the heading of Brokerage commissions received by Cheung On. Also on 4 September 1990 was an entry showing "paid in cash" \$3,904,662.50. Cheung On have recorded in their books two deposits on this day which total \$16,500,000, of which this \$3,904,665.50 is one and the other is for \$12,585,337.50. The first is attributed to "*Spinus*" and the other to "*12/F*".
- 9.159 Cheung On have not retained any record of who paid the \$16,500,000 into this account, however there are five deposits slips recording cash receipts to Cheung On at the Wing Hang Bank on 4 September 1990 (Appendix 67). As can be seen from these slips they were all deposited at Wing Hang Bank between 2:04:13 pm and 2:05:56 pm on 4 September 1990.
- 9.160 Examination of Mr Roy Loffill's bank account at the Wing Hang Bank shows that two cheques for \$8,000,000 and \$8,500,000 were drawn and cleared on 4 September 1990 payable to "*cash*". Mr Roy Loffill signed the cheques, which were endorsed by Mr Dennis Chung. These cheques were cashed at 2:03:32 pm and 2:03:52 pm by the same teller who twenty one seconds later, accepted the first of five deposits to the Cheung On account.

- 9.161 The deposit attributed to the account of Spinus at Cheung On does not come from Spinus's bank account. "12/F" refers to the 12/F Cash Client Account maintained by Cheung On and is discussed in Chapter 10.
- 9.162 It would therefore appear that Mr Roy Loffill reimbursed the account of Spinus at Cheung On and that this reimbursement is somehow connected to dealings through the 12/F Cash Client account.
- 9.163 This directly contradicts Mr Tsoi Mow Hung's evidence that Hauxton reimbursed Cheung On.

Disbursement of \$3,800,000 from Hauxton's bank account

- 9.164 Following the transfer of \$46,600,000 to Spinus, Hauxton retained a balance of \$3,800,000. On 13 August 1990, two cheques for \$2,500,000 and \$1,300,000 were drawn payable to David Tong Company. The \$2,500,000 cheque was deposited to David Tong Company's account at the Ka Wah Bank Limited ("Ka Wah Bank") and \$1,300,000 to its American Express Bank Limited ("Amex Bank") account. Mr David Tong was unable to offer any explanation as to why these payments were made from Hauxton saying:

*"I can say for sure that I was not involved at all but I still, even up to now, I still do not understand why."*

- 9.165 In a subsequent examination Mr David Tong stated that Madam Hsu Jye would be the most appropriate person to discuss this transaction with.
- 9.166 David Tong Company is a Hong Kong company owned by Mr David Tong and Madam Hsu Feng. Madam Hsu Jye, along with Madam Hsu Feng, is authorised to sign solely on David Tong Company's bank accounts.

9.167 Madam Hsu Jye explained these payments by stating that David Tong Company had lent \$3,800,000 to Madam Chiang Pei Ling (a director of Hauxton) and that these were repayments of that loan.

9.168 At a subsequent examination, Madam Hsu Jye presented me with a copy of a cheque drawn on David Tong Company made payable to Mr Tung Ming Hsun for \$3,787,351.13 dated 2 July 1990 (Appendix 68). Madam Hsu Jye said that this was in fact the loan mentioned above. According to Madam Hsu Jye, the repayment figure had been calculated by adding the cost of acquiring Hauxton (which was also paid for by David Tong Company) and the interest accrued to the loan. Madam Hsu Jye added that the inconsistency in her evidence was because Madam Chiang Pei Ling and Mr Tung Ming Hsun had a joint bank account and that:

*"Chiang Pei Ling told us at the time that we should credit this cheque into that account".*

9.169 Madam Hsu Jye said she was not aware of any interest held by Mr Tung Ming Hsun in Hauxton.

9.170 I have examined the accounts of David Tong Company in some detail (see Chapter 25) and have located many payments to and from Mr Tung Ming Hsun. None of these have been satisfactorily explained by Madam Hsu Jye other than to say they were *"cash swaps"*. No documentary evidence has been produced to support this contention. I have not been able to locate Mr Tung Ming Hsun or Madam Chiang Pei Ling to verify Madam Hsu Jye's evidence.

9.171 I have examined the Amex Bank and Ka Wah Bank David Tong Company accounts into which the \$2,500,000 and the \$1,300,000 were banked. In both cases there is no specific purpose identifiable for which the funds were used.



Madam Hsu Jye's submission

9.172 Solicitors for Madam Hsu Jye made the following submission on her behalf relating to this \$3,800,000.

*"Madam Hsu Jye's recollection is that a loan of \$3.78 million was advanced to Madam Chiang Pei Ling from David Tong Company as a temporary loan. This loan was arranged between Madam Chiang and Madam Hsu Jye with the prior approval of Mrs Tong because the money belonged to Mr and Mrs Tong. The loan proceeds were deposited into the joint account of Madam Chiang and Mr Tung Ming Hsun. In about early August 1990 Madam Hsu Jye was told by Madam Chiang that she expected to receive a remittance to Hauxton's account, upon which Madam Hsu Jye was the authorised signatory, and Madam Hsu Jye was told by her to check the account balance and to use part of the monies standing to the credit of such account to repay the earlier loan of \$3.78 million, which she did. Madam Hsu Jye was subsequently instructed by Madam Chiang to remit the balance in Hauxton's account to Spinus. Madam Hsu Jye has no knowledge of any mistake or overpayment on the part of Cheung On or of any arrangements between Madam Eva Hui or Mr Tsui Mow Hung and Madam Chiang regarding the use of the money."*

Brokerage commissions charged by Cheung On

9.173 Cheung On earned the following brokerage fees from the various trades:

August 1990	Transaction	Client	Brokerage \$
8	Sold 145,000,000 Tian Teck	Ditton (Great Eagle)	815,625
8	Bought 145,000,000 Tian Teck	Spinus	815,625
8 or 9	Sold 145,000,000 Tian Teck	Spinus	942,500
8 or 9	Bought 145,000,000 Tian Teck	HESH (WTCTG)	942,500
8	Sold 116,500,000 WTCTG	Hauxton	815,500
8	Bought 116,500,000 WTCTG	Hung Cheong (Great Eagle)	815,500
		TOTAL	\$5,147,250

9.174 However, my investigation has shown that four of the six commissions have been "rebated" to other parties. As there are three separate Bought and Sold transactions, with the commission identical for both the Bought and Sold contracts, it is difficult to determine which commissions have been rebated, but I have set out below those most likely from my knowledge of the transactions.

9.175 My allocation of the commissions to these rebates is influenced by my belief that Great Eagle was dealing at arm's length with Spinus and Hauxton, and was therefore not likely to receive a rebate of the commission paid.

Rebate of the Spinus Commission

9.176 As mentioned above the account of Spinus at Cheung On remained overdrawn to the extent of \$3,904,662.50 following the profit of \$46,495,337.50 on the sale of the Tian Teck shares and the withdrawals of \$50,400,000 from Spinus's account at Cheung On.

9.177 On 31 August 1990, the "*Prop A/C*" [Proprietorship Account] in the books of Cheung On was debited \$1,758,125 with the narration "*Funds payable to 12/F*" (Appendix 69). The account of Spinus was credited for the same amount with the narration "*deposit*". The transfer was by journal (Appendix 70).

9.178 The above two entries were reversed on 4 September 1990, and a new journal prepared and posted (Appendix 71).

9.179 Mr Lau Cheung Man has stated that the entry for \$1,758,125 had nothing to do with Spinus and hence the reversal.

9.180 However the amount was exactly the amount of commission charged to Spinus on the Tian Teck transaction:

	\$
Bought 145,000,000 Tian Teck	815,625
Sold 145,000,000 Tian Teck	<u>942,500</u>
	<u>\$1,758,125</u>

9.181 The new journal debited the Prop A/C with \$1,758,125, and another unidentifiable account with \$5,593.75 ("*deposit WHB #124017*"), and credited two accounts, Wing Hang Bank ("*cheque . . . to COF*" [*Cheung On Fat*]) for \$1,500,000, and Reserved for Taxation ("*1990/1991*") with \$263,718.75. A copy of the journal is shown at Appendix 72.

9.182 I also note that Cheung On Fat drew a cheque on 4 September 1990 for an amount of \$1,494,406.25 payable to "*Cash*" (Appendix 73). The amount of \$1,500,000 above less the \$5,593.75, also equals \$1,494,406.25.

9.183 The credit of \$263,718.75 above was posted to the credit of the "*Prop A/C Tax*" account in the books of Cheung On.

9.184 It is apparent that \$263,718.75 is exactly 15% of \$1,758,125. 15% was the rate of income tax applicable to individuals during 1990.

9.185 The figures above appear to be derived from:

Commissions received from Spinus:	\$
- Purchase of Tian Teck shares	815,625.00
- Sale of Tian Teck shares	<u>942,500.00</u>
Sub total	1,758,125.00
Deduct provision for income tax at 15%	<u>263,718.75</u>
Amount of Cheung On Fat "cash" cheque	<u>\$1,494,406.25</u>

Rebate of the HESH and Hauxton Commissions

9.186 Another cheque payment of \$1,758,000 has been identified as being made by Cheung On at the time of the Tian Teck dealings.

9.187 On 9 August 1990, a cheque for \$1,758,000 (with the payee left blank) was drawn by Cheung On and debited to the "Prop Rebate" [Proprietorship Rebate] account in their books.

9.188 According to a note prepared by Mr But Yuk Yiu of Cheung On the cheque without the payee section completed for \$1,758,000 was delivered to Mardela Limited ("Mardela") on the 12th floor of the Hongkong and Macau Building. Mardela is a subsidiary of Widelines. Mardela's directors are Mr David Kao, Mr Peter Kao and Madam Vicki Tan. Both Mr David Kao and Mr Peter Kao are brothers-in-law of Mr George Tan and Madam Vicki Tan is his daughter.

9.189 The amount of \$1,758,000 is exactly the sum of two of the commissions charged by Cheung On:

<u>Transaction</u>	<u>Client</u>	<u>Amount</u>
		\$
Bought 145,000,000 Tian Teck	HESH	942,500
Sold 116,500,000 WTCG	Hauxton	<u>815,500</u>
TOTAL		<u>\$1,758,000</u>

- 9.190 As discussed above, it is possible that the rebate made covered one or both of the other sides of these two transactions; the sale by Spinus of the Tian Teck shares and the purchase by Hung Cheong of the WTCG shares.
- 9.191 The narration on the entry to the Proprietorship Rebate Account was "*Special Rebate B/ 12/F*".
- 9.192 Mr But Yuk Yiu has stated that the "*B/*" is "*a slip of the pen*" and the narration should read "*Special Rebate 12/F*". "*12/F*" refers to the 12/F Cash Client account conducted by Cheung On.
- 9.193 The amount of \$1,758,000 debited to the Proprietorship Rebate account on 9 August 1990 was transferred to the Service Charges account on 29 August 1990, together with two other amounts, both connected with the 12/F Cash Client account (Appendix 74).
- 9.194 Whereas the first entry for the \$1,758,000 to the Proprietorship Rebate account was dated 9 August 1990, the narration for the transfer out of that account read "*E/R [Entry Reversed] of 8/8*". Mr But Yuk Yiu has told me that this date was wrong and that it should be "*9/8*".
- 9.195 It would appear that Mardela was rebated the commission paid by HESH and Hauxton. This evidence is particularly anomalous as Mardela, or its directors, have no declared role in the Tian Teck acquisition.

- 9.196 Mr David Kao has stated that he believes that Mardela received this money from Mr Tan Cham Kai, the proprietor of Cheung On, in relation to commission on a property transaction. Mr David Kao told me that he thought he introduced Mr Tam Cham Kai to a property deal and later Mr Tam Cham Kai paid him a commission. He stated that as he did not know which property Mr Tam Cham Kai was actually successful with he was unable to tell me which property the commission related to.
- 9.197 I do not accept Mr David Kao's evidence in this respect and the documentary evidence from Cheung On makes no mention of a property commission.
- 9.198 Mr David Kao produced a copy of the cheque from Cheung On which had Mardela's name inserted as payee. The handwriting for the payee and the amount appear to be different. He said that he did not insert Mardela's name. A copy of the cheque is at Appendix 75.

#### Money paid to Keen Investments Limited

- 9.199 Great Eagle have told me that Mr Eddie Lo was offered and was paid a commission by them for his role in assisting them in the disposal of their 145,000,000 Tian Teck shares.
- 9.200 By way of a debit note dated 9 August 1990, Keen Investments Limited ("Keen Investments"), a Liberian company allegedly controlled by Madam Stella Hui, charged a commission of 1% of the total sale price achieved by Ditton Investments to that company (Appendix 76). The commission was \$3,262,500.
- 9.201 Mr Eddie Lo claims that he did not receive any other commissions in relation to the transactions which are covered by this chapter and Madam Hsu Jye has said that he was not entitled to any commission from Grand Ocean.

- 9.202 However, Spinus's records show that an amount of \$4,590,000 was paid to Chintung on 23 August 1990. These funds were credited against an account in the name of Keen Investments.
- 9.203 In the Spinus second cashbook the entry showing this payment is shown in the column headed "*at the request of [Tsoi] Mow Hung*" again indicating that it relates to the Tian Teck transaction.
- 9.204 Mr Eddie Lo through his solicitor has provided the following explanation which he apparently obtained from Madam Stella Hui, a director of Keen Investment:

*"Keen Investment Limited was at that time the owner of . . . 1.7 million Tian Teck Land Limited shares. At the request of Ms. Eva Hui, Ms. Stella Hui on behalf of Keen Investment Limited agreed to sell the said 1.7 million Tian Teck Land Limited shares to Spinus Limited at a price of HK\$4,590,000.00. Spinus Limited paid the purchase price to Keen Investment Limited by issuing a cheque in favour of Chintung Finance Limited and the said cheque was then credited to the account of Keen Investment Limited with Chintung Finance Limited.*

*The purchase price of the said 1.7 million Tian Teck Land Limited shares was agreed at HK\$2.70 per share and thereby giving a total sum of HK\$4,590,000.00.*

*The said sum of HK\$4,590,000.00 is not related to the Sale of 145 million Tian Teck Land Limited shares by Spinus Limited.*

*Keen Investment Limited then instructed Chintung Finance Limited to effect the transfer of the 1.7 million Tian Teck Land Limited shares to Spinus Limited."*

9.205 In reply to my request for further information in respect of the shares sold, Mr Eddie Lo's solicitor advised:

*"Keen Investment are also unable to find any document relating to release of shares to Spinus Limited. Keen Investment Limited specifically instructed Chitung Finance Limited to release the shares to Spinus Limited upon receipt of the cheque for HK\$4.59 million.*

*We are further instructed that the said 1.7 million Tian Teck Land Limited shares were part of 10 million Tian Teck shares acquired by Keen Investment Limited from Great Eagle Co Limited in early August 1990 at the price of \$2.25 per share. It was then agreed that payment and delivery of shares should be made at any time within one month. Keen Investment Limited do not have in its possession any documentation relating to the acquisition."*

9.206 Dr K S Lo has confirmed that Mr Eddie Lo had asked that Great Eagle sell 10,000,000 Tian Teck shares to him at \$2.25 and asked that payment and delivery be made 2 weeks later.

#### Pattern of Share Trading

9.207 Many of the same people who bought WTCG shares prior to and subsequent to the placement (as set out in Chapter 10), also bought Tian Teck shares prior to and subsequent to this transaction. In addition companies associated with Tomson Pacific and WTCG were each separately buying and selling small parcels of shares in Tian Teck immediately following the acquisition of the 145,000,000 shares.

9.208 The Hang Seng Index fell from a high of 3559.89 on 23 July 1990 to below 3100 on 8 August 1990. Tian Teck share prices however held steady at between \$2.45 and \$2.65 during this period.



- 9.209 In July 1990, the average daily volume for Tian Teck was 128,644 shares with 8,000 shares being traded on the least active day.
- 9.210 During August 1990, trading of 251,186,282 shares was reported. After deduction of the 145,000,000 shares sold by Spinus to HESH, a balance of 106,186,282 remains, a daily volume of 4,826,649 shares.
- 9.211 The volume of trading in Tian Teck was particularly heavy between 3 August and 17 August when the daily volume was 8,530,345 per day (after deduction of the 145,000,000 shares) and the price rose from \$2.45 on 2 August 1990 to \$3.10 on 17 August 1990.
- 9.212 Some of the notable trading in Tian Teck shares was:
- (1) Mr Tan Yakobus Suryopranoto bought 7,750,000 Tian Teck shares between 9 and 13 August 1990 using Smith New Court Far East as broker. According to Smith New Court, Mr Ng Kin Wah placed the orders. At that time Mr Ng Kin Wah was an employee of Widelines and his address was given as 12/F Hong Kong & Macau Building. Mr Ng Kin Wah denied knowing Mr Tan Yakobus Suryopranoto. He was adamant Smith New Court had made a mistake. Mr Ng Kin Wah is discussed in Chapter 10.
  - (2) On 31 July 1990 Mr Ng Kin Wah is also shown by Smith New Court Far East as placing an order to buy 7,032,000 WTCG shares for Mr Tan Yakobus Suryopranoto.
  - (3) Mr Ng Kin Wah is shown as having purchased 450,000 Tian Teck shares on 9 and 10 August 1990 using Sun Hung Kai Investment Services Limited as broker. On these same days Mr Ng Kin Wah also purchased 1,044,000 Tian Teck shares using CEF Securities Limited as broker. This time his address was given as:

*"c/o 10/F HK & Macau Bldg  
156-7 Connaught Road, Central"*

- (4) A further 1,000,000 Tian Teck shares were bought by Mr Ng Kin Wah using Sanborn Securities Co. as broker.
- (5) Madam Wong Man Ling bought 60,000 shares on 13 and 14 August 1990. Her account address is care of Mr Wong Wai. Mr Wong Wai is Mr Jackson Chang's nephew and was at that time an employee of Tomson Pacific and is discussed at Chapter 4. Madam Wong Man Ling is a close friend of Madam Hsu Jye and is discussed in Chapters 4 and 6.
- (6) Mr Chan Tai Tak bought 1,100,000 Tian Teck shares on 9 August 1990 and sold 2,000,000 shares on 10 August 1990 through Koo & Co. It is unclear the source of these additional shares. His address was given as care of the Mandarin Hotel, Hong Kong. In other sharetrading, relating to WTCCG shares, his contact address was that of Widelines, 12/F Hong Kong & Macau Building.
- (7) Mr Chu Kai Ying also traded through Koo & Co. He bought 760,000 Tian Teck shares on 9 August 1990 and sold 3,548,000 on 10 August 1990. Mr Chu Kai Ying's address was also given as care of the Mandarin Hotel, Hong Kong. In other sharetrading, relating to WTCCG shares, his contact address was that of Widelines, 12/F Hong Kong & Macau Building.
- (8) Mr Kao Keng Hua ("Mr David Kao") bought 500,000 shares on 9 August 1990 using Sanborn Securities Co. as broker. Mr David Kao is a director of Widelines and his address is also shown as 12/F Hong Kong & Macau Building. Mr David Kao is related to Mr George Tan and is discussed in Chapter 10.

9.213 The Tomson Pacific Group also traded in Tian Teck shares after the acquisition of 145,000,000 shares by HESH.

9.214 The table below sets out the trading conducted by Evertop Surplus, a subsidiary of Tomson Pacific, Satasia Limited ("Satasia") a subsidiary of WTCG, and HESH.

Date	Company	Bought	Sold
13/8/90	Evertop Surplus	7,650,000	
13/8/90	Satasia		2,300,000
14/8/90	Evertop Surplus	3,300,000	
14/8/90	Satasia		4,000,000
15/8/90	HESH	308,000	
15/8/90	Evertop Surplus	2,620,000	
15/9/90	Satasia		2,000,000
16/8/90	HESH	400,000	
16/9/90	Evertop Surplus	4,250,000	
16/8/90	Satasia		2,000,000
17/8/90	Evertop Surplus	2,200,000	
17/8/90	Satasia		1,800,000
20/8/90	HESH	100,000	
20/8/90	Evertop Surplus	1,150,000	
20/8/90	Satasia		1,000,000
21/8/90	HESH	70,000	
21/8/90	Evertop Surplus	1,700,000	
21/8/90	Satasia		1,100,000
22/8/90	HESH	40,000	
22/8/90	Evertop Surplus	1,010,000	
22/8/90	Satasia		100,000
24/8/90	Evertop Surplus	20,000	4,000,000
		24,818,000	18,300,000

9.215 I have been informed by Mr David Tong and Mr Mico Chung that Mr Jackson Chang was in charge of all share trading within WTCG at this time.

Audit considerations

9.216 Although the transaction was material to WTCG I believe Deloitte would only have been concerned to see that proper authorisation and verification of the purchase price paid for the Tian Teck shares had been obtained.

9.217 Authorisation in the form of a directors' minute and the signing of cheques appears to have taken place and according to Deloitte's workpapers their staff inspected a bought note. Those workpapers do not show which bought note it was.

9.218 I do not believe the auditors could have been expected to uncover the link between Grand Ocean, Hauxton, Spinus and David Tong Company that has been found by me. In particular, the fact that the sale at \$2.25 of the Tian Teck shares by Great Eagle to Spinus was not disclosed to the Stock Exchange by Cheung On would have assisted in shielding this transaction from the auditors.

Mr David Tong's submission

9.219 Solicitors for Mr David Tong made submissions with respect to this transaction, an extract of which is reproduced below:

*"Whilst there may be some confusion as to precisely who introduced the idea of acquiring the [Tian Teck] shares to Mr Sun [Tao Tsun] and Mr Tong, what is clear is that both Mr Sun and Mr Tong approved the purchase of the shares but the details of how the transaction was to be effected were left to Mr Jackson Chang. At that time, as you are aware, Mr Tong had complete trust in Mr Jackson Chang and in his integrity and he, as you appear to accept, was in control of WTCG's shares dealings and Mr Tong had no involvement in the details of such dealings.*

*"Mr Tong's evidence is that he did not know of the earlier purchase of [Tian teck] shares from Great Eagle or the instant profit of \$46 million made by Spinus: nor did he know of the alleged "share swap" for 116,500,000 WTCCG shares, nor of the payment of \$3.8 million to David Tong Co., and his evidence on this subject has not been refuted in any witness to whom you refer, and, we respectfully submit, should be accepted to you. Mr Tong is also quite certain that Mr Sun had no idea of the earlier purchase or the profit made by Spinus, let alone the alleged "share swap". Had Mr Tong or Mr Sun known of these matters, which appear to have been orchestrated by Mr Jackson Chang, they would have stopped the transactions going ahead, - in no way would either of them have agreed to Spinus, or anyone else making such an outrageous profit at the expense of WTCCG."*

## **CONCLUSIONS**

- 9.220 I have concluded that the purchase of 145,000,000 Tian Teck shares by Spinus from Great Eagle's subsidiary Ditton, the imposed sale of 116,500,000 WTCCG shares from Hauxton to Great Eagle's subsidiary Hung Cheong and the subsequent acquisition of 145,000,000 Tian Teck shares by WTCCG through its subsidiary HESH from Spinus were connected transactions and were part of a pre-arranged scheme.
- 9.221 There is no evidence to suggest that either the directors of Great Eagle or of Tian Teck were aware of this scheme and I am not critical of their actions in relation to this transaction.
- 9.222 The evidence given by Madam Eva Hui, Madam Hsu Jye, Mr Tsoi Mow Hung and Mr David Tong in these transactions is that they were three separate unrelated transactions. Mr David Tong (in oral evidence) and Mr Tsoi Mow Hung have asserted that Mr Sun Tao Tsun represented WTCCG in each transaction, however, Mr Sun Tao Tsun has denied knowledge of any of the transactions proceeding further than an alleged telephone discussion with Mr Tsoi Mow Hung. The three allegedly separate transactions were:

1. The acquisition of 145,000,000 Tian Teck shares by Spinus from Hung Cheong;
2. The sale of 145,000,000 Tian Teck share from Spinus to HESH; and
3. The sale of 116,500,000 WTCG shares from Hauxton (or Grand Ocean) to Ditton.

9.223 The evidence that I have received in support of the contention that these transactions were separate is substantially flawed. I summarise below the key issues in the evidence submitted in respect of each transaction and indicate where I believe this evidence is flawed. I then present my arguments in support of my conclusion that the series of transactions was one scheme rather than three separate transactions.

9.224 In assessing the evidence of the various parties relating to the three transactions, there are issues which were critical in determining whether all three transactions are part of a pre-arranged scheme.

9.225 Firstly, whether there was a "*swap*" of shares, and if so, secondly who were the parties to the swap, and thirdly, who arranged the swap and/or directed that Cheung On be used as broker by all parties.

9.226 I give great weight to the evidence of Dr K S Lo. He says, and I accept, that he approached Mr Eddie Lo to sell his Tian Teck shares, and later agreed to accept a deal whereby he would "*swap*" as many of his Tian Teck shares at \$2.25 as would equal the cost of his acquiring 116,500,000 WTCG shares at \$2.80 per share. At the time of the sale, Great Eagle held 165,906,000 Tian Teck shares through Ditton.

9.227 The swap was disclosed in a statement to shareholders issued by Great Eagle on 31 January 1991.

9.228 From the evidence of Dr K S Lo and Mr Eddie Lo, I conclude that it was through Mr Eddie Lo that the Tian Teck shares became available for sale.

- 9.229 Mr Eddie Lo has confirmed that the sale of the Tian Teck shares was part of a swap and has informed me that he was told this by Madam Stella Hui who, Mr Lo claims, had located a "buyer" for the Tian Teck shares who had some WTTCG shares "*which he wanted to sell to Great Eagle*".
- 9.230 From the evidence outlined above, I have concluded that the deal arranged between Mr Eddie Lo and Dr K S Lo was for a swap of Tian Teck and WTTCG shares. It should then follow that the parties to the swap would be the respective owners of these shares, Grand Ocean and Great Eagle/Ditton, unless the swap was arranged by a third party who took the opportunity of putting two separate transactions together as a "*swap*".
- 9.231 I am only aware of two people from Fulldiamond who were involved in this transaction, Madam Stella Hui and Mr Eddie Lo. After considering the evidence given to me in respect of the operations of Fulldiamond, Madam Stella Hui, appears to have incomplete knowledge about the transaction. Accordingly, I have deduced from this and from Mr Eddie Lo's central role in respect of all of the transactions covered by my report in which Fulldiamond has played a role, that Mr Eddie Lo had a more extensive role than he has admitted.
- 9.232 Mr Eddie Lo, Madam Eva Hui and Madam Hsu Jye all deny arranging the swap.
- 9.233 Had Mr Eddie Lo arranged the swap I cannot see why he would wish to deny doing so. From the evidence I have received, Mr Eddie Lo is a skilled deal maker. Arranging such a deal would be consistent with his acknowledged abilities as a deal maker. However, if Mr Eddie Lo had arranged the swap and brought the two parties together, I believe he would have insisted on a commission from the vendor of the WTTCG shares. There is no evidence that a commission was paid to Mr Eddie Lo from Grand Ocean or Hauxton. For this and other reasons I accept that Mr Eddie Lo did not arrange the swap.

- 9.234 Madam Hsu Jye's evidence in respect of both the acquisition and disposal of the WTCG shares lacks credibility. It is unlikely that she would have purchased such a large quantity of WTCG shares for unknown friends of her brother, and there is evidence that Mr Jackson Chang was also involved in the purchase of the shares. Madam Hsu Jye did not seem to know that Hauxton sold these shares, instead of Grand Ocean, and it is not clear whether she actually approached Fulldiamond to arrange the sale.
- 9.235 Although I have not been able to speak to Mr Jackson Chang, from the evidence received from Chintung, he was clearly involved in the purchase of the WTCG shares by Grand Ocean, and as discussed in Chapter 6, I believe he has some control over Hauxton. It is likely that he was involved in the sale of the WTCG shares by Hauxton.
- 9.236 Given his involvement in the purchase and sale of the WTCG shares, and his control over the share dealing by WTCG, it is probable that Mr Jackson Chang was also involved in arranging the swap.
- 9.237 Madam Eva Hui claims that her role in this transaction was limited to executing the instructions of Mr Tsoi Mow Hung. She says that she was first approached by Madam Stella Hui to see if she was interested in purchasing the Tian Teck shares and claims that Mr Tsoi Mow Hung only gave her instructions to buy the Tian Teck shares and to use Cheung On as broker. There was no mention of any swap.
- 9.238 Mr Tam Cham Kai of Cheung On says that upon the recommendation of his friend, Mr Y S Chan, he agreed to accept an order for the purchase of the Tian Teck shares from Mr Tsoi Mow Hung. This order was to be for more than 30% of the shares of a tightly held public company for a gross amount of \$326,250,000. It is acknowledged by Mr Tsoi Mow Hung, Madam Eva Hui and Mr Tam Cham Kai that neither Mr Tsoi Mow Hung nor Spinus had ever dealt at Cheung On before.



- 9.239 I largely discount the evidence of Mr Tsoi Mow Hung in relation to the use of Cheung On. Mr Tsoi Mow Hung has told me that the reason for using Cheung On was that his Japanese partner had referred him to Cheung On, a stockbroking firm used by the Japanese partner over many years. In spite of my request, Mr Tsoi Mow Hung has failed to provide me with the name of his alleged Japanese partner.
- 9.240 I have heard no evidence from Cheung On to confirm that this alleged long standing relationship with the partner of Mr Tsoi existed. I believe that if this was the true reason for using Cheung On, Mr Tam Cham Kai would have confirmed this.
- 9.241 Instead Mr Tam Cham Kai claimed that the introduction to Mr Tsoi was facilitated by Mr Y S Chan. Mr Tsoi initially denied knowledge of Mr Y S Chan, though later claimed he did know a Mr Chan Yim Sang. Despite Mr Tsoi Mow Hung's subsequent claim I believe he was being truthful the first time he gave his answer.
- 9.242 In addition, Mr Tam Cham Kai says that he was unaware of any arrangements for Spinus to on sell the shares at the time he agreed to accept Mr Tsoi Mow Hung's order.
- 9.243 I find this evidence very difficult to accept. Mr Tam Cham Kai of Cheung On was taking on a significant risk that this one transaction would seriously damage his business if Mr Tsoi Mow Hung was unable to settle the cost of the purchase. However, if Mr Tam Cham Kai knew WTCG had agreed to purchase these shares, such a risk would be minimal.
- 9.244 It is Mr Lau Cheung Man's evidence that the failure to notify the Stock Exchange of the acquisition of the 145,000,00 Tian Teck shares by Spinus was an administrative error. I believe there are reasons to suggest that this error was no accident. Had Cheung On notified the Stock Exchange, I believe it would have made it more difficult for WTCG to justify to its shareholders buying Tian Teck shares for \$2.60 when the shares had been acquired the previous day for \$2.25.

The evidence concerning Spinus's sale of 145,000,000 Tian Teck shares to HESH

- 9.245 Mr Tsoi Mow Hung has stated that he and Mr Sun Tao Tsun agreed to the sale and purchase after considering the opening prices for Tian Teck shares after the Stock Exchange opened [at 10 am] on 9 August 1990.
- 9.246 Mr Lau Cheung Man told me that Madam Eva Hui rang him at about 11 am, told him of the agreement to sell the Tian Teck shares and gave him Mr Sun Tao Tsun's contact details, albeit for Hong Kong, not Taiwan.
- 9.247 Mr Sun Tao Tsun denies he was involved in any negotiation for the purchase of the Tian Teck shares and claims he merely referred Mr Tsoi Mow Hung to Mr David Tong.
- 9.248 If the evidence of the parties to this transaction is to be believed, a significant number of events would need to have been completed within 90 minutes (the period from the time when the decision to sell was allegedly made to the time at which the WTCG cheque was cleared).
- 9.249 It was necessary for Cheung On to prepare a contract note and deliver this to WTCG. WTCG then had to ensure that it had sufficient funds in its current account by calling deposits, preparing a cheque, arranging two signatories and delivery of the cheque to Cheung On.
- 9.250 Cheung On had then to bank the WTCG cheque to its account at the Wing Hang Bank, and ask for a special clearance.
- 9.251 The Wing Hang Bank then had to take the WTCG cheque to the Hongkong Bank at 1 Queen's Road to ask for a special clearance. This occurred at 12.26 pm on 9 August 1990. I do not believe that these various tasks would normally be completed within 90 minutes.

- 9.252 In addition, and I believe most importantly, the existence of the two separate Bought Notes recording the purchase of the Tian Teck shares by HESH (one dated 8 August 1990 and the other 9 August 1990) adds to the likelihood that the sale of the Tian Teck shares to HESH had been arranged before 9 August 1990.
- 9.253 Although Mr Lau Cheung Man argues otherwise, I am persuaded to accept that the Bought Note dated 8 August properly recorded the trade. This Bought Note carried the WTCG chop approving payment, and records the payment details. It is obviously the Bought Note relied upon by WTCG to make their payment.
- 9.254 Payment was made on 9 August 1990, which is consistent with the requirements of the Bought Note dated 8 August 1990. The Bought Note dated 9 August 1990 required settlement on 10 August 1990.
- 9.255 This earlier Bought Note conflicts with Mr Tsoi Mow Hung's evidence but it is consistent with the settlement by WTCG.
- 9.256 Mr Tsoi Mow Hung had told me that he was contacted on the evening of 8 August 1990 by Mr Sun Tao Tsun and asked if he would sell the Tian Teck shares. Conversely Mr Sun Tao Tsun said that he was contacted by Mr Tsoi Mow Hung. Despite the evidence presented by Mr Tsoi Mow Hung I find it unlikely that either telephone call took place, particularly in view of the fact that the Spinus transaction was not advised to the Stock Exchange.
- 9.257 Mr David Tong's evidence was initially that Mr Sun Tao Tsun negotiated this acquisition of the Tian Teck shares. Subsequently he changed his story and claimed that Mr Sun Tao Tsun "*was very keen*" to buy the Tian Teck shares but that he (Mr David Tong) "*referred the matter to Jackson Chang*". Mr David Tong's submission later sought to clarify this.
- 9.258 I discount Mr David Tong's evidence and I believe it is likely that he was more directly involved in the decision to acquire the Tian Teck shares than he has declared.

9.259 I have concluded, on the evidence I have received, that Mr Jackson Chang was involved in making the decision to purchase the Tian Teck shares. I have been unable to interview Mr Jackson Chang and, in the absence of his evidence, I have heard no plausible explanation of why WTCG would make a substantial purchase of illiquid stock which could not have appeared at the time of the acquisition to, nor has it been subsequently shown to, represent good business synergy or a good investment for WTCG. Tian Teck was controlled by a family holding more than 50% of the issued shares, who had already rebuffed attempts by First Pacific Special Assets Limited (the owners of the parcel of Tian Teck shares prior to Great Eagle) and Great Eagle to gain board representation. Accordingly, I believe it reasonable to infer that the acquisition formed part of a larger scheme.

The evidence concerning Grand Ocean's sale of 116,500,000 WTCG shares

9.260 Madam Hsu Jye has said that the large block of WTCG shares was bought on behalf of the friends from Taiwan, of her brother, Mr Hsu Bin. After these friends of Mr Hsu Bin had failed to provide money for the purchases she was forced to seek the assistance of Fulldiamond to realise a sale of the shares on Grand Ocean's behalf. Madam Hsu Jye claims she told Fulldiamond that if the WTCG shares could be sold for greater than \$2.80 then they would get a commission.

9.261 Madam Hsu Jye has failed to provide the names of any of her brother's friends on whose behalf she alleges she committed herself to the purchase of shares worth approximately \$320,000,000. I do not find Madam Hsu Jye's evidence in this respect credible. In addition, Mr Hsu Bin has not responded to my repeated requests to meet with him to discuss his sister's claims.

- 9.262 It is also significant that Mr Jackson Chang appears to have purchased 50,000,000 of the WTTCG shares that were booked into the name Grand Ocean, then arranged a loan of \$50,000,000 from Mr David Chiu to partially finance the cost of acquiring these shares. The loan was made by way of a cheque dated 8 August 1990 and repaid by way of a post dated cheque dated 15 August 1990. Madam Hsu Jye has claimed that she did not know about this loan although she signed the cheque for its repayment. If the sale of the WTTCG shares to Great Eagle was a separate transaction, I can find no reason to explain Mr Jackson Chang's involvement.
- 9.263 Madam Hsu Jye could not *"remember exactly"* who asked her to use Cheung On to sell Grand Oceans' WTTCG shares, but then stated *"I seem to remember"* that Fulldiamond told her *"Perhaps we would ask Cheung On to deal with these shares."*
- 9.264 Given that Chintung already held the WTTCG shares on behalf of Grand Ocean it would have been more convenient to use Chintung.
- 9.265 Although Hauxton placed the order to sell the WTTCG shares, I am confident that the WTTCG shares held by Grand Ocean were delivered to Great Eagle in settlement as is evidenced by the withdrawal of 116,500,000 WTTCG shares from Grand Ocean's margin account at Chintung following the sale.
- 9.266 Neither Mr Lau Cheung Man, nor Madam Hsu Jye has provided any reason why the disposal of the WTTCG shares was done in Hauxton's name and not Grand Ocean's. In view of the part Mr Jackson Chang played in the acquisition of these shares I believe it likely that Madam Hsu Jye did not instruct Cheung On. It would therefore appear that Cheung On acted upon Mr Jackson Chang's instructions (a point which is denied by Mr Tam Cham Kai and Mr Lau Cheung Man).

An alternative hypothesis: that the three transactions were one pre-arranged scheme

- 9.267 After considering the many inconsistencies throughout the evidence presented I have come to the conclusion that these three transactions were part of one pre-arranged scheme and I set out below the facts which support this.
- 9.268 The bought note dated 8 August 1990 showing HESH's purchase of 145,000,000 Tian Teck shares on that day is in direct contradiction to Mr Tsoi Mow Hung's and Madam Eva Hui's evidence, but was relied upon by WTCG. It is most unlikely that two unconnected purchases would take place after the close of the Stock Exchange, but before close of business on that day.
- 9.269 All parties used Cheung On who rebated 4 of the 6 commissions received, and neglected to advise the Stock Exchange of the sale by Great Eagle and the purchase by Spinus of 145,000,000 Tian Teck shares on 8 August 1990.
- 9.270 HESH was the only party to have used Cheung On previously and Mr Tam Cham Kai claims he dealt with Mr Jackson Chang in relation to the sale of the World Trade Centre Building which had been negotiated only days before this transaction.
- 9.271 It is clear that Mr Jackson Chang was involved in the purchase of the WTCG shares by Grand Ocean. These shares were later delivered to Cheung On to settle the sale by Hauxton.
- 9.272 I have concluded that Mr Jackson Chang has control over both Grand Ocean and Hauxton, and at the time of the transactions he was the Director at WTCG responsible for share trading.
- 9.273 It is also important to note that WTCG financed completion of the whole transaction. Great Eagle proffered an ordinary cheque for \$200,000,000 in part payment of the WTCG shares, but requested a cashiers order for settlement of the Tian Teck shares.

- 9.274 The WTCG shares sold by Hauxton to Great Eagle were held by Chintung as security for Grand Ocean's margin account.
- 9.275 Accordingly, the WTCG cheque (for the purchase of the Tian Teck shares from Spinus) was delivered to Cheung On prior to receipt of the Tian Teck share certificates, and after special clearance, enabled Cheung On to arrange a cashiers order (covering the sale by Hauxton of the WTCG shares) in favour of Chintung, which was credited to Grand Ocean's margin account, so that the WTCG shares could be released for delivery to Great Eagle.
- 9.276 It is likely that the Tian Teck scheme was planned sometime prior to 8 August 1990.
- 9.277 Mr Lau Cheung Man was not sure when he was told by Mr Tam Cham Kai to expect an order from Mr Tsoi Mow Hung but *"it was certainly some time after Mr Tam had given the instruction to us before the order was received on the 8th"*.
- 9.278 It is also significant that the Hauxton bank account was opened on 2 August 1990, and was used for this transaction only, and then closed.
- 9.279 The purchases of the WTCG shares from Madam Loo's syndicate commenced on 1 August 1990 and it is apparent that the swap was arranged to *"mop up"* WTCG shares that had been acquired by Madam Loo's syndicate during share manipulation operations conducted by this syndicate. This is more fully explained in Chapters 10 and 26.
- 9.280 The involvement of the 12/F Cash Client account with Madam Loo's Syndicate, the fact that profits from the Spinus purchase and sale were diverted to this account, and the payment of two of the commissions to Mardela, highlight the participation in this transaction by Widelines, and Mr George Tan. The relationships between the 12/F Cash Client account, Widelines and Mr George Tan are discussed in detail in Chapter 10.

- 9.281 I am critical of the directors and officers of HESH and WTCG who authorised, or allowed, the cheque for \$324,276,187.50 to be given to Cheung On before value was received in the form of good title to, and possession of, the Tian Teck shares.
- 9.282 The reason that Cheung On paid \$50,400,000 to Hauxton instead of \$46,495,337.50 to Spinus eludes me. It was not a mistake; Hauxton's bank account had just been opened a few days earlier, and was not used afterwards.
- 9.283 I find that the evidence of Madam Eva Hui and Mr Tsoi Mow Hung, that the funds were to be transferred to Taiwan via Hauxton for share trading, but transferred back to Spinus the next day due to an overnight crash on the stock market in Taiwan, lacks credibility. The index of shares on the stock market in Taiwan had been falling for some time before, and continued to do so after the transfer.
- 9.284 Madam Hsu Jye has alleged that the \$3,800,000 retained by Hauxton, was paid to David Tong Company in repayment of a loan to Madam Chiang Pei Ling (initially) and Mr Tung Ming Hsun (subsequently). However, no substantive evidence has been produced to confirm her story. I have not been able to contact Mr Tung Ming Hsun.
- 9.285 I place no weight on the evidence of Madam Hsu Jye, who has not proved to be a credible witness during my examinations, that the \$3,800,000 transferred to David Tong Company from Hauxton was to repay a loan from Mr Tung Ming Hsun.
- 9.286 Although Mr David Tong denies any knowledge of the \$3,800,000 diverted to David Tong Company, I believe that by receiving these funds it indicates that he may be beneficially interested in the proceeds of the Spinus account at Cheung On.
- 9.287 I have doubts as to whether these transactions were arranged by Madam Hsu Jye as her knowledge of them seems genuinely inadequate. I believe that she was merely an account signatory.



- 9.288 In addition the overpayment by Cheung On out of Spinus's account to Hauxton has been recovered from Mr Roy Loffill rather than Hauxton as Mr Tsoi Mow Hung claims.
- 9.289 The rebates of commission remain unexplained. Mardela's directors are closely associated with Mr George Tan and the operation of Widelines on the 12th floor of the Hong Kong & Macau Building. As discussed in Chapter 10, there is a weight of evidence to suggest that Widelines and/or those on the 12th Floor of the Hong Kong & Macau Building were actively engaged in dealings in the shares of both Tian Teck and WTCG at about the time of this transaction and in the month before.
- 9.290 However, Mr George Tan emphatically denies any involvement in this transaction as does Mr David Kao, a director of Mardela and Widelines.
- 9.291 Mr David Kao's explanation of the receipt of \$1,758,000 by Mardela is wholly at odds with the documents recovered from Cheung On and is, in my view, a fabrication.
- 9.292 I am therefore unable to determine with certainty the real reason for the payment to Mardela although the evidence suggests that persons involved with the 12th Floor of the Hong Kong & Macau Building had some involvement in the sale of Tian Teck shares to HESH from Spinus and in the sale of WTCG shares from Hauxton/Grand Ocean to Great Eagle.
- 9.293 It is clear that two of the commissions (I have concluded that these were the commissions received from Spinus) were rebated in cash after deduction of a provision for taxation. Although I am not able to name the beneficiaries of this rebate, I believe that, because a provision for taxation was made, these beneficiaries are likely to have been persons outside the Widelines/Cheung On Group. I note that the commissions rebated to Mardela were rebated before any provision for taxation had been made.

- 9.294 One third of the profit earned by Spinus stayed with that company and there is little evidence to show that Mr Tsoi Mow Hung received the benefit of this. Some \$3,768,407 was in fact allegedly borrowed by Mr David Chiu and as at the date of my appointment to investigate the affairs of Spinus this "loan" remained outstanding. I have received no evidence that this amount has subsequently been repaid.
- 9.295 Two thirds of the profit went to Mr Roy Loffill, an alleged "*money changer*" who was to convert the cheque into cash quicker than it could have been converted by First Pacific Bank.
- 9.296 Mr Roy Loffill denies he is a "*money changer*" and both he and Mr Dennis Chung claim that the money they received was through the instructions of Mr Tan Kiem Tiau, who is now deceased. No evidence has been given which shows how Mr Tan Kiem Tiau was connected to Mr Tsoi Mow Hung.
- 9.297 Given the complete lack of any reference to Mr Tan Kiem Tiau by the principal people claiming involvement in this transaction, I seriously doubt the accuracy of the evidence given by Mr Roy Loffill and Mr Dennis Chung.
- 9.298 What I believe to be the true nature of Mr Roy Loffill's activities is discussed in detail in Chapter 10.
- 9.299 Once the cheque for \$31,066,666 was deposited into Mr Roy Loffill's account it was placed on deposit for two days.
- 9.300 The placing of the funds on deposit is inconsistent with Madam Eva Hui's statement that the money was needed immediately and hence the need to use Mr Roy Loffill. The need to draw such a large amount of money in cash has not been explained to me. A cashier's order drawn on a reputable bank would be far more secure.
- 9.301 Although, due to mixing with other monies, it cannot be demonstrated conclusively, I have no doubt that from the \$31,066,666 payment received from Spinus, two payments were made:

- (1) A cheque for \$30,000,000 payable to Cheung On, and deposited to the credit of the 12/F Cash Client account.
- (2) A cheque for \$1,000,000 payable to cash, the beneficiary of which is unknown to me.

9.302 At approximately the same time as Spinus was retaining one third of this profit and paying two thirds to Mr Roy Loffill, Spinus was retaining one third of the World Trade Centre commission for Mr David Chiu and paying two thirds to Mr Roy Loffill for Mr George Tan as set out in Chapter 8.

9.303 There has been no evidence that directly links Mr George Tan to this transaction and as stated above he strenuously denies any involvement. However I note that the majority of the \$31,066,666 appears to have gone to Cheung On for the credit of the 12/F Cash Client account. In Chapter 10 I set out a considerable amount of circumstantial evidence that links Mr George Tan to this account.

9.304 I have concluded that Mr David Chiu had a part to play in this transaction, as he received part of the profit that Spinus achieved on the purchase and sale of the Tian Teck shares.

9.305 In addition as I believe Mr David Chiu controls Spinus (refer Chapter 23), I consider that unless he was involved in this transaction, Spinus would not have been.

9.306 Mr David Chiu also provided, through Far East Holdings International Limited, a \$50,000,000 facility to Grand Ocean which partly funded the acquisition of the WTCG shares "*swapped*" in this transaction.

9.307 The above leads me to conclude that Mr Tsoi Mow Hung was not involved in this transaction and that it was only someone from Spinus and from WTCG who arranged the swap of shares to Great Eagle through the assistance of Mr Eddie Lo at Fulldiamond.

- 9.308 I am critical of Madam Eva Hui, Madam Hsu Jye, Mr Tsoi Mow Hung and Mr Eddie Lo as I do not believe the evidence given by them has been truthful.
- 9.309 I am critical of Mr David Tong who appears to have derived \$3,800,000 from the profit made by Spinus at the expense of the shareholders of WTCG.
- 9.310 I am critical of Mr Jackson Chang who appears to have been closely involved in acquiring at least some of the WTCG shares that were sold to Great Eagle's subsidiary, Hung Cheong and in arranging for HESH to buy the Tian Teck shares.
- 9.311 I am critical of Mr David Chiu who appears to have provided Spinus to be used to disguise the profit made at the expense of the WTCG shareholders and retained up to one third of this profit for his own use.
- 9.312 I am critical of Messrs Roy Loffill and Dennis Chung whose explanations about the source of the \$31,066,666 and how it was disbursed, I find to be implausible.

#### **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 10

### THE 12/F CONNECTIONS

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## 10 INTRODUCTION

10.1 The purpose of this chapter is to analyse the connections between the 12/F Cash Client account at Cheung On and the following persons and entities who were directly or indirectly involved in the sale of the World Trade Centre Building, the sale of 145,000,000 Tian Teck shares and the disbursement of commissions and profits earned from those transactions:

Mr George Tan  
Mr Roy Loffill  
Mr Dennis Chung  
Mr Tam Cham Kai  
Widelines Investments Ltd ("Widelines")  
Cheung On  
Cheung On Fat  
Mr Ng Kin Wah  
Mr Tan Yakobus Suroypranoto  
Madam Loo Kwee Huay

10.2 Widelines is the sole occupant of the 12th floor of the Hong Kong & Macau Building, 156-157 Connaught Road, Central ("Hong Kong & Macau Building"). I have been told that Widelines is the family trust company of Mr George Tan's father-in-law and that the office of Widelines is not only used for that company's business but also for family members such as Mr George Tan and "*other friends*".



- 10.3 The 12/F Cash Client account is a code name given by Cheung On to its largest client account in 1990. Cheung On and Cheung On Fat were located on the 9th floor of the Hong Kong & Macau Building in 1990.
- 10.4 As I received inconsistent oral evidence about the meaning of "12/F" and the fact that monies had been traced to the 12/F Cash Client account, I was prompted to investigate the operations of the account more thoroughly, to determine its role and to ascertain who benefitted from it.
- 10.5 My review of the 12/F Cash Client account has centred around 15 and 16 August 1990 being the dates when \$30,000,000 from the Tian Teck share transaction and \$17,200,000 from the sale of the World Trade Centre Building were credited to the account.
- 10.6 Even over these two days it is evident that the 12/F Cash Client account was not used for ordinary share trading through the brokerage services of Cheung On. Rather, it is clear that monies were deposited into it and cheques drawn by Cheung On (debiting the 12/F Cash Client account), made payable to other stockbrokers. These other stockbrokers would then deposit the cheques into designated persons' accounts which would be used to settle purchases of WTCG and Tian Teck shares.
- 10.7 The 12/F Cash Client account therefore operated as a bank account, not a share trading account. Cheung On acted as banker rather than as stockbroker.
- 10.8 The source of the monies deposited into the 12/F Client Cash account are numerous and varied. To trace all of the deposits into the 12/F Cash Client account was not a viable option open to me during this investigation. I have found however that in addition to the \$17,200,000 and \$30,000,000 referred to above, that a number of deposits made to the 12/F Cash Client account were from bank accounts held in the names of Mr Roy Loffill and Mr Ng Kin Wah. Mr Roy Loffill's account was handled on a daily basis by Mr Dennis Chung, a director of Widelines and Mr Ng Kin Wah, an employee of Widelines.

- 10.9 On 15, 16 and 17 August 1990, the sharetrading accounts of Mr Roy Loffill and Mr Ng Kin Wah at different stockbrokers were credited with funds from the 12/F Cash Client account. Other persons discussed later in this chapter who received monies can also be connected to Widelines through, for example, the issue of instructions to purchase WTCG and Tian Teck shares and/or the delivery of the share certificates.
- 10.10 It remains unclear who the true beneficiaries of the 12/F Cash Client account are, although from the available evidence there is a strong connection between the 12th floor of the Hongkong & Macau Building and the 12/F Cash Client account. The regular presence of Mr George Tan at the offices of Widelines and the fact that I have traced funds to the 12/F Cash Client account from transactions with which Mr George Tan was involved adds weight to this assertion.

## **THE CONNECTIONS**

### Widelines

- 10.11 Widelines was incorporated in Hong Kong on 24 July 1987. It was during 1990, and remains, the sole occupant of the 12th floor of the Hong Kong & Macau Building. Widelines' directors throughout 1990 were:

Mr Kao Keng Hua (David) - Mr George Tan's brother in law  
(Singaporean)

Madam Kao Keng Wan (Helen) - Mr George Tan's wife  
(Singaporean)

Mr Kao Keng Pin (Peter) - Mr George Tan's brother in law  
(Singaporean) (resigned 16 October 1990)

Mr Chung Chi Wah (Dennis) (appointed 16 October 1990)  
(British)

10.12 The shareholders of Widelines were:

<u>Name</u>	<u>No of shares</u>
Aldus Limited ("Aldus")	2,799,999
Mr Peter Kao	<u>1</u>
	<u>2,800,000</u>

10.13 Aldus was incorporated in Hong Kong on 6 November 1987. Its directors in 1990 were Mr David Kao, Madam Helen Kao and Mr Peter Kao. The shareholders of Aldus are Fanlaw Limited ("Fanlaw") and Secnomcon Limited ("Secnomcon"). Mr Bill Catley of Fairbairn Catley Low & Kong ("Fairbairns") solicitors was described to me by Mr David Kao as a *"trustee and one of the signatories for Widelines"*. As discussed in Chapter 8, Fairbairns acted for WTCG in the purchase of the World Trade Centre. The evidence of Mr Mico Chung, the then General Manager of WTCG, which I accepted, was that Fairbairns were not previously WTCG's solicitors. I understand that Fairbairns had regularly acted for Mr George Tan in various civil litigation and personal matters.

10.14 According to Mr David Kao, Widelines is a trust company set up by his father, Mr Kao Wei Tseng, for the benefit of Mr Kao Wei Tseng's family and, in particular, his grandchildren. It trades in gold, silver, shares and foreign exchange. Mr Kao Wei Tseng resides in Singapore and wanted Widelines' office to be used like a *"representative office"*, in other words a place where family and friends could meet to watch the market and to use its secretarial services.

10.15 Mr David Kao told me that there were only four persons employed by Widelines during 1990; namely, himself, Mr Dennis Chung, Mr Ng Kin Wah and Mr Tsoi Yu (the driver). Mr Ng Kin Wah stated that there were ten persons employed by Widelines at this time. Mr Ng Kin Wah's involvement with Widelines is discussed later in this chapter.

- 10.16 Both Mr Dennis Chung and Mr Ng Kin Wah are referred to in Chapters 8 and 9 relating to the acquisition of the World Trade Centre Building and the acquisition of 145,000,000 Tian Teck shares. I have ascertained that payments were made from the 12/F Cash Client account to Mr Dennis Chung and Mr Ng Kin Wah and these are referred to in detail later in this chapter.
- 10.17 Mr George Tan told me that during 1990 he was at Widelines' office at least four days a week to attend to matters unrelated to this investigation. He also stated that he used the office as a contact address sitting at a coffee table in Mr David Kao's office as he did not have his own office. Mr David Kao also told me in evidence that there were many "*groups of friends*" of Mr Ng Kin Wah, Mr Dennis Chung and Mr George Tan who came to Widelines' office on a daily basis and would stay for some hours. He added that he did not interfere with "*their business*" as he had his own dealings to attend to.
- 10.18 Mr George Tan told me that his wife occasionally attended the office of Widelines but that he did not know what work she undertook for the company. Mr David Kao has stated that she did no work for Widelines.
- 10.19 During his initial examinations, Mr George Tan stated that despite the frequency with which he was in the office of Widelines he did not know what business Widelines conducted. He subsequently told me that Widelines was his father-in-law's trust company.
- 10.20 When asked whether Widelines controlled the 12/F Cash Client account Mr David Kao denied this although he added that he did not know whether it was controlled from the 12th floor of the Hong Kong & Macau Building.

#### Cheung On

- 10.21 Cheung On is a member of the Hong Kong Stock Exchange and, during 1990, was located on the 9th floor of the Hong Kong & Macau Building. The sole proprietor of Cheung On is Mr Tam Cham Kai.

- 10.22 Cheung On Fat is a member of the Chinese Gold & Silver Exchange and is, according to Mr Tam Cham Kai, "*his family business*". Cheung On Fat shares the premises of Cheung On.
- 10.23 The operations of Cheung On and Cheung On Fat are closely linked as is evident from payments to Cheung On Fat which I have traced to the 12/F Cash Client account at Cheung On. Further details of this account are discussed below.

Commission paid to Cheung On Fat following the acquisition of the World Trade Centre Building

- 10.24 Mr Tam Cham Kai told me that Cheung On Fat received a 1% commission (\$17,200,000) from WTCG following the acquisition of the World Trade Centre Building on 7 August 1990 because he had introduced Mr Jackson Chang to Mr George Tan. Mr Tam Cham Kai has told me that he and Mr George Tan are close friends. The evidence of Mr George Tan as set out in Chapter 8 was that Mr Tam Cham Kai approached him, Mr George Tan, asking for his help to introduce "*a client*" (later revealed as Mr Jackson Chang) to Hongkong Land, whom Mr George Tan knew well. Mr Tam Cham Kai had apparently stated that he needed the commission from the proposed sale of the World Trade Centre Building to counter heavy losses he had suffered in the 1987 stock market crash.
- 10.25 As detailed in Chapter 8, I have traced the \$17,200,000 commission paid to Cheung On Fat through the accounts of Cheung On Fat, Mr Tam Cham Kai and Cheung On. The funds were ultimately credited to the 12/F Cash Client account on 16 August 1990. I have received no evidence to suggest that Mr Tam Cham Kai received any benefit from these monies. The disbursement of these funds is discussed later in this chapter.

### The use of Cheung On as the stockbroker for the Tian Teck share transaction

- 10.26 In addition, as discussed in Chapter 9, Cheung On was used as the stock broker on 8 and 9 August 1990 for the purchase by Spinus and subsequent sale to HESH, a subsidiary of WTCG of 145,000,000 Tian Teck shares and the acquisition by Great Eagle of 116,500,000 WTCG shares. This in itself was curious since of the parties involved in these transactions only HESH had traded through Cheung On before.
- 10.27 Cheung On failed to advise the Stock Exchange of the acquisition by Spinus of the 145,000,000 Tian Teck shares at \$2.25 per share on 8 August 1990, although their subsequent sale at \$2.60 per share on 9 August 1990 was reported. As noted in my conclusions to Chapter 9, I believe that Cheung On's failure to advise the Stock Exchange of this share trading was a deliberate act designed to conceal the true nature of the transaction. Mr Tam Cham Kai, the sole proprietor of Cheung On, and Mr Lau Cheung Man, the Deputy Manager of Cheung On, disagree with this conclusion.
- 10.28 If the Tian Teck and WTCG share transactions were unconnected, which is the evidence that Madam Eva Hui and Mr Tsoi Mow Hung would have me believe, then Cheung On purchased a very large quantity of illiquid shares with a value of \$326,250,000 on behalf of a client, Mr Tsoi Mow Hung, for whom it had never done business before. In addition, the trade was through an unregistered oversea company, without the guarantee of Mr Tsoi Mow Hung. Such behaviour can only be viewed with scepticism.
- 10.29 Although the profit earned on the sale by Spinus of the 145,000,000 Tian Teck shares was only \$46,495,337.50, Cheung On paid an amount of \$50,400,000 to Hauxton who then deposited \$46,600,000 into Spinus's bank account. A cheque for \$31,066,666 was then drawn by Mr David Chiu payable to Mr Roy Loffill. I believe that \$30,000,000 was paid to Cheung On who credited the 12/F Cash Client account on 15 August 1990. The disbursement of these funds is discussed later in this chapter. Mr Tam Cham Kai has advised that the \$30,000,000 was a loan from Mr Roy Loffill.

10.30 In addition, Cheung On earned commissions totalling \$5,147,250 from the Tian Teck transaction. On 9 August 1990, a cheque (with the name of the payee left blank) for \$1,758,000 was drawn by Cheung On and debited to its Proprietorship Rebate account. According to Mr But Yuk Yiu of Cheung On, this cheque was delivered to Mardela Limited ("Mardela") on the 12th floor of the Hong Kong & Macau Building.

10.31 The amount of \$1,758,000 is exactly the sum of two of the commissions charged by Cheung On:

<u>Transaction</u>	<u>Client</u>	<u>Amount</u>
		<u>\$</u>
Bought 145,000,000 Tian Teck shares	HESH	942,500
Sold 116,500,000 WTTCG shares	Hauxton	<u>815,500</u>
	Total	<u>\$1,758,000</u>

10.32 Mr David Kao confirmed the receipt of this cheque although he stated that he thought it covered a real estate commission. He told me that the proceeds were used for the day to day operating expenses of Widelines.

10.33 In Chapter 9 I note that it is possible, but unlikely, that the rebate covered one or both of the other sides of these two transactions; the sale by Spinus of the Tian Teck shares and the purchase by Hung Cheong, a subsidiary of Great Eagle, of the WTTCG shares.

10.34 During 1990 the directors of Mardela were:

Mr David Kao (Mr George Tan's brother-in-law)

Madam Helen Kao (Mr George Tan's wife)

Madam Tan Wan Ling (Vicki) (Mr George Tan's daughter)

(Singaporean)

10.35 The shareholders of Mardela were:

<u>Name</u>	<u>No of shares</u>
Mr Peter Kao (Mr George Tan's brother-in-law)	1
Widelines	<u>99,999</u>
	<u>100,000</u>

10.36 According to Mr Patrick Lau, the Financial Controller of Tomson Pacific, the 145,000,000 Tian Teck shares purchased by HESH on 9 August 1990 remained at Cheung On until the end of August 1990. I have been informed however by Wader Investment Co ("Wader") that 6,000,000 Tian Teck shares were sold through them in the name of HESH on 10 August 1990. When Mr Patrick Lau was asked why this transaction was not shown in HESH's Share Investment Portfolio Schedule as at 30 April 1991 he explained that he was not aware of this transaction. In regard to a further question of whether the Tian Teck shares owned by HESH had been "borrowed and repaid" by other parties during that period, he replied in writing:

*"We are unable to ascertain whether the scrips had been used without our authority or knowledge during the period of custody by Cheung On and Company."*

10.37 From the \$16,300,780 proceeds of the sale of the 6,000,000 Tian Teck shares, \$11,417,027.50 was paid to Mr Roy Loffill. I have requested an explanation for this payment from Mr Roy Loffill, however I have not received a response.

10.38 According to Wader it does not have any account opening documentation for HESH. Further, the instructions for the sale came from Mr Tan Kiem Tiau and the source of the Tian Teck shares was Mr Roy Loffill.

10.39 Mr Roy Loffill has told me that he acts as a nominee for Mr Tan Kiem Tiau in Hong Kong and their relationship is discussed later in this chapter.



The 12/F Cash Client account

10.40 The 12/F Cash Client account was Cheung On's largest cash client. In respect of the meaning of the abbreviation "12/F", the Deputy Manager of Cheung On, Mr Lau Cheung Man, has told me that:

*". . . 12th floor is actually a code name, a code used by our accounting department to represent . . . a group of overseas speculators who speculate in stock . . . that account is looked after by Mr Tam's [Mr Tam Cham Kai] relatives and friends. I don't know the exact identity of those speculators . . . but I know that they are more than ten such people . . . I know there is a Mr Tse, for example, and others who would simply phone in and give instructions to our accounting department to make, say, withdrawals . . ."*

10.41 Mr Lau Cheung Man added that Cheung On did not have any account opening documentation in relation to this account for the following reason:

*". . . It was a very competitive industry at the time and when we were dealing with cash clients . . . [they] were not required to sign any documents as long as they traded in cash and settled, then it would be all right, everything was on the basis of trust."*

10.42 Mr Tam Cham Kai stated that "12/F" could be interpreted to mean:

*"Twelve persons or twelve Taiwanese . . . Formosan."*

10.43 I found Mr Tam Cham Kai's evidence to be deliberately evasive and do not accept his evidence in this regard. My conclusion is reinforced by the evidence of Mr But Yuk Yiu of Cheung On who stated that:

*"12/F is a code which includes people in this building. This building means the Hong Kong & Macau Building."*

*"12/F could include people on the 12th Floor of this building, but it could also include others on 8th and 10th Floor.*

10.44 Although the 12/F Cash Client account was Cheung On's largest cash client neither Mr Tam Cham Kai or Mr Lau Cheung Man could provide me with details of the persons who benefitted from it. Mr Tam Cham Kai did state however that his father-in-law Mr Peter Tse acted as the "runner" for the account. I understand "a runner" introduces clients and acts as the contact person.

10.45 When requested to provide further details about the account and Mr Peter Tse, Mr Tam Cham Kai advised me through his solicitors that:

*"The father-in-law of our client is Mr. Peter Tse. He was formerly a senior administrative officer of the Central Trust Bureau of the Taiwan Government. He had undertaken investments in stock and shares, gold, foreign exchange and real estate in different parts of the world on behalf of various organizations and private individuals. Owing to confidentiality and the sensitive position that he was in, our client did not consider it appropriate for any enquiries to be made into the identity of his principals.*

*Our client's father-in-law had been helpful in many ways to our client in his business. That included financing the businesses of our client from time to time ever since 1986. There were capital advances by his father-in-law to him through different sources, including remittances through underground money broker. There were also funds provided by our client's father-in-law from Taiwan to the United States, Australia, Malaysia, Singapore and Indonesia. His father-in-law had also made investments on his behalf in those places. His father-in-law had a real estate and a trading company in Taiwan as well as real estate in the United States and Australia and stock and shares in Malaysia, Singapore and Indonesia. His father-in-law was also active in investment in real estate in mainland China.*

*When our client attempted to approach his father-in-law for assistance in providing the relevant information in order to respond to you, he learned that his father-in-law in fact passed away on the 31st January, 1993 in Australia as a result of a heart attack. "*

10.46 At the time of his examination in mid February 1993 Mr Tam Cham Kai made no mention of the fact that his father-in-law had died.

10.47 Mr Lau Cheung Man was unable to provide me with the names of the persons who gave instructions in respect of the 12/F Cash Client account. He stated that:

*"Well, Mr Tam [Cham Kai] already had made a specific instruction to the accounting staff and he told those people that whenever a fax was received, or whenever someone would call the office, then a cheque should be issued, according, to the person as instructed. "*

10.48 Many names are referred to throughout the 12/F Cash Client account records as receiving payments. Mr Lau Cheung Man stated that these names were given to the accounting department by Mr Tam Cham Kai's *"relatives"*. He stated:

*". . . We were instructed to put in the entries in this manner by the person managing the account so I don't know whether these names represent the real persons of those who own the account or whether they were just names given to us for the purpose of filling in the details on the contracts and documents . . . "*

10.49 According to Mr Lau Cheung Man, as the 12/F Cash Client account was a cash account, no record or receipt of monies was kept. He stated:

*"That is not required in our line of business. Especially at that time when the securities business is very competitive and everything had to be on the basis of trust because if you have too many formalities then your clients will simply not come to you, they will go to another broker. "*

- 10.50 I also found the evidence of Mr Lau Cheung Man to be deliberately vague and unhelpful. I do not accept that as General Manager of Cheung On he did not know further details about the 12/F Cash Client account.
- 10.51 An extract of the ledger of the 12/F Cash Client account is at Appendix 77. It shows that from July 1990 to September 1990 the account carried a continuous debit of tens of millions of dollars.
- 10.52 A common pattern throughout the ledger is for two or three amounts to be deposited into the account on a certain day followed almost immediately by a number of withdrawals for various amounts.
- 10.53 In many instances, no reference was made to whether the withdrawal was in cash or by cheque. Further, there was often no reference to whom the monies were paid. Mr Tam Cham Kai explained that:

*"I don't know whether the withdrawals were made in the form of cash or cheques . . . so the client may instruct us to say, pay so much out of the account . . . the clients of this runner, may actually be engaged in stock transactions through more than one company. In other words, besides our company they could also be buying and selling stocks through other brokers."*

- 10.54 The deposits of \$30,000,000 and \$17,200,000 into the 12/F Cash Client account on 15 and 16 August 1990 were mixed with other deposits. In particular the sources of two of the other deposits namely; \$7,161,092.84 and \$20,000,000 have been traced to the Wing Hang Bank accounts of Mr Ng Kin Wah and Mr Roy Loffill respectively.

- 10.55 Schedules showing the disbursement of the funds from the 12/F Cash Client Account on 15, 16 and 17 August 1990 are at Appendix 78. Deposits totalling \$116,844,939.03 were made over this three day period. Forty one cheques and transfer debits totalling \$52,608,798.90 were charged against the account, twenty eight of which were payable to various stockbrokers. The balance of the cheques were payable to individuals, most of whom I have been unable to identify. I understand from the various stockbrokers that the cheques were deposited into their clients' accounts to settle purchases of WTCG and/or Tian Teck shares. The transfer debits were credited against other accounts for share purchases.
- 10.56 A number of the withdrawals were deposited into the accounts of:
- Mr Roy Loffill  
Mr Tan Yakobus Suryopranoto  
Mr Ng Kin Wah  
Madam Loo Kwee Huay
- 10.57 Each of these persons is dealt with separately in this chapter. Four other recipients of funds from the 12/F Cash Client account on 15, 16 and 17 August 1990 were Mr Chan Tai Tak, Mr K Y Chu, A C Tang and S T Yu. According to Koo & Co, the stockbroker who received cheques on their behalf, the funds were used to settle purchases of WTCG shares which had been bought on the instructions of Widelines. The share certificates were also delivered to Widelines.
- 10.58 Mr Tam Cham Kai stated that he was not aware of the names of the persons referred to in the 12/F Cash Client account because he only dealt with Mr Peter Tse in his capacity as a runner. This is inconsistent with his subsequent evidence that Mr Roy Loffill was known to him through Mr Peter Kao and that Mr Roy Loffill bought and sold stocks and gold through Cheung On and Cheung On Fat.

Mr Roy Loffill

10.59 Mr Roy Loffill is a 69 year old Englishman. During 1990, he was a consultant and director of a Hong Kong company, Joint Sincerity Limited ("Joint Sincerity"), which is located on the 13th floor of the Hong Kong & Macau Building. I understand that company is also involved in "*trading*".

10.60 I have been advised by the Companies Registry that Joint Sincerity did not file a form nominating directors for the period 1 January 1990 to 1 January 1991. After that time however, its directors were named as:

Mr Tam Cham Kai (the Principal of Cheung On)

Mr Roy Loffill

Mr Rodney Bell

Mr Law Kin Ming (resigned on 1/10/92)

Mr Ng Wai Chi (appointed on 29/6/93)

10.61 Mr George Tan has told me that Mr Rodney Bell was his former business associate at Carrion Holdings Limited.

10.62 Mr Roy Loffill stated that he met Mr George Tan in Singapore 25 years ago whilst both were employed by Westpile Construction Company Limited ("Westpile"). According to Mr George Tan, Mr Roy Loffill had taught him about foundation work at Westpile. Their friendship has continued since that time. I understand from Mr George Tan that Mr Roy Loffill lived in Mr Peter Kao's house in Singapore before moving to Hong Kong in 1987. Upon arrival in Hong Kong he lived next door to Mr George Tan at Yuen Long.

Mr Roy Loffill's introduction to Cheung On

- 10.63 Mr Tam Cham Kai told me in evidence that Mr Roy Loffill was introduced to him by Mr Peter Kao (Mr George Tan's brother-in-law), who asked that Mr Tam Cham Kai help Mr Roy Loffill place orders for sharetrading. Mr Tam Cham Kai told me that Mr Roy Loffill was classified as a large client of Cheung On:

*". . . sometimes he would place us with many large orders and sometimes there would be no business at all. You could call him a large client."*

- 10.64 He added that there had been no credit checks done in respect of Mr Roy Loffill because:

*". . . given the close relationship between Goh [Mr Peter Kao] and [Mr George] Tan at the time and the fact that Mr Loffill was introduced to us by Goh, we didn't think that a margin of \$10 million would be very much. . ."*

*". . . I think the orders he placed belonged to a group of people and he was one of them."*

- 10.65 Mr Tam Cham Kai told me that "one or two" Indonesians and Singaporeans would call Cheung On in relation to Mr Roy Loffill's account.

Mr Roy Loffill's bank account at the Wing Hang Bank

- 10.66 Mr Roy Loffill told me in evidence that he has maintained a bank account in his name at the Wing Hang Bank since 1987 on behalf of Mr Tan Kiem Tiau, an Indonesian. According to Mr Roy Loffill, this account was operated solely for the benefit of Mr Tan Kiem Tiau. I understand that Mr Tan Kiem Tiau died in September/October 1992.

- 10.67 According to Mr Roy Loffill he had met Mr Tan Kiem Tiau in Singapore. Mr Tan Kiem Tiau apparently asked Mr Roy Loffill to open an account for him in Hong Kong. Mr Roy Loffill told me that as he was not in the office every day due to ill health, he requested Mr Dennis Chung to also become a signatory on the account.

10.68 Mr Dennis Chung has confirmed that he knew Mr Tan Kiem Tiau, stating that he had joined Mr Tan Kiem Tiau, Mr Roy Loffill and Mr George Tan for dinner in Hong Kong. Mr George Tan has denied knowing Mr Tan Kiem Tiau. I concluded in Chapter 8 that I do not accept the evidence of Mr George Tan on this matter.

10.69 I have reviewed Mr Roy Loffill's account with the Wing Hang Bank for the period June 1990 to December 1990. Set out below is a reconciliation of the deposits and withdrawals relating to that account:

Month	Total Deposits	Total Withdrawals
	\$	\$
Jun 90	61,879,694.27	46,531,991.01
Jul 90	214,578,822.40	246,905,446.96
Aug 90	273,979,275.09	224,307,027.22
Sep 90	28,116,447.94	56,706,241.10
Oct 90	26,838,583.60	73,129,484.85
Nov 90	30.00	225,900.30
Dec 90	69,186.50	0.00
Total	\$605,462,039.80	\$647,806,091.44

Note: Monies transferred to and from Mr Roy Loffill's Deposit Account have been excluded from this table.

10.70 The statements of account in respect of this account were addressed to Mr Roy Loffill at "Rm 1201 Hong Kong & Macau Bldg, 156-7 Connaught Road C Hong Kong". Mr Roy Loffill told me in evidence that he had not received those statements and that he was unaware of the volume of money moving through the account. He added that the statements were received by Mr Dennis Chung, a director of Widelines.



Mr Roy Loffill's connections with the 12/F Cash Client account

10.71 As discussed earlier, following the Tian Teck share transaction a cheque for \$31,066,666 was withdrawn from Spinus's account on 11 August 1990 payable to Mr Roy Loffill. According to Mr David Chiu, Mr Tsoi Mow Hung wanted that cheque cashed immediately. Mr David Chiu told me that as it was not possible to cash such a large sum of money on short notice at any bank:

*". . . the only way, the only person who have so much cash available that I know - you know, you want to call him the money broker, whatever you want to call him or treasurer, whatever is obviously because I exchanged money with him before, myself - is Roy Loffill. So, as I told Eva [Hui] it is not going to be cheap, I can refer you to Roy Loffill"*

When asked whether Mr Roy Loffill charged a commission, Mr David Chiu added:

*"Depends on your knowledge. I mean sometimes, depends really I mean depends on Danny [Mr Dennis Chung] and George Tan. Can be anything which depends how they feel [on] the day, but can be anything between one to five percent for the money exchange. That is my experience, I don't know about other companies."*

10.72 Mr Roy Loffill has denied receiving the cheque for \$31,066,000.

10.73 According to Mr Dennis Chung, the cheque for \$31,066,000 was in fact deposited into Mr Roy Loffill's account and placed on deposit on the instruction of Mr Tan Kiem Tiau. Two days later the monies were transferred back to Mr Roy Loffill's current account and mixed with other funds. Two cheques were then drawn; one for \$30,000,000 payable to Cheung On and the other for \$1,000,000 which was cashed. This too was allegedly done on the instruction of Mr Tan Kiem Tiau. With respect to the \$30,000,000 cheque payable to Cheung On, those monies were ultimately deposited into the 12/F Cash Client account on 15 August 1990. Mr Dennis Chung could not recall the names of the persons who collected the \$1,000,000 in cash. I have been

unable to trace the beneficiary of the \$1,000,000, although I have no evidence to suggest that Mr Tsoi Mow Hung received any of these monies.

- 10.74 From scrutiny of Mr Roy Loffill's bank account I cannot locate any other payments made within two weeks of the \$31,066,666 deposit that could have led to a cash payment to Mr Tsoi Mow Hung.
- 10.75 Spinus made a net profit of \$46,495,337.50 on the sale of the 145,000,000 Tian Teck shares to HESH. Following the transfer of \$50,400,000 from Spinus's account at Cheung On to Hauxton on 9 August 1990, Spinus's account was overdrawn by \$3,904,662.50. That debit was corrected by the receipt of funds on 4 September 1990. Also on that date an amount of \$12,595,337.50 was deposited into the 12/F Cash Client account. These two amounts totalled \$16,500,000. Examination of Mr Roy Loffill's account shows that two cash cheques of \$8,000,000 and \$8,500,000 were withdrawn on 4 September 1990. Set out below is a schedule of the banking transactions based on information provided by the Wing Hang Bank which shows the cashing of cheques totalling \$16,500,000 from Mr Roy Loffill's account and the subsequent deposit of funds also totalling \$16,500,000 into Cheung On's account on 4 September 1990. All of these transactions took place through the same teller at the Wing Hang Bank:

<u>Time</u>	<u>Transaction</u>
2:03:32 pm	- Cheque issued by Mr Roy Loffill for \$8,500,000 cashed.
2:03:52 pm	- Cheque issued by Mr Roy Loffill for \$8,000,000 cashed.
2:04:13 pm	- \$2,000,000 cash deposited into Cheung On's account.
2:04:31 pm	- \$5,000,000 cash deposited into Cheung On's account.
2:05:14 pm	- \$3,000,000 cash deposited into Cheung On's account.
2:05:29 pm	- \$2,500,000 cash deposited into Cheung On's account
2:05:56 pm	- \$4,000,000 cash deposited into Cheung On's account.

Total withdrawals from Mr Roy Loffill's account:	\$16,500,000
Total deposits into Cheung On's account :	\$16,500,000

- 10.76 I have also traced numerous cheque withdrawals from Mr Roy Loffill's account with the Wing Hang Bank which were payable to either Cheung On or Cheung On Fat and which were deposited into the 12/F Cash Client account. These monies were mixed with other deposits and immediately a number of withdrawals were made.

Payment of monies from the 12/F Cash Client account to Mr Roy Loffill

- 10.77 Following the deposit of the \$30,000,000 and \$17,200,000 from the Tian Teck share transaction and the sale of the World Trade Centre Building into the 12/F cash client account on 15 and 16 August 1990, four cheques were drawn payable to Wader Investment Limited ("Wader") (a stock broker) for \$4,351,673.94, \$24,900.52, \$344,886.10 and \$2,041,529.10. According to Wader, these funds were deposited into Mr Roy Loffill's share trading account and used to purchase WTCG and Tian Teck shares.
- 10.78 In addition to these payments I have also traced other payments made from the 12/F Cash Client account to Mr Roy Loffill's Wing Hang Bank account.

Mr Roy Loffill's share trading

10.79 During the period from 23 July 1990 to 1 August 1990, Mr Roy Loffill purchased a total of 5,244,000 WTCG shares through Sun Hung Kai Investment Services Limited ("Sun Hung Kai"), Mok Ying Kie Limited ("Mok Ying Kie") and Ban Hin Securities Co ("Ban Hin"). He also sold through those brokers as well as Wader and Smith New Court Far East Limited ("Smith New Court") a total of 25,400,000 WTCG shares, of which 17,400,000 were sold through Sun Hung Kai. A schedule of this sharetrading is set out below:

<u>DATE</u>	<u>WTCG SHARES</u>		<u>PRICE</u>	<u>BROKER</u>
	<u>BOUGHT</u>	<u>SOLD</u>		
			<u>\$</u>	
23-Jul-90		2,000,000	2.350	Ban Hin
23-Jul-90		2,000,000	2.300	Mok Ying Kie
25-Jul-90	300,000		2.400	Ban Hin
25-Jul-90		500,000	2.400	Mok Ying Kie
25-Jul-90		1,000,000	2.450	Sun Hung Kai
25-Jul-90		1,400,000	2.400	Sun Hung Kai
25-Jul-90		5,000,000	2.350	Sun Hung Kai
25-Jul-90		500,000	2.400	Wader
26-Jul-90		3,000,000	2.425	Smith New Court
26-Jul-90	500,000		2.500	Sun Hung Kai
26-Jul-90	936,000		2.475	Sun Hung Kai
31-Jul-90	500,000		2.650	Mok Ying Kie
31-Jul-90	192,000		2.575	Mok Ying Kie
31-Jul-90	52,000		2.550	Mok Ying Kie
31-Jul-90	500,000		2.675	Mok Ying Kie
31-Jul-90	766,000		2.600	Mok Ying Kie
31-Jul-90	242,000		2.625	Mok Ying Kie
31-Jul-90	756,000		2.600	Mok Ying Kie
31-Jul-90	500,000		2.675	Sun Hung Kai
1-Aug-90		10,000,000	2.700	Sun Hung Kai
TOTAL	<u>5,244,000</u>	<u>25,400,000</u>		

10.80 When I questioned Mr Roy Loffill about this sharetrading, I was informed by his solicitor that:

*"Mr Loffill has informed me that he is totally unaware as to the various transactions which have been identified. He has advised me that he gave no instructions whatsoever to purchase any shares in WTCG during the relevant period. Nor did he give any instructions in respect of the sale of these shares.*

*It has come as a complete surprise to Mr Loffill that any shares were registered in his name in respect of the various transactions identified by yourself.*

*Mr Loffill also confirms that he has not dealt in WTCG shares during the period 1st June 1990 to 1st December 1992. "*

- 10.81 Mok Ying Kie has advised me that there was no authorization from Mr Roy Loffill naming any other person to give instructions on his behalf and that according to Cheung On's records, Mr Roy Loffill gave instructions for the share transactions.
- 10.82 Sun Hung Kai, Smith New Court, Wader and Ban Hin have all advised me however that Mr Tan Kiem Tiau w gave instructions for these share transactions.
- 10.83 I have been unable to determine the source of all the funds used to purchase the WTCG shares or the source of the WTCG shares sold.
- 10.84 However Sun Hung Kai provided me with the following schedule of sharetrading in WTCG shares conducted by Mr Roy Loffill, Mr Ng Kin Wah, Mr Tan Yakobus Suryopranoto and Mr P Hwang over the period 23 July 1990 to 27 July 1990:

<u>Date</u>	<u>Client</u>	<u>No. of WTCG shares bought</u>	<u>Net Amount \$</u>
23/7/90	Ng Kin Wah	2,000,000	2,378,435.00
26/7/90	Roy Loffill	500,000	1,257,562.50
26/7/90	Roy Loffill	936,000	2,330,616.63
26/7/90	P Hwang	1,000,000	2,515,125.00
26/7/90	P Hwang	230,000	572,696.19
27/7/90	Ng Kin Wah	1,500,000	3,923,595.00
27/7/90	Ng Kin Wah	500,000	1,257,562.50
27/7/90	Yakobus	500,000	1,270,139.68
27/7/90	Yakobus	640,000	1,657,970.40
27/7/90	Yakobus	500,000	1,257,562.50
27/7/90	Yakobus	500,000	1,282,713.75
27/7/90	Yakobus	<u>3,168,000</u>	<u>8,286,633.24</u>
	TOTAL	<u>11,974,000</u>	TOTAL <u>\$27,990,612.39</u>

10.85 These share purchases were settled by nineteen separate cheques drawn from seven different banks on 30 July 1990. Although Sun Hung Kai has not been able to provide me with the details of the drawers of these cheques, I have traced the source of four of the cheques to the 12/F Cash Client account.

Mr Dennis Chung

10.86 Mr Dennis Chung told me that prior to joining Widelines in 1988/1989 he worked for Mr Roy Loffill at Gameway Limited. That company was apparently involved in property investment. Mr Dennis Chung stated that he came to know Mr Roy Loffill socially because he lived next door to Mr George Tan in Yuen Long and was a friend of Mr Peter Kao. Mr Dennis Chung referred throughout his examination to Mr Roy Loffill, as "*Uncle Roy*".

10.87 I understand from Mr Dennis Chung (and this has been confirmed by Mr George Tan) that his father was a very old friend of Mr George Tan and had been involved with him in the construction industry.

- 10.88 Mr Dennis Chung told me that he was initially employed by Widelines as a manager. He was subsequently appointed a director of Widelines in October 1990 at which time he was 27 years old. Widelines is, according to Mr Dennis Chung, involved in property investment and *"any kind of business"* which is inconsistent with the evidence of Mr David Kao.
- 10.89 Mr Dennis Chung told me that Mr Roy Loffill had opened a bank account on behalf of Mr Tan Kiem Tiauw and had asked Mr Dennis Chung to be a signatory as he, Mr Roy Loffill, was not always *"in town"*. The Power of Attorney granting Mr Dennis Chung power to operate Mr Roy Loffill's account was dated 22 August 1987. Mr Dennis Chung stated that he met Mr Tan Kiem Tiauw when he accompanied Mr Roy Loffill and Mr George Tan to dinners.
- 10.90 Mr Dennis Chung was actively involved in operating Mr Roy Loffill's account. He told me that *"someone"* would deliver the pay in slips to his office in respect of deposits of cash or cheques into Mr Roy Loffill's account. He asserted that he did not know the persons involved. He would then forward these slips to Mr Tan Kiem Tiauw in Indonesia, without keeping copies.
- 10.91 According to Mr Dennis Chung, if withdrawals had to be made, Mr Tan Kiem Tiauw would telephone him from Indonesia advising him of the amount to be withdrawn. *"Two or three Indonesians"* would then meet him at the office of Widelines and together they would go to the Wing Hang Bank. Mr Dennis Chung would draw a cash cheque, the monies would be counted and the Indonesian persons would take the money. Mr Dennis Chung again told me that he did not know the identities of the persons who collected the monies.
- 10.92 Mr Dennis Chung denied any knowledge of the purpose of Mr Roy Loffill's account, stating that as the money did not belong to him he did not ask about it. He added that he did not have a telephone number for Mr Tan Kiem Tiauw and would be telephoned by him.

- 10.93 Mr Dennis Chung denied receiving any monies for operating this account stating that he was paid his salary by Widelines.
- 10.94 According to Mr Dennis Chung, after working for Widelines for one or two years, he resigned and joined Hong Kong & Macau Holdings Limited ("Hong Kong & Macau Holdings") as a director. That company is located on the 15th floor of the Hong Kong & Macau Building. Mr Dennis Chung told me that it is involved in investment in China and Hong Kong.

Mr Dennis Chung's connection with the 12/F Cash Client account

- 10.95 Mr Dennis Chung is noted in the records of the 12/F Cash Client account as receiving funds under both his English and Chinese name, Chung Chi Wah. I have tried to contact Mr Dennis Chung to obtain his comments about these payments, however I understand that he has moved to China.

Mr Ng Kin Wah

- 10.96 From 1988 to 1991 Mr Ng Kin Wah (then in his early 30s) was employed by Widelines during which time he was engaged in trading "*everything*" in China.
- 10.97 Mr Ng Kin Wah told me that prior to joining Widelines he worked for the Hon Chim Pui Chung in stockbroking and China trade. He met Mr David Kao (Mr George Tan's brother-in-law) during the 1980s when the latter visited the Hon Chim Pui Chung's office. Mr David Kao subsequently offered him a job at Widelines.
- 10.98 Mr Ng Kin Wah also told me that the Hon Chim Pui Chung had introduced him to Mr George Tan. Mr Ng Kin Wah considered Mr George Tan a friend, seeing him at the offices of Widelines and more recently at Chinese festival celebrations held at Mr George Tan's home. Mr George Tan stated that Mr Ng Kin Wah called him "*Uncle*" and Mr George Tan referred to Mr Ng Kin Wah as "*little Wah*". Mr Ng Kin Wah also told me that he had met Mr Roy Loffill, having been introduced to him by Mr Peter Kao.



10.99 Surprisingly, Mr Ng Kin Wah was unable to explain to me the activities with which the other staff at Widelines were involved. He said:

*"If you put the question to me like that it's very difficult for me to answer because I did not know what the other departments of the company were doing."*

*"I didn't know what they did because we each of us had our own responsibilities and there was no reason why I would . . . poke my nose over somebody's desk and ask what they were doing."*

10.100 He added that he did not believe Madam Helen Kao, Mr George Tan's wife, did any work whilst at the office but was merely there *"to keep company with Mr [George] Tan."*

Mr Ng Kin Wah's connections with the 12/F Cash Client account

10.101 Following the deposit of the \$30,000,000 and \$17,200,000 from the Tian Teck share transaction and the sale of the World Trade Centre Building into the 12/F Cash Client account on 15 and 16 August 1990, two cheques were drawn payable to Agincourt Securities Company for \$54,329.81 and Triple A & Company for \$70,928.03. According to these stockbrokers the funds were deposited into Mr Ng Kin Wah's accounts and used to purchase WTCG and Tian Teck shares. In addition, Mr Ng Kin Wah received a cheque for \$6,840.86 which was deposited into his account at the Wing Hang Bank. Mr Ng Kin Wah told me that he could not recall receiving this cheque.

Mr Ng Kin Wah's bank account at the Wing Hang Bank

10.102 I have also traced a number of cheque withdrawals from Mr Ng Kin Wah's Wing Hang Bank account, which were payable to either Cheung On or Cheung On Fat and credited to the 12/F Cash Client account during 1990.

10.103 I have reviewed Mr Ng Kin Wah's current account with the Wing Hang Bank for the period 28 February 1990 to 13 November 1990. Set out below is a reconciliation of the deposits and withdrawals relating to that account.

Month	Total Deposits	Total Withdrawals
	\$	\$
Mar 90	-	-
April 90	5,069,110.13	3,920,154.41
May 90	31,030,217.32	31,030,217.32
June 90	39,286,418.26	36,671,034.59
July 90	59,051,649.13	44,925,612.89
Aug 90	46,383,573.45	60,310,253.75
Sept 90	-	4,218,000.00
Oct 90	139,560.00	40,297.79
Nov 90	3,823,263.04	3,935,211.75
TOTAL	\$184,783,791.33	\$185,050,782.50

Note: Funds transferred to and from Mr Ng Kin Wah's deposit account have been excluded from this table.

10.104 The similarities between the bank accounts of Mr Ng Kin Wah and Mr Roy Loffill are notable. Both accounts were operated over a certain period of time during which very large deposits and withdrawals were made on a daily basis. Further, a considerable number of the cheques drawn were payable to stockbrokers to settle purchases of WTCG and Tian Teck shares. I have little doubt that Mr Ng Kin Wah operated this account as a nominee for others in similar circumstances to those of Mr Roy Loffill.

Mr Ng Kin Wah's share trading

10.105 I have ascertained that over the period from 23 July 1990 to 8 August 1990 Mr Ng Kin Wah purchased 38,134,000 WTCG shares and sold 7,634,000 WTCG shares. Mr Ng Kin Wah conducted these share tradings through Sun Hung Kai, Wader, Mok Ying Kie, Smith New Court, Triple A & Company and CEF Securities Limited ("CEF Securities").

10.106 According to Mr Ng Kin Wah some of these shares were purchased for himself and others on behalf of his friends. When asked the names of *"these friends"* he said:

*"They are all people in the market."*

*". . . we were always exchanging information and we asked people in the market for information and that's how we traded."*

10.107 The only name that he could provide me with was Mr Chen Chiu Pu, a Taiwanese he had met in Macau some six years earlier. Mr Ng Kin Wah said that it was *"partly his suggestion"* to purchase WTCG shares because:

*"It was rumoured very strongly in the market at the time that that particular stock was the subject of speculative activities."*

10.108 Mr Ng Kin Wah could not recall when the balance of approximately 29,000,000 WTCG shares were sold.

10.109 When asked how the share purchases on *"behalf of friends"* were settled, Mr Ng Kin Wah told me that monies would be deposited into his bank account at the Wing Hang Bank. Mr Ng Kin Wah has failed to identify which of these deposits were from his *"friends."*

- 10.110 Mr Ng Kin Wah provided Mok Ying Kie and Wader with his home address for correspondence. However he provided Smith New Court with the address of 12th floor, Hong Kong & Macau Building for correspondence. The 12th floor of the Hong Kong & Macau Building is solely occupied by Widelines. Mr Ng Kin Wah provided CEF Securities with an address of 10th floor, Hong Kong & Macau Building for correspondence.
- 10.111 Mr Ng Kin Wah explained that Sanborn Securities Limited was located on the 10th floor, Hong Kong & Macau Building. Although he could not recall why he had provided that address, he did tell me that he had an account with that stockbroker at the time.
- 10.112 As referred to earlier in this chapter a portion of Mr Ng Kin Wah's WTCG share purchases through Sun Hung Kai were settled by nineteen cheques drawn from seven different banks on 30 July 1990. These cheques were concurrently used to settle the sharetrading of Mr Roy Loffill, Mr Tan Yakobus Suryopranoto and Mr P Hwang. I have traced the source of four of these cheques to the 12/F Cash Client account.

Mr Tan Yakobus Suryopranoto

- 10.113 Mr Tan Yakobus Suryopranoto is an Indonesian. His travel document records his profession as "entrepreneur". Over the period from 23 July 1990 to 18 January 1991, Mr Tan Yakobus Suryopranoto purchased 46,468,000 WTCG shares and sold 6,894,000 WTCG shares. This sharetrading was conducted through Mok Ying Kie, Smith New Court and Sun Hung Kai.
- 10.114 Correspondence forwarded to the two Hong Kong addresses provided by Mr Tan Yakobus Suryopranoto to Sun Hung Kai and Mok Ying Kie has been returned to me unanswered.

Mr Tan Yakobus Suryopranoto's connections with the 12/F Cash Client account

- 10.115 Following the deposit of the \$17,200,000 commission from the sale of the World Trade Centre Building into the 12/F Cash Client account, Smith New Court was issued with two cheques for \$2,819,710.40 and \$1,138,096.32 on 16 and 17 August 1990. These funds were deposited into Mr Tan Yakobus Suryopranoto's account at Smith New Court, and used to purchase WTCG and Tian Teck shares.
- 10.116 Mr Ng Kin Wah was noted as the contact person for Mr Tan Yakobus Suryopranoto's share trading at Smith New Court. Mr Ng Kin Wah denied knowing Mr Tan Yakobus Suryopranoto or conducting any share trading on his behalf. The client address provided to Smith New Court in relation to Mr Tan Yakobus Suryopranoto's account was the 12th floor, Hong Kong & Macau Building, the same address as that provided for Mr Ng Kin Wah.
- 10.117 As discussed earlier, a portion of Mr Tan Yakobus Suryopranoto's WTCG share purchases through Sun Hung Kai were settled by nineteen cheques from seven different banks on 30 July 1990. Although Sun Hung Kai was unable to provide me with the drawers of these cheques I have traced the source of four of them to the 12/F Cash Client account.

Madam Loo Kwee Huay

- 10.118 Madam Loo Kwee Huay, a Singaporean, is alleged to have purchased 113,630,000 WTCG shares through Ban Hin from 23 July 1990 to 13 August 1990 and sold 76,430,000 WTCG shares during the same period.
- 10.119 Mr Ong Ban Chye, the sole proprietor of Ban Hin told me that he had been introduced to Madam Loo Kwee Huay a few years ago by friends of his in Singapore.

10.120 According to Mr Ong Ban Chye:

*"Normally she [Madam Loo Kwee Huay] would call in the morning if she wanted to trade, then I would call her afterwards in the afternoon. Then she would call again in the afternoon to enquire whether the transactions had been completed and I would make a report to her. She would then indicate to me what would be her portion of the shares traded and what would be the portions which were transactions undertaken for her friends. "*

10.121 Mr Ong Ban Chye told me that *"friends"* of Madam Loo Kwee Huay in Hong Kong would help her settle the transactions by either cash or cheque payments. He could not remember the drawer of the cheques. Mr Ong Ban Chye added that *"normally"* if there was a difference between the bought and sold shares in favour of the seller, Ban Hin would draw a cheque for that amount leaving the name of the payee blank. Madam Loo Kwee Huay's *"friends"* in Hong Kong would collect the cheques.

10.122 When asked whether he could find out the names of these *"friends"*, Mr Ong Ban Chye stated:

*"That would be difficult because these people gave us such a lot of business and it would not be proper of us to ask so many questions. We, being brokers, are there simply to serve our customers in return for small commissions. "*

10.123 No account opening documentation was ever completed for Madam Loo Kwee Huay. Although I did contact Madam Loo Kwee Huay by telephone she failed to respond to my correspondence or meet with me in Singapore.

Madam Loo Kwee Huay's connection with the 12/F Cash Client account

- 10.124 Following the deposit of the \$30,000,000 and \$17,200,000 commission from the Tian Teck share transaction and the sale of the World Trade Centre Building into the 12/F Cash Client account, Ban Hin were issued four cheques on 15, 16 and 17 August 1990. These monies were deposited into an account at Ban Hin in the name of Madam Loo Kwee Huay's and used to purchase WTCG shares.
- 10.125 Mr Ong Ban Chye told me that he was a friend of Mr George Tan, having known him for *"more than ten years."* He also told me that he, Mr Ong Ban Chye, knew Mr Jackson Chang of WTCG, having sold him shares.

Madam Loo Kwee Huay's further sharetrading

- 10.126 On 1, 2 and 6 August 1990, Grand Ocean Corporation ("Grand Ocean"), a Liberian company controlled by Madam Hsu Jye (Mr David Tong's sister-in-law) and Mr Hsu Bin (Mr David Tong's brother-in-law) acquired a total of 118,200,000 WTCG shares through Chintung. Chintung's account opening documentation for Grand Ocean referred to the account as being managed by Mr Jackson Chang.
- 10.127 The schedule below sets out the sale of 115,000,000 WTCG shares alleged to be by Madam Loo Kwee Huay and others in her syndicate through Ban Hin to Grand Ocean on 1, 2 and 6 August 1990. These WTCG shares formed part of the 116,500,000 WTCG shares sold by Hauxton to Great Eagle on 9 August 1990 at \$2.80 each through Cheung On. This share transaction is detailed in Chapter 9.

<u>Date</u>	<u>No of shares purchased by</u>	<u>Price</u>	<u>Broker</u>	<u>Sellers</u>	<u>No of shares sold</u>
			<u>Grand Ocean</u>	\$	
1 August 1990	10,000,000	2.675	Ban Hin	Mr W S Ng	5,000,000
			Ban Hin	Mr W S Ng	5,000,000
	5,000,000	2.725	Ban Hin	Loo Kwee Huay	5,000,000
	10,000,000	2.725	Ban Hin	Mr Leung	5,000,000
				Mr Leung	5,000,000
	10,000,000	2.725	Ban Hin	Mr Lai	5,000,000
				Mr Lai	5,000,000
2 August 1990	10,000,000	2.650	Ban Hin	Mr Tsang	10,000,000
	10,000,000	2.675	Ban Hin	Loo Kwee Huay	10,000,000
	10,000,000	2.725	Ban Hin	Loo Kwee Huay	10,000,000
	10,000,000	2.725	Cheung On	Ng Wing Yu	5,000,000
			Cheung On	Luk Chun Nam	5,000,000
	10,000,000	2.725	Wader	Trina Abraham	2,000,000
				Abraham Adiasa	4,000,000
				Soelamah	4,000,000
6 August 1990	<u>30,000,000</u>	2.700	Ban Hin	Loo Kwee Huay	<u>30,000,000</u>
	<u>115,000,000</u>				<u>115,000,000</u>

Madam Loo Kwee Huay's submission

10.128 Although Madam Loo Kwee Huay would not respond to my direct approaches prior to preparation of my provisional conclusions, after she was forwarded a copy of this chapter in draft form for her comments, her Solicitors made the following submission on her behalf:

*"We are instructed that Mr Ong Ban Chye is a friend of our client's husband. She has not purchased any of the shares in question through Mr Ong nor authorised him to transact any such shares on her behalf.*

*Our client does not know the persons named in your report and she has no dealings with them at all in the alleged share transactions. "*



## CONCLUSIONS

- 10.129 I consider the evidence of Mr George Tan, Mr Ng Kin Wah and Mr Dennis Chung regarding the business activities which took place during 1990 on the 12th floor of the Hong Kong & Macau Building, was given in a manner so as to ensure as little real information as possible was provided to me.
- 10.130 Mr David Kao's evidence however drew a far more informative picture of life on the 12th floor. I accept that during 1990 there were only four employees of Widelines, not ten as Mr Ng Kin Wah asserted, namely, Mr David Kao, Mr Ng Kin Wah, Mr Dennis Chung and the driver, and that the office was and continues to be used by other members of the Kao family, including Mr George Tan. Of interest was the additional use made of Widelines' office by "*groups of friends*" of Mr George Tan, Mr Ng Kin Wah and Mr Dennis Chung.
- 10.131 Mr David Kao told me in evidence that he did not "*interfere with their business*" as he had the family business of Widelines to attend to. He added that he did not know whether the services of Mr Ng Kin Wah and Mr Dennis Chung were "*taken advantage of*" by Mr George Tan and others who used Widelines' office.
- 10.132 The connections between the 12/F Cash Client account and the 12th floor of the Hong Kong & Macau Building are numerous. I have little doubt that the 12/F Cash Client account operated through Cheung On refers to the 12th floor of the Hong Kong & Macau Building. It remains unclear however who actually controls and benefits from the account. I have not been appointed to investigate the affairs of Widelines and therefore have not been able to review its books and records.
- 10.133 I infer however from the evidence of Mr David Kao that Mr Ng Kin Wah and Mr Dennis Chung were involved in other activities whilst working for Widelines which may have been for the benefit of others who used the 12th floor for their own business.
- 10.134 I believe one such activity of Mr Dennis Chung was to operate Mr Roy Loffill's account at the Wing Hang Bank allegedly on behalf of Mr Tan Kiem Tiau.

- 10.135 On the evidence of Mr Roy Loffill it is clear that he had nothing to do with the account except occasionally to sign blank cheques. Mr Dennis Chung operated the account. He received the pay in slips, was allegedly contacted by Mr Tan Kiem Tiauw regularly to withdraw funds from the account, he attended the bank to make the withdrawals and reconciled the account. Over the six month period from June 1990 to December 1990 in excess of \$600,000,000 was deposited and withdrawn from that account. The sheer volume of money moving through the account meant Mr Dennis Chung dealt with it virtually on a daily basis. He told me that he did not receive any form of compensation for his role as he was paid his salary by Widelines.
- 10.136 Mr Tan Kiem Tiauw was known to Mr Roy Loffill and Mr Dennis Chung. Although Mr George Tan has denied knowing him, as I conclude in Chapter 8, I do not accept this evidence.
- 10.137 The similarities between the bank accounts of Mr Roy Loffill and Mr Ng Kin Wah are clearly evident. They both acted as conduits for large deposits and withdrawals over a defined period of time. Cheques drawn from both accounts have been traced to the 12/F Cash Client account. Similarly, cheques were drawn from the 12/F Cash Client account payable to Mr Ng Kin Wah and Mr Roy Loffill which have been traced back to their bank accounts and to their sharetrading accounts. They both traded in WTCG shares extensively over the six month period from July 1990 to December 1990 using common stockbrokers such as Sun Hung Kai, Mok Ying Kie and Smith New Court.
- 10.138 Mr Roy Loffill has denied any knowledge or involvement in the operation of his bank account and the sharetrading in WTCG conducted in his name. I accept that Mr Roy Loffill may not have been personally involved in these matters although I believe he was aware that persons were using his name for dealings with which they did not wish to have their names associated.

10.139 Mr Ng Kin Wah on the other hand was employed by Widelines and as such was at the office daily. His failure to identify the monies deposited and withdrawn from his account on behalf of his "*friends*" or to recall the names of the persons on whose behalf he traded leads me to believe that he too acted on behalf of others on the 12th floor of the Hong Kong and Macau Building, whose names he has deliberately withheld from me.

10.140 I have found that without the cooperation of Mr Tam Cham Kai, the proprietor of Cheung On, the 12/F Cash Client account would not have been able to operate efficiently. The 12/F Cash Client account was not a sharetrading account, rather it was used as a bank account into and out of which monies were deposited and withdrawn, payable to other stockbrokers and individuals.

10.141 In answer to this criticism Mr Tam Cham Kai, through his solicitors, submitted:

*"It was a service provided to client and it was customary practice at that particular time and is not just limited to our client's firm. At the relevant time, very often our clients are asked by its client to issue cheques with the payee left blank. It was to our client's understanding that this is not contrary to any stock exchange rules. "*

10.142 Mr Tam Cham Kai is an old friend of Mr George Tan. He has told me that he received a 1% commission (\$17,200,000) from WTCG because he introduced Mr Jackson Chang to Mr George Tan which led to WTCG purchasing the World Trade Centre from Hongkong Land. I conclude in Chapter 8, that I find it difficult to understand why such a commission had been paid to Mr Tam Cham Kai when he had played no active role in the transaction. Mr David Chiu, who was involved throughout the transaction with Mr George Tan and Mr Jackson Chang, knew nothing of Mr Tam Cham Kai's involvement. In further support of my conclusion that Mr Tam Cham Kai had no real involvement is the fact that he does not appear to have benefitted in any way from the payment of the \$17,200,000. I have found these monies were channelled through three bank accounts and then deposited into the 12/F Cash Client account. I have received no evidence from Mr Tam Cham Kai that he was one of the beneficiaries of the 12/F Cash Client account

and as such have inferred that he was acting on behalf of another. I conclude in Chapter 8 that I believe this to be Mr George Tan.

10.143 Cheung On was also used as the stockbroker for the purchase and subsequent sale of 145,000,000 Tian Teck shares and the acquisition of 116,500,000 WTCG shares. Its involvement is a curious one as of the parties involved in these share transactions only HESH had ever used Cheung On previously. The Financial Controller of WTCG has been unable to explain the sale of 6,000,000 Tian Teck shares on 9 August 1990 allegedly by HESH through Wader. No authority was given for such a transaction. According to Wader, Mr Tan Kiem Tiau gave the instructions and Mr Roy Loffill supplied the Tian Teck shares. The connections of both these men to the 12th floor of the Hong Kong & Macau Building lead me to conclude that this transaction was driven from those premises.

10.144 I believe that \$30,000,000 from the total profit earned by Spinus on the sale of the 145,000,000 Tian Teck shares was channelled through Mr Roy Loffill's account to Cheung On who deposited it into the 12/F Cash Client account. I have received no evidence to suggest that those who were associated with Spinus, namely Madam Eva Hui, Mr Tsoi Mow Hung or Mr David Chiu, were beneficiaries of the 12/F Cash Client account. It can therefore be inferred that they were acting on behalf of those who benefitted from the 12/F Cash Client account. The rebate of part of the commission earned by Cheung On to Mardela, a subsidiary of Widelines, is however evidence of a beneficial interest held by Widelines in the Tian Teck share transaction. Although Mr David Kao stated that this commission had in fact arisen from a property transaction, I do not accept his evidence on this matter. The documentary evidence from Cheung On is clear that the commission was related to the Tian Teck share transaction.

10.145 I have found that some of the other recipients of funds from the 12/F Cash Client account were also connected to the 12th floor of the Hong Kong & Macau Building:

- (i) Mr Tan Yakobus Suryopranoto traded heavily in WTCG shares from July 1990 to January 1991. Mr Ng Kin Wah was named as his contact person for sharetrading conducted through Smith New Court;
- (ii) Mr Chan Tai Tak, Mr K Y Chu, A C Tan and S T Yu traded in WTCG and Tian Teck shares through Koo & Co with instructions being received from Widelines and share certificates also delivered to Widelines; and
- (iii) The similarities between the pattern of WTCG sharetrading in the name of Madam Loo Kwee Huay, Mr Tan Yakobus Suryopranoto, Mr Roy Loffill and Mr Ng King Wah, the well established friendship of Mr Ong Ban Chye (the proprietor of Ban Hin) and Mr George Tan and the sale of 115,000,000 WTCG shares to Grand Ocean which formed part of the Tian Teck share transaction, strongly infers that the account in the name of Madam Loo Kwee Huay was operated by the same people on the 12th floor of the Hong Kong & Macau Building, who controlled the 12/F Cash Client account. Madam Loo Kwee Huay's submission that she did not authorise or have knowledge of these transactions further supports this view.

10.146 After consideration of the evidence set out in this chapter, I have concluded that Mr George Tan has controlled the operations of the 12/F Cash Client account, and has given direction to Mr Dennis Chung and Mr Roy Loffill in respect of Mr Roy Loffill's account at the Wing Hang bank.

10.147 In view of the various connections, it is likely that Mr George Tan has also directed, or had a part to play in the purchase of WTCG shares in the names of Madam Loo Kwee Huay, Mr Ng Kin Wah, Mr Dennis Chung and Mr Tan Yakobus Suryopranoto.

10.148 I also believe that Mr Jackson Chang had a part to play in the purchase of the WTCG shares above, or was aware of this, and this lead to the purchase by Grand Ocean of the WTCG shares that were later sold to Great Eagle as discussed in Chapter 9.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 11

### THE ACQUISITION OF DONG SHAN TAI INDUSTRIAL ESTATE, HUANGPU, GUANGZHOU, PEOPLES REPUBLIC OF CHINA

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## 11 INTRODUCTION

11.1 My terms of reference directed me to investigate and report on all the events surrounding the acquisition by WTCG on 24 August 1990 of land at Dongji Industrial District in Huangpu, Guangzhou, the People's Republic of China.

11.2 In the annual report of WTCG for the year ended 30 June 1990 in the section headed "Post-Balance Sheet Events" was a paragraph which read:

*"By an agreement dated 24th August, 1990, the Group had acquired from unrelated third parties the entire issued capital and shareholders' loan of Hammul Ltd, a company incorporated in Hong Kong, for a total consideration of approximately HK\$128 million. Via its wholly owned subsidiary company, Hammul Ltd. holds under long-term lease a piece of land of approximately 2.8 million square feet in Guangzhou, People's Republic of China. The consideration was settled by internal resources of the Group. At completion, the outstanding instalments payable by the subsidiary of Hammul Limited to the Guangzhou Government relating to the land held by it was approximately RMB 54 million, which is payable by instalments over the next 4 years. "*



- 11.3 In WTCG's published accounts for the period ended 31 March 1991 the land acquired was shown in the sub-section headed "Properties under Development".
- 11.4 On 24 August 1990, WTCG, through a wholly owned subsidiary, Padbury Limited ("Padbury") agreed to acquire all the issued share capital of Hammul Limited ("Hammul").
- 11.5 Hammul controlled the Land Use Rights to 260,000 square metres of land at the Dong Shan Tai Industrial District, Huangpu, Guangzhou, in the Peoples Republic of China (the "Guangzhou Land").
- 11.6 Mr David Chiu has stated that he was the beneficial owner of all 4 of the Hammul shares, although at the time of the sale, Martra Inc ("Martra") was registered as the holder of 2 of the 4 issued shares. The other 2 shares were held in trust for Mr David Chiu. Although Martra was expressed to be the vendor of its 2 shares in Hammul in the sale agreement, this agreement was changed after it had been executed and references to Martra were replaced by Mr Kam Kin Yat (of the Far East Group). The instructions for the change of name of the vendor appear to have come from the purchaser.
- 11.7 The Land Use Rights were granted on 25 July 1990 to Guangzhou Hammul Limited ("Guangzhou Hammul"), a wholly owned subsidiary of Hammul for a consideration of RMB 67,619,760 payable over five years. This amounted to \$86,692,000 at the unofficial exchange rate (say, HKD1.00 : RMB0.78), or \$111,528,550 at the official rate (say, HKD1.00 : RMB0.6063).

- 11.8 Padbury purchased the shares in Hammul for \$197,868,096.56 placing a value on the Guangzhou Land of \$195,696,229.36. The \$195,696,229.36 included a premium or goodwill element of \$109,004,229.36 agreed by the parties sometime earlier, and which was equal to the cost of the Land Use Rights, using HKD1.00:RMB0.6063 as the official rate of exchange. The additional \$2,171,867.20 was paid to reimburse the vendors for amounts paid by them including the costs of incorporation of Hammul and Guangzhou Hammul and legal and other expenses.
- 11.9 Accordingly, a profit of \$109,004,229.36 was booked by the vendors, although the majority of the consideration was by way of transfer of shares.
- 11.10 The involvement of Martra has not been satisfactorily explained, and it appears that the completed agreements for the sale of the shares in Hammul were later altered to exclude Martra.
- 11.11 The sequence of events has been difficult to establish as much of the verbal evidence I have received is conflicting, and also contradicts documentary evidence.
- 11.12 The verbal evidence of Mr David Chiu, Mr David Tong, Madam Hsu Jye and Mr Kam Kin Yat has been that WTCG only became interested in the acquisition of this land following the breakdown of negotiations to sell the land to Taiwanese interests represented by Martra and Madam Hsu Jye.
- 11.13 Documentary evidence suggests that directors of WTCG were involved in discussions or negotiations about the land much earlier than the time specified by those witnesses.
- 11.14 The consideration paid by WTCG comprised shares in First Pacific Bancshares Holdings Limited ("First Pacific Bancshares") and Tian Teck Land Limited ("Tian Teck"). The shares in First Pacific Bancshares had earlier been purchased from a company controlled by Mr David Chiu.

- 11.15 The amount paid by WTCCG was supported by a valuation and a feasibility study. I have examined the methodology and assumptions used in the valuation and feasibility study.
- 11.16 A commission of \$1,100,000 was paid to Fulldiamond by WTCCG for introducing the transaction although Mr Jackson Chang appeared to be in discussion with the vendors prior to the involvement of Fulldiamond.

### **ACQUISITION OF THE GUANGZHOU LAND BY MR DAVID CHIU**

- 11.17 Mr Kam Kin Yat, who advises that he is the former head of the China Division of Far East Development Limited, a subsidiary of the Far East Group of Companies, has told me that he was approached by officials of the Guangzhou Economic Technology Development Zone ("GETDZ") in or about early 1990 and told that a plot of land of approximately 260,000 square metres was available for sale. Mr Kam Kin Yat inspected the site which is about thirty-five kilometres from Shenzhen on the north-eastern fringe of the GETDZ. (Some documents described the GETDZ as the Guangzhou Economic Technology Development District, or GETDD).
- 11.18 Mr David Chiu has stated that this site was one of many parcels of land acquired by the Far East Group in early 1990.
- 11.19 Mr David Chiu has said that following the Tiananmen Square incident on 4 June 1989, investing in China became unpopular and that as an incentive there was a considerable amount of land available at special prices. Independent advice I have obtained has verified that there were very few transactions carried out at this time in Southern China, particularly for properties of this size.

- 11.20 According to Mr Kam Kin Yat, the first six months of 1990 were spent negotiating terms with the Guangzhou authorities. On 27 May 1990, the officials of the GETDZ and Guangzhou Hammul entered into a preliminary agreement whereby Guangzhou Hammul agreed to acquire a right to use the Guangzhou Land.
- 11.21 Guangzhou Hammul was incorporated in the Peoples Republic of China and is a wholly owned subsidiary of Hammul, a company incorporated in Hong Kong. The ownership of Hammul is discussed below.
- 11.22 On 25 July 1990, the right to use the Guangzhou Land was granted to Guangzhou Hammul.
- 11.23 The essential terms of the land grant made by the Management Committee of the GETDZ were:
- (1) a performance deposit of RMB 3,380,988, being 5% of the total consideration, to be paid on signing;
  - (2) the total purchase price of RMB 67,619,760 (calculated at RMB 260 per square metre) was to be paid within five years by instalments on 26 August of each year commencing in 1990. The first instalment was for 15%, the next three instalments were each for 20% and the last was for 25%. The performance deposit could be deducted from the last instalment provided there was no default. Interest was payable on the balance outstanding each year at a floating rate which would be approximately 10%.
  - (3) the purchaser would be entitled to transfer the right to use the land;
  - (4) the purchaser would be entitled to use the land for fifty years;
  - (5) the purchaser had a two year "*marketing period*" to introduce projects to the site and seven years to complete all development; and

(6) the land could be subdivided. Lots of less than 10,000 square metres had to be completed within three years. Buildings on lots over 10,000 square metres had to be completed within five years from the date of the grant of the Land Use Rights.

11.24 Guangzhou Hammul was required to pay a total purchase price of \$86,692,000 (at the unofficial exchange rate of for example HKD 1.00 : RMB 0.78) or \$111,528,550 (at the official exchange rate of say HKD 1.00 : RMB 0.6063). The value of the land is discussed further below.

11.25 An extract of an audit workpaper prepared by Deloitte Touche Tohmatsu is reproduced below. This shows the manner in which Guangzhou Hammul was allowed by the Chinese authorities to deal with the land:

*"On payment of deposit the China Govt. shall issue Land Rights Certificate which shall be kept in Ko & Co, Solicitors appointed by the China Govt. Such certificate is used for inspection purposes by prospective buyers in H.K. This was issued on 27 Aug 1990.*

*Moreover, upon every instalment paid, an equivalent portion of the land shall be allotted to the Company. The Company can then transfer/sub-divide any portions of it. A Notice of transferable area was issued on 20/9/1991.*

*Therefore the land rights have been registered and confirmed by the China Govt."*

11.26 According to Mr David Chiu, the Chinese authorities wanted Taiwanese investment in the Guangzhou Land. He claimed that it was his intention to develop the land by entering into a joint venture with a Taiwanese investor. In other words, he would contribute the land and the Taiwanese party would subdivide and develop the property. He has told me that many Taiwanese were shown the site however when requested to provide details of these persons he was unable to do so.

11.27 It is clear however that before the Land Use Rights were granted, Mr David Chiu was negotiating at least the partial sale of his interest, if not the whole project.

#### **THE SALE OF THE ISSUED SHARE CAPITAL OF HAMMUL**

11.28 Following the indirect acquisition of the land by Hammul, Padbury, a wholly owned subsidiary of WTCG, agreed to acquire the issued share capital of Hammul by way of a Share Sale Agreement dated 24 August 1990 ("the Sale Agreement").

11.29 The important terms and conditions of the Sale Agreement were:

- (1) Padbury, a wholly owned subsidiary of WTCG, would purchase all the issued share capital of Hammul.
- (2) Hammul had four shares in issue.
- (3) The purchase consideration of \$109,004,229.36 was to be paid, and a loan of \$5,835,900.80 made to Hammul by the vendors was to be repaid, by the transfer to the vendors of 1,508,300,000 shares in First Pacific Bancshares and 16,661,077 shares in Tian Teck.
- (4) The shares in First Pacific Bancshares were to have an attributed value of \$0.043 per share and the Tian Teck shares, a nominal value of \$3.00 per share.
- (5) WTCG would indirectly acquire the liability to the Guangzhou authorities for payment of instalment monies outstanding on the loan.
- (6) Any interim advances made by the vendors to the Guangzhou authorities between the signing and settlement of the terms of this Agreement would be reimbursed in cash.

11.30 In addition, the following were important conditions precedent to the Sale Agreement:

- (1) The right to use and transfer the Guangzhou Land had to be duly vested in Guangzhou Hammul.
- (2) Hammul's consolidated accounts had to be audited and pass that audit without qualification.
- (3) Padbury's appraiser had to issue a valuation report on the land within fourteen days, confirming that its fair open market value on 24 August 1990 was not less than \$180,000,000, on the basis that the property was free from encumbrances, liability, debt or obligations, save and except for the terms of the Transfer Agreement.
- (4) That the third vendor, Mr Kam Kin Yat, was required to complete acquisition of the two shares he had agreed to sell.
- (5) Mr David Chiu was required to make an interest free loan to Hammul to finance the first instalment of monies due to the Guangzhou authorities of RMB 10,142,964.

11.31 As the conditions precedent were prima facie met, completion of the sale of Hammul's issued share capital occurred on 11 September 1990. Transfers of the shares in First Pacific Bancshares and shares in Tian Teck as consideration took place in early October 1990.

#### **THE VENDORS**

11.32 An important issue which I have had to determine was exactly who sold Hammul to WTCG and who received the sale consideration.

11.33 According to the Sale Agreement, the following employees of the Far East Group of companies agreed to sell the four issued shares in Hammul:

<u>Name</u>	<u>No. of shares</u>
Madam Rita Chi-Ka Ng ("Madam Rita Ng")	1
Madam Eva Hui	1
Mr Kam Kin Yat	2

11.34 The Hammul shares had a par value of \$10 each.

11.35 Madam Eva Hui and Madam Rita Ng were registered owners of their shares and held these on trust for Mr David Chiu. This arrangement was documented in Declarations of Trust dated 15 May 1987 and 25 April 1990 respectively.

11.36 On 24 August 1990 Mr Kam Kin Yat appears to have had no interest in the 2 shares in Hammul. The name of Mr Kam Kin Yat was subsequently inserted into the share purchase agreement in an irregular manner (as will be discussed later in this chapter). The amended agreement indicates that as at 24 August 1990 Mr Kam Kin Yat had agreed to acquire the 2 shares although I have seen no evidence to confirm this and it seems on all the evidence that as at 24 August 1990 this was not the case (see extract at Appendix 79).

#### Mr Kam Kin Yat's two shares in Hammul and the involvement of Martra

11.37 On 26 June 1990, Martra had been issued two \$10 shares in Hammul increasing the issued capital from \$20 to \$40. There is no evidence of Martra remitting the subscription money for the shares to Hammul.

11.38 I was appointed to investigate the affairs of Martra as it features prominently in several transactions involving Mr David Tong. A full description of the activities of Martra that I have reviewed can be found in Chapter 19. In summary though, the salient facts relating to this aspect of the investigation are:



- (1) Martra is a Liberian company, incorporated on 14 December 1988, with one bearer share in issue.
- (2) The one issued share in Martra was transferred to Madam Hsu Jye, Mr David Tong's sister-in-law, on 1 September 1989. Madam Hsu Jye and her brothers, Mr Hsu Sun and Mr Hsu Bin, were appointed directors of Martra on that day.
- (3) On 6 November 1989, Madam Hsu Jye's subscriber share was cancelled and Mr Koo Tai Ne ("Mr Danny Koo") was subsequently issued one bearer share. Mr Danny Koo and Madam Sun Huei Chuan were appointed directors following the resignations of Madam Hsu Jye, Mr Hsu Sun and Mr Hsu Bin.
- (4) Mr Danny Koo and Madam Sun Huei Chuan are both Taiwanese nationals and residents.
- (5) I understand Mr Danny Koo has been the General Manager of Tomson Development Co Limited ("Tomson Development") since 1989. Tomson Development is a Taiwanese property development company in which I understand Mr David Tong, Mr Sun Tao Tsun and Mr Danny Koo are major shareholders.
- (6) Madam Hsu Jye operated a bank account in Martra's name at Security Pacific Asian Bank ("SPAB"). Mr Danny Koo and Madam Hsu Jye were able to sign solely on this account.
- (7) In an application for share trading facilities with Cresvale Hong Kong dated 13 January 1990, Madam Hsu Jye describes herself as the "*Manageress*" of Martra.
- (8) During 1990, Martra advanced several loans to Tomson Investments (a subsidiary of Tomson Pacific), David Tong Company (a company owned by Mr David Tong and Madam Hsu Feng), Mr David Tong personally and Peace Forest Limited ("Peace Forest") (a company which at the time was controlled by Mr David Tong and Mr Jackson Chang).

(9) During 1990 and 1991, Martra traded extensively in Rivera, Tomson Pacific and WTCG shares, at times directly controlling over 4% of the issued shares of WTCG.

11.39 Mr Kam Kin Yat has explained Martra's involvement in Hammul by saying that he approached Madam Hsu Jye at the offices of WTCG with a view to her recommending Taiwanese investors as joint venture partners to either contribute to the cost of the land or pay for the construction. He said he contacted her because:

*"She is Mr Tong's sister and she knew a lot of Taiwanese people, she had many Taiwanese friends . . . we knew at the time that the Tong family had similar experience in Taiwan developing industrial estates."*

11.40 Madam Hsu Jye has not claimed she had any experience in land development but has alleged that she was in fact initially contacted by Mr Eddie Lo whilst he was visiting Mr Jackson Chang at the offices of WTCG. Mr Eddie Lo is discussed in Chapter 4.

11.41 Madam Hsu Jye has said that Mr Eddie Lo mentioned the Guangzhou Land to her because she had good connections in Taiwan and that he offered to introduce Mr Kam Kin Yat to her. Madam Hsu Jye claimed that she then contacted a few Taiwanese friends who she believed would be interested in the land, including Mr Danny Koo.

11.42 In her evidence to me Madam Hsu Jye has claimed that she stood to gain nothing from her efforts to secure a Taiwanese investor.

11.43 When I first asked Madam Hsu Jye about Mr Danny Koo, she told me he was a business associate from Taiwan. It was only after I presented additional evidence to her that she admitted that he was a close personal friend of Mr David Tong and the General Manager of Tomson Development in Taiwan.

11.44 Madam Hsu Jye stated that Mr Danny Koo sent someone to inspect the land. He was apparently interested in forming a joint venture and paying for the construction costs of the development. She stated that negotiations reached the point where two shares in Hammul were issued to Martra on 26 June 1990. However, I was told that when Mr Danny Koo found out that Taiwanese law prevented him from selling the land to other Taiwanese investors, he withdrew. Although Madam Hsu Jye alleged she negotiated at all times with Mr Kam Kin Yat on behalf of Mr Danny Koo, she claimed not to know who Mr Kam Kin Yat represented.

11.45 Mr David Chiu stated that he was not serious about entering into a joint venture with Martra and that Martra was only brought in to convince the Management Committee of the GETDZ that Taiwanese were interested in the land. By doing this Mr David Chiu was able to negotiate deferred payment for the land. He said:

*". . . you've got to understand, we were playing a little bit ourselves between me and Mr Kam [Kin Yat], OK? - that basically I knew that if I don't tell China I've got a Taiwanese partner I won't get that 4-5 years instalment, frankly, despite my connections they won't give that because they were keen to get the Taiwanese investors. So that to me, if you see what I mean, was first priority, OK? And when it was clear to me that China agreed and I could keep on telling them and Ah Kam [Mr Kam Kin Yat] brought a lot of Taiwanese businessmen through Hsu Jye to China who impress upon China that we have got a lot of Taiwanese businessmen behind us in this deal, which later on the Mayor approved to give me this 4-5 years instalment, thereafter I was advised by my right-hand man, it doesn't matter any more whether the Taiwanese would come in or not because we've got what we want and I was quite happy to go on my own. "*

*"My major concern was to get this deal, at this price, at this instalment. Quite frankly, I would have been quite happy in my mind if I can thereafter achieve what I want to do, thereafter the Taiwanese go out of this deal, I'm very happy. "*

*". . . I know only one thing. . .that without the image of painting to the Chinese Government in Canton that the Taiwanese group is behind me on this deal, I can't get this five years instalment and at this price. So my major concern was really to give the impression to the Chinese Government, to the Canton Government, that this land must be 50 per cent with a group of Taiwanese businessmen and then at the end, when the Taiwanese businessmen - because I gave a condition to Hsu Jye through Ah Kam [Mr Kam Kin Yat], and Ah Kam knows actually what is in my heart thinking, a deal that I think even the Taiwanese almost cannot swallow because I insist the few hundred million dollars construction costs must be all provided by them, they have to underwrite 50 per cent of the industrial building, you know blah-blah-blah, a lot of conditions like that. Basically I wasn't that keen in my heart to get the Taiwanese investors. "*

- 11.46 The fact that Martra was the registered holder of 2 shares in Hammul on 24 August 1990 is not disputed. However Mr David Chiu considered that as Martra had not proceeded with the joint development of the land, they had no entitlement to the shares, which were transferred to Mr Kam Kin Yat on 9 September 1990.
- 11.47 I note that Martra was included as a shareholder in a draft Schedule I to the Sale Agreement forwarded to Cheng, Yeung & Co, the solicitors for the vendors, by Mr Roger Leung of the Far East Group on 22 August 1990 (Appendix 80).
- 11.48 Minutes of a meeting of the Board of Directors of WTCG on 24 August 1990 attended by Mr David Tong and Mr Jackson Chang (Appendix 81) included the following extracts:

"Dongji Industrial District, Whampoa, Guangzhou, PRC

The Chairman reported as follows:-

- (a) *The management of the Company had completed firstly an overall analysis and review of the development prospects in Guangzhou, Guangdong Province of the People's Republic of China and further an assessment on the commercial potentialities of a piece of land of approximately 260,076 square metres, situate at the District of Whampoa, Guangzhou, Guangdong Province known as Dongji Industrial District Lots Nos. "DJ-1", "DJ-2-1", "DJ-4-1" and "DJ-5-1" ("the Land").*
- (b) *After careful analysis, the management of the Company were of the opinion that, subject to unforeseen circumstances, the development potentialities and prospects of the Land is good and promising.*
- (c) *Hammul Limited ("Hammul"), a company incorporated in Hong Kong, through its wholly-owned subsidiary company, Guangzhou Hammul Limited, is entitled to the rights to use the Land. With the approval of the management of the Company, Padbury Limited, a wholly-owned Subsidiary of the Company ("the Subsidiary") had entered into an agreement with Messrs. Eva Yin-Fun Hui, Rita Chi-Ka Ng, Tat-Cheong David Chiu and Martra Inc. (collectively "the Vendors") for the purchase by the Subsidiary from the Vendors the entire issued share capital of Hammul being in total of 4 ordinary shares of HK\$10.00 each ("the sale shares") . . .*

*(d) The aforesaid agreement for the purchase of the Sale Shares was made subject to a satisfactory valuation on the fair open market value of the Land conducted by a professional appraiser to be appointed for the purpose but, based on its own review, assessment and analysis on the Land as aforesaid, the management of the Company is satisfied for the time being that the purchase consideration for the Sale Shares is fair and reasonable and reflected the reasonable market value of the Land and that the acquisition of the Sale Shares would be in the interest of the Group. "*

11.49 On 1 September 1990, Cheng, Yeung & Co wrote to Mr Kam Kin Yat concerning the settlement of the Sale Agreement dated 24 August 1990 (Appendix 82). The letter stated:

*"We refer to your telephone conversation with our Mr Benny Yeung yesterday and send you again copy of a breakdown which was sent to you by Bond Corporation International Limited [WTCG] on 24th August 1990 showing the amount of shares to be transferred by the purchaser to Mr David Chiu and Martra Inc. in settlement of the consideration for the purchase of all the shares of Hammul Limited.*

*We are arranging with Messrs King & Co to affix the respective rubber chops of Martra Inc. and the purchaser on the Agreement. Upon completion of the formality, we shall send an original copy of the Agreement to you for your retention. "*

- 11.50 It would thus appear that Martra was in fact a party to the Sale Agreement dated 24 August 1990. Although Madam Rita Ng, Madam Eva Hui and Mr Kam Kin Yat were named in the Agreement as *"the vendors"*, I have obtained evidence which showed that the Sale Agreement had been altered after completion. Documentation from King & Co, solicitors for the purchaser and Cheng, Yeung & Co, solicitors for the vendors, showed that on 12 September 1990 it was agreed to substitute several pages in the Sale Agreement which effectively deleted any reference to Martra (Appendix 83).
- 11.51 It would appear that these instructions were issued by WTCG.
- 11.52 An extract of the amended Sale Agreement dated 24 August 1990 is at Appendix 79.
- 11.53 The amended pages to the Sale Agreement deleting all references to Martra were sent by King & Co to Cheng, Yeung & Co on 12 September 1990. In a letter from Cheng, Yeung & Co to Mr David Chiu at Far East Consortium Limited dated 13 September 1990, the proposed changes to the Sale Agreement are described as *"their [King & Co's] proposed rectifications"*. On 13 September 1990, Cheng, Yeung & Co confirmed to King & Co that these amendments were acceptable (Appendix 84).
- 11.54 Mr David Chiu explained:

*". . . at one time we thought that Martra was going to be a shareholder of Hammul but they didn't participate at the end, so therefore nobody take any notice of Martra and if I never sold the land, because Martra never pay us a consideration and we never physically gave them the shares . . . it was not until we sell the land to Bond or Tomson we realise that Martra is not supposed to be a shareholder, so we just took them out. And why did the lawyer come up with this agreement to take them out, I don't understand. They just did it."*

- 11.55 I sought access to the files of King & Co as part of my investigation. These were eventually provided for inspection under the supervision of WTTCG's solicitors, Richards Butler. I was informed by Richards Butler that five letters were removed from these files claiming legal privilege. Letters dated 4 August, 13 August, 28 August and 4 September 1990 were advices from King & Co to WTTCG. The other letter, dated 22 October 1990, was a request to King & Co from WTTCG for advice.
- 11.56 Richards Butler advised me that the amendments to the Sale Agreement of 24 August 1990 were necessary "*possibly for stamp duty reasons*", however WTTCG could not recall the precise reason for the changes.
- 11.57 King & Co, acting for WTTCG, wrote to Cheng, Yeung & Co on 31 July 1990 requesting various particulars in respect of Hammul and Martra to enable them to prepare the Sale Agreement.
- 11.58 This letter was referred to the Far East Group of Companies for completion, and Madam Magdalene W Y Ho, replied to Mr Clarence Cheng on 1 August 1990 making a notation in regard to Martra:
- "Please ask King & Co to refer to Mr Jackson Chang."*
- 11.59 When asked why she thought Mr Jackson Chang could assist in providing information in respect of Martra, Madam Magdalene Ho replied:
- "We on our part didn't know who Martra Inc was. So if Jackson Chang represented the buyer and he wanted information on the seller, that's why we asked King & Co to enquire from Jackson Chang who Martra Inc was, because we didn't know . . ."*
- 11.60 Martra was a shareholder of Hammul at that time, and if Madam Hsu Jye's evidence is truthful, it seems unusual that no-one at the Far East Group knew that she represented Martra.



## THE HEADS OF AGREEMENT

- 11.61 The contents of an undated but signed agreement to purchase the shares in Hammul (the "Heads of Agreement") does not support the evidence of Madam Hsu Jye, Mr David Chiu, Mr David Tong and Mr Kam Kin Yat in certain areas.
- 11.62 The Heads of Agreement were signed by Mr David Chiu and Mr Jackson Chang on behalf of the vendors and purchaser respectively. A copy is included as Appendix 85. I understand it was prepared by Cheng, Yeung & Co.
- 11.63 The substance of the Heads of Agreement leads me to believe that this agreement was negotiated and drafted well before the Sale Agreement was executed, and perhaps prior to the issue of the shares to Martra on 26 June 1990.
- 11.64 Clause 6 of the Heads of Agreement referred to the transaction being concluded *"on or before the 19th day of July 1990."* That date had been crossed out and the *"22nd of August"* inserted and initialled by Mr Jackson Chang and Mr David Chiu.
- 11.65 Mr Clarence Cheng of Cheng, Yeung & Co has confirmed that he inserted the following handwritten amendment:

*"Subject to Tomson Pacific Limited acquiring effective control of Bond Corporation International Limited."*

This amendment was initialled by Mr Jackson Chang and Mr David Chiu.

- 11.66 As mentioned in Chapter 5, Tomson Pacific gained effective control of WTCG on 28 June 1990 when it acquired 34.5% of WTCG's shareholding.
- 11.67 This handwritten clause would suggest that the negotiations between Mr David Chiu and Mr Jackson Chang and the drafting of the Heads of Agreement took place in May or June 1990.

11.68 Clause 2 included the following paragraph:

*"A deposit of HK\$21,800,845.86 had been paid by the Company and the Company is liable to pay a balance sum of HK\$87,203,383.48 by 4 equal yearly instalments together with interest on the unpaid balance at the prime rate per annum of the Bank of China from time to time. The Company is indebted to Mr. David Chiu in the sum of HK\$21,800,845.86 being the said deposit paid by the Company. "*

11.69 Clause 4 referred to the same purchase price as that in the Sale Agreement.

*"The seller shall sell and the buyer shall purchase the said two shares of \$10.00 each being all the issued capital of the Company for the price of HK\$109,004,229.36. "*

11.70 The purchase price of Hammul has been calculated by adding together from Clause 2 the Hong Kong dollar equivalent of the Land Use Rights instalments:

	\$	
The "deposit"	21,800,845.86	
The "balance sum"	87,203,383.48	
	<hr/>	
	<u>\$109,004,229.34</u>	(There is a \$0.02 discrepancy)

11.71 The \$109,004,229.36 agreed for the purchase price of the Hammul shares is actually a premium or goodwill element as the purchaser undertakes to repay monies advanced to Hammul for instalments of the Land Use Rights, and to assume the liability for future instalments.

11.72 As the Land Use Rights instalments total RMB 67,619,760, an exchange rate of HKD1.00 : RMB 0.6203407 has been used.

- 11.73 Clause 5 stated that the purchaser would repay Mr David Chiu \$21,800,845.86 being monies advanced by the latter to Hammul and representing instalments paid by him in relation to the land.
- 11.74 It appears that the Heads of Agreement was signed before the Land Use Rights were granted on 25 July 1990, as the terms of Clause 2 vary to what was finally agreed:
- (1) Instead of a 20% deposit followed by 4 equal yearly instalments, there was a 5% performance deposit to be paid immediately. RMB 67,619,760 was payable as to 15% on 26 August 1990, followed by 3 annual payments at 20% each and a final annual payment of 25% (from which the performance deposit could be deducted provided there was no default).
  - (2) The interest rate was to be only 95% of the prime rate of the Bank of China.
  - (3) Hammul could not be indebted to Mr David Chiu for \$21,800,845.86 as the first instalment was not due until 26 August 1990 (the Sale Agreement was signed on 24 August 1990) and the audited accounts of Hammul as at 20 August 1990 show only the 5% performance deposit as being paid.
- 11.75 A further point which may support the view that the Heads of Agreement was drawn up prior to the issue of shares to Martra on 26 June 1990 is that clause 4 of the Heads of Agreement referred to the issue of two shares rather than four. Mr Clarence Cheng and Mr David Chiu have both suggested that this was probably a typographical error.
- 11.76 Mr David Chiu recalled signing "*an agreement*" other than the Sale Agreement with respect to the Guangzhou Land. He said that this agreement spoke of the consideration being paid fully in cash. He could not however recall if this was the Heads of Agreement I showed him. However he has said that subsequent to the signing of this agreement Mr Jackson Chang had told him that Tomson Pacific did not have the funds to proceed with the acquisition and that accordingly, Mr Jackson Chang had requested that Mr David Chiu accept shares as consideration.

## THE MEETINGS - 23-30 MAY 1990

11.77 Notes of meetings between Mr David Chiu, Mr Jackson Chang and Mr Clarence Cheng between 23 May 1990 and 30 May 1990 show that several transactions involving subsidiaries of Tomson Pacific, WTCG and the Far East Group of companies were discussed. In particular, these discussions covered the sale of 100,000,000 Regal Hotels International Holdings Limited shares (Chapter 7), the Guangzhou Land and the sale of the 50% interest in Far East Biscuit Factory (HK) Limited (Chapter 12).

11.78 When asked to confirm the discussions that took place at that meeting Mr David Chiu stated:

*"I mean all these things happened, we bought [sold] the Canton land, we bought [sold] the biscuit factory and Regal, Pacific, yes, but to say, to ask me to recall a specific topic that I discussed at my office at 11.30 to one or two o'clock, that's two hours, what do I remember what I discussed, honestly I can't remember. I am not trying, I mean, would anybody remember something of three or four years ago no matter how important it is, of the specific detail of discussions that went on for two hours."*

11.79 Mr David Chiu became a director of Hammul on 29 May 1990. This coincided with his discussions with Mr Jackson Chang on the above matters. Mr David Chiu has told me that he believed negotiations with Mr Jackson Chang took place in about June 1990. Mr Clarence Cheng's notes of the meetings between 23 May 1990 and 30 May 1990 (Appendix 86) are the earliest records of discussions on the Guangzhou Land I have sighted. However Mr David Chiu considered it unlikely that they had discussed the Guangzhou Land at that meeting as they were still *"planning, marketing that in Hong Kong"*.

## THE CONSIDERATION PAID BY WTCG

- 11.80 The purchase price included the liability for payment of future instalments on the land which were due to be paid in Renminbi. It was necessary therefore to select whether the official or unofficial rate of exchange should be used. (I note that these rates vary over time).

Chesterton Petty, in its report dated 5 September 1990, argued that the unofficial rate was appropriate:

*"As you are aware, apart from Renminbi, Hong Kong dollar is another currency commonly circulated in the Development Zone. The existing official exchange rate is HK\$100 : RMB60.63. However, due to the substantial devaluation of Renminbi in 1989 and the lack of foreign currencies, a Foreign Exchange Regulation Centre has set up in the Development Zone which provides foreign exchange services to overseas investors . . . The 'unofficial' exchange rate fluctuates from time to time depending on the supply and demand of Renminbi and foreign currencies. In preparing our valuation, we have made the basic assumption that the end users are willing to accept this unofficial exchange rate through the Foreign Exchange Regulation Centre in the transaction and the current 'official' exchange rate HK\$100 : RMB76 is adopted."*

- 11.81 However, the premium or goodwill element for the Hammul shares was calculated at the official rate.
- 11.82 The total cost to WTCG for Hammul pursuant to the Sale Agreement can be shown as follows:

	<u>\$</u>	<u>Consideration</u>
The Purchase Consideration (Premium or goodwill element)	109,004,229.36	Shares
The Shareholders' Loan (5% performance deposit of RMB3,380,988 plus other costs)	5,835,900.80	Shares
	_____	
	114,840,130.16	
The Further Shareholders' Loan (Instalment of RMB10,142,964 due 26 August 1990)	13,674,366.40	Cash
	_____	
<u>Total value of cash and shares</u>	128,514,496.56	
Balance of Land Use Right Instalments Outstanding (RMB54,095,808)	69,353,600.00	
	_____	
<u>Total Consideration</u>	<u>\$197,868,096.56</u>	

- 11.83 As the vendors were reimbursed all monies advanced to Hammul, a profit of \$109,004,229.36 was realised within 30 days of being granted the Land Use Rights.
- 11.84 As stated above, the consideration for the Sale Agreement of 24 August 1990 was not paid wholly in cash. Mr David Chiu stated that he was not particularly interested in receiving either the First Pacific Bank or Tian Teck shares. He added that he was not overly concerned about taking shares that may have been difficult to dispose of, as the price received for the land was greater than he had anticipated.

## **WAS A FAIR PRICE PAID FOR THE LAND?**

### Negotiations between Mr David Chiu and Mr Jackson Chang

11.85 Mr David Chiu has told me that he negotiated the price of the land with Mr Jackson Chang, who was apparently keen to acquire the land. According to Mr David Chiu, Mr Jackson Chang proposed buying 51% of the project with Mr David Chiu retaining the balance of 49%.

11.86 Mr David Chiu alleged that he was not keen to sell the property due to the favourable terms and conditions granted by the Chinese authorities. However when Mr Jackson Chang initially approached him Mr David Chiu said that he suggested there be three conditions to any agreement. These were:

*"(a) you have to provide all construction costs, I don't put in a penny, and (b) that I would have the majority of the Board, (c) we would be the exclusive agent of marketing of this property for three per cent, five per cent commission, you know on the selling price."*

11.87 Mr David Chiu added that these were:

*"A few fairly, frankly, not that reasonable terms which I would normally ask because I wasn't very keen, frankly, for any more parties to be brought in to this deal."*

11.88 Following this suggestion, a meeting was allegedly arranged by Mr Jackson Chang at which negotiations became more serious. Mr David Chiu described the negotiations in the following terms:

*". . . he [Mr Jackson Chang] can't agree on something like five per cent marketing fee, you know providing 500 men and construction costs while I only have 49 [percent], they have 51 [percent], and he says, "We'll do a deal which, whatever you deserve to make, we know this is a privileged deal that you got David, we're prepared to pay for it, be fair to us but thereafter we go partners, everything is whatever is our percentage agreement, 51/49 or 60/40", that basically I chip in a dollar, they chip a dollar, you know for the construction. And this meeting I brought in Kam [Kin Yat] because, then I'm beginning to wake up a little bit because he was prepared to pay me some premium for the deal really, so I asked Kam to be here. So there was Jackson [Chang] and Kam in front of me talking about this deal and Jackson knew, I think he knows me well enough that when I bring in Kam I was beginning to be more serious, because otherwise I was just entertaining you and having a cup of coffee I wasn't very serious. So we start talking about terms and conditions and Jackson says, I remember, "Whatever is the valuation by a professional valuator on the land". I said, "Don't talk about this deal, how much I paid, let's talk about the market price. Forget about the five years instalment or whatever, let's talk about market price". And then Jackson said, "OK, we're fair, whatever is the valuation, we'll pay for it." I said, "Are you sure?" I said, "The valuation could be two, three hundred million above what I paid". Really, you know I said, "Are you sure?" He said, "No, no, no it can't be, depends on negotiation." Then Jackson left, you know it was the first-round meeting that I think the discussion became a little bit more serious than before, in my heart anyway, . . ."*

- 11.89 According to Mr David Chiu, he subsequently telephoned Mr Jackson Chang advising him that he was not prepared to proceed on the basis of a "51/49" agreement. It was at that point he said, that Mr Jackson Chang agreed to buy all the land at a price to be agreed by a professional valuer.



Mr David Tong's submission

11.90 Solicitors for Mr David Tong made the following submission regarding the negotiations for the price of the Guangzhou Land with Mr David Chiu:

*"The evidence in this Chapter makes it quite clear that the price to be paid for the property was negotiated between Mr David Chiu and Mr Jackson Chang, and there was no evidence to suggest that Mr Tong knew that WTCG was paying much more than the price negotiated by Hammul with the PRC authorities. As he put it to your examiner on 25 February 1993, in investing in land in the PRC one has to rely on one's own commercial instinct or insight and one cannot rely one hundred per cent on valuation reports. Mr Tong satisfied himself that the price negotiated with Mr David Chiu was reasonable once he had received assurances from the vice-mayor of Guangzhou as to the future zoning of the property for planning purposes and the possibility of approving a higher plot ratio, which satisfied him as to its very considerable development potential. Mr Tong knew that Mr Chiu/Far East Group would be making a profit out of the sale, but he did not know or enquire as to the extent of that profit as he was satisfied that WTCG would be obtaining the property at a proper market value and would be able to realise a substantial profit on its future development.*

*Mr Tong was also reassured by the fact that a condition precedent to completion of the acquisition was that WTCG's acquiring subsidiary should have obtained a valuation confirming that a fair open market value was in excess of \$180,000,000 : such a valuation (at \$208 million) was obtained from Chesterton Petty. "*

11.91 The Chesterton Petty valuation will be discussed shortly.

### The Raine, Horne & Lau Valuation

- 11.92 Prior to the execution of the Sale Agreement on 24 August 1990, WTCG had not arranged for a valuation of the land.
- 11.93 Hammul however, had through Mr Eddie Lo, a consultant to Fulldiamond, commissioned Raine, Horne & Lau, Real Estate Agents and Surveyors, to prepare a design layout, feasibility study and valuation of the land on 2 August 1990. It appears, however, that no architectural plans for buildings on the site were ever drawn up.
- 11.94 Mr Mico Chung has stated that WTCG had no intention of developing the land before it was purchased, but rather intended to subdivide the land into vacant blocks for resale. Mr David Tong has concurred that subdivision and resale to Taiwanese investors was his intention at the time of acquisition.
- 11.95 Instructions were given to Raine, Horne & Lau through Mr Eddie Lo. Mr Eddie Lo has claimed that instructions were only given to Raine, Horne & Lau after WTCG bought the land to assist it to ascertain how the land could be subdivided.
- 11.96 Mr Eddie Lo has recalled dealing with Mr Francis Lau, the Executive Chairman of Raine, Horne & Lau, in relation to the valuation as he had known him for some time.
- 11.97 Raine, Horne & Lau generally rendered their debit notes to Hammul Ltd (or "*Hammful Ltd*") at the offices of the Far East Group. These debit notes total \$147,800 and covered the period from 11 August 1990 to 24 October 1990.
- 11.98 However, the first account dated 11 August 1990 for the amount of \$20,000 was sent to the address of Fulldiamond and was paid by a cheque dated 9 August 1990 drawn by Spinus, a beneficiary of commission from the World Trade Centre transaction and profit from the Tian Teck transaction. These transactions are discussed in Chapters 8 and 9 respectively, and Spinus in Chapter 23.

11.99 Raine, Horne & Lau rendered copies of outstanding debit notes to a company called Metrotown Agency Ltd ("Metrotown"), a subsidiary of Fulldiamond engaged in property speculation (also discussed in Chapter 24) for work undertaken over the period 15 August 1990 to 11 September 1990 for a total of \$95,000.

11.100 Under cover of a letter dated 18 September 1990 on the letterhead of Metrotown, Mr Eddie Lo sent the copies of outstanding debit notes to Mr Kam Kin Yat at Far East Consortium, with a copy to Mr Mico Chung at WTCG.

11.101 Mr Eddie Lo has stated that he believes that the accounts were sent in error to Metrotown:

*"Subsequently after the land was purchased, we were asked to make arrangements for the breaking up of that land into smaller pieces for sale and we intended Metrotown to be the company used for the deal."*

*"I think they made a mistake . . . Felix Wong was also a shareholder of Metrotown, so perhaps in the process Felix Wong may have given Francis Lau his name card, bearing the name of Metrotown and that could have been the reason why the invoice was sent to Metrotown."*

11.102 It appears that WTCG paid Raine, Horne & Lau amounts of \$95,000 on 28 September 1990 and \$32,800 on 16 November 1990 to settle accounts of Hammul.

11.103 Mr Francis Lau has stated that the Raine, Horne & Lau report was not a valuation but simply an estimate of the value given a particular development plan. I understand that the plan relied upon had not been approved by the GETDZ however it was likely that they would approve of this plan.

11.104 Although the Raine, Horne & Lau report is described as a "*Feasibility Study*", paragraph 10, with a margin heading "*Valuation*" states:

*"After considering the location, general accessibility to the subject sites, existing facilities and other relevant Land-use conditions, and the relative demand for similar accommodations in GETDD [GETDZ], we are of the opinion that the development value of the captioned estates as at today's date is HK\$203,850,000 (HONG KONG DOLLARS : Two Hundred and Three Million and Eight Hundred and Fifty Thousand) and with the benefit of vacant possession. "*

- 11.105 I understand that the development value is the value at which a purchaser should be willing to buy given various assumptions about the revenues and costs expected over time in connection with a project.
- 11.106 An extract of the Feasibility Study is enclosed as Appendix 87. Other key points of this study are:
- (1) The net area for development was 235,000 square metres (approximately 90% of the land area).
  - (2) A plot ratio of 4.
  - (3) Proposed use to be *"Industrial building and ancillary facilities"*.
  - (4) Unofficial exchange rate of HKD1 : RMB0.78.
  - (5) Land to be developed in five phases and disposed of over five years.
- 11.107 Raine, Horne & Lau prepared a discounted cash flow analysis of the project. A copy of the workpaper is included in Appendix 88.
- 11.108 The discounted cash flow model has several critical components which are highly sensitive and if altered may materially affect the valuation. These components are discussed later in this chapter.

### The Chesterton Petty Valuation

11.109 Mr Mico Chung said that when he was first asked by Mr Jackson Chang to consider the transaction the latter had produced Raine, Horne & Lau's Feasibility Study. As the report was not addressed to WTCG, Mr Mico Chung was concerned. He suggested to Mr Jackson Chang that *"we should get another valuation done by an international firm to make sure the board is properly protected"*.

11.110 Mr Mico Chung added:

*"A few days later Mr. Patrick Tsang of Chesterton Petty & Company called me and said he had been asked to prepare a valuation report for BCIL [WTCG] and he asked me to confirm the instruction and confirm the fees, so I confirmed because I thought, you know, Chesterton Petty is probably good enough because they have been accepted by the Stock Exchange many times"*.

11.111 According to Mr Patrick Tsang, in late August 1990 he was asked by Mr Stanley Wong of the Far East Group to conduct a valuation of the Guangzhou Land for WTCG and was requested to contact Mr Mico Chung of WTCG.

11.112 Mr Patrick Tsang has said that he knew Mr Stanley Wong on a professional basis, as Chesterton Petty & Company ("Chestertons") had done many valuations for the Far East Group before.

11.113 I have inspected Mr Patrick Tsang's files and found that a copy of Raine, Horne & Lau's feasibility report was sent by Mr Stanley Wong to Mr Augustine Wong of Chestertons by facsimile on 23 August 1990. Mr Augustine Wong told us that this was then handed on to Mr Patrick Tsang. On the facsimile cover sheet was a note from Mr Stanley Wong which stated:

*"Please study their [Raine, Horne & Lau] report and indicate to us whether you will be able to accommodate HK\$20.00 sq.ft. AV [accommodation value] price same as them.*

*Please phone back in the afternoon for if we have a deal you and I will have to go to China tomorrow to inspect the premises accordingly. "*

- 11.114 After Chestertons' fee was confirmed with Mr Mico Chung, Mr Patrick Tsang and Mr Stanley Wong travelled to Huangpu to inspect the property. Mr Patrick Tsang claims that during the visit Mr Stanley Wong showed him a copy of Raine, Horne & Lau's feasibility report. This contradicts the evidence of Mr Augustine Wong that Mr Patrick Tsang received this report before he visited the property. Mr Patrick Tsang said that this report dealt with how the land could be developed, but was adamant that it did not show any valuation figure, or if it did, *"I think I didn't see this page"*. In essence Mr Patrick Tsang sought to convince me that in preparing his valuation he had no knowledge of the estimate of value reached by Mr Francis Lau.
- 11.115 However, this seems unlikely as the Feasibility Report, with the valuation figure, was found in his file, and as an experienced valuer, it would be unlikely that he would overlook such an important area of the report.
- 11.116 On 3 September 1990, Mr Patrick Tsang sent a draft valuation report to Mr Mico Chung for comment. It valued the land at \$208,000,000.
- 11.117 The final valuation report also shows a value of \$208,000,000 and was dated 5 September 1990. An extract is enclosed as Appendix 89.
- 11.118 The final valuation report does not take into account the instalments which are owing on the land to the GETDZ. In a submission by solicitors for Mr Patrick Tsang it is stated:

*"Our client agrees that the instalments are not recorded in the valuation report prepared by him. However this point was expressly provided for in the valuation report. Your attention is drawn to p.11 of the valuation report which states that:*

*'WE ARE OF THE OPINION that the current open market value of the property is in the sum of HK\$208,000,000.00 (HONG KONG DOLLARS TWO HUNDRED AND EIGHT MILLION) subject to the above bases of valuation'. [their emphasis]*

*The estimate is therefore not a 'final value' of the property. The estimate is a figure which is expressly subject to the bases of valuation stated in the valuation report.*

*In page 4 of the valuation report, our client stated clearly the Terms of Payment, which showed that the price was to be paid in 5 instalments. Then in p. 10 of the valuation report our client expressly states that:*

*'The transferee shall either pay the premium in one lump sum or in 5 instalments in accordance with the time limit as specified in the contract.' [their emphasis]*

*And if one turns to the Land Use Contract, which is attached to the valuation report, one can see at Page 5 that the instalment amounts were deleted. At the time our client did make inquiry with Mr Mico Chung and Stanley Wong in that regard before the final preparation of the valuation report. Mr Stanley Wong then sent a fax dated the 4th September 1990 to our client with the particulars of the purchase price stated. However, he was told by Mr Mico Chung that he should prepare the valuation on the basis that all the premiums had been paid. As our client believed that Mr Mico Chung clearly knew of the purchase price and the value of the outstanding instalment, and that for commercial reasons unknown to our client, Mr Mico Chung did not*

*wish to reveal them in the valuation report, he therefore expressly entered the caveat in the form appearing on page 10 of the valuation report. Further our client did not believe that any person would be misled thereby as it is expressly stated in page 12 that:*

*'This report is confidential to the client for the specific purpose to which it refers. It may be disclosed to other professional advisers assisting the client in respect of the purposes, but the client shall not disclose the report to any other person.' [their emphasis]*

*And as the client, namely Mr Mico Chung, was clearly aware of the value of the instalments and can work out the FINAL VALUE from his own information with the aid of the valuation report, there is no misrepresentation whatsoever as . . . [your] Report alleged. Our client categorically denies, and there is absolutely no evidence before us to indicate, that he knew about that there was a conditional price agreement between whoever were the parties transacting before he prepared the valuation report. "*

11.119 Mr Patrick Tsang's solicitors added:

*"As to the failure to state that the price of the land was HK\$260.00 per square meter, we have already stated the reason . . . above and shall not again repeat it here. Our client believes similar instruction was probably given by the then client of Raine, Horne and Lau to them not to give away the purchase price in the valuation report. "*

11.120 Mr Mico Chung has stated that WTCG had requested that a valuation which confirmed that the market value of the land was not less than \$180,000,000 be a condition precedent to the Sale Agreement dated 24 August 1990.

11.121 Mr Mico Chung commented that \$180,000,000 had been used because he believed Raine, Horne & Lau's assessment of \$200,000,000 was not unreasonable.



A Comparison between the Valuation Reports prepared on the Guangzhou Land

	<u>Raine, Horne &amp; Lau</u>	<u>Chestertons</u>
Area available for development (sq/m pa)	188,000	188,000
Selling price (\$ per sq/m)	1,553	1,560
- Growth Rate (%)	12	12
Construction cost (\$ per sq/m)	869	830
- Growth Rate (%)	12	12
Professional fees (%)	7	7
Financing charge (discount rate) (%)	12	13
Developers' profit (%)	25	25
Infrastructure costs (\$)	27,116,240	30,000,000
Additional developer profit (%)	-	25
Development value (\$)	203,850,000	208,000,000

- 11.122 Gross Development Value, is the value at which the developed properties can be realised. It was calculated by estimating the amount of area that would be available for sale each year and, estimating a price per square metre each year.
- 11.123 Development Value is calculated after deducting from the Gross Development Value, the costs of developing the industrial accommodations to a saleable condition.
- 11.124 Mr Patrick Tsang when preparing the Chestertons' valuation selected a Construction Cost \$39 per square metre lower than Raine, Horne & Lau.
- 11.125 Construction cost is the cost per square metre of building the development, multiplied by the square metres estimated to be completed each year.
- 11.126 Professional fees represents the cost of architects and other professionals and is commonly calculated as a percentage of construction cost.
- 11.127 Developer's profit is the amount of profit that should be allowed for the developer in a project of this nature. I am advised that normal convention in Hong Kong would be to adopt either a percentage of the gross development value or of the total costs. Both valuers have based this on the total costs, but Chestertons' also deduct an additional developers profit based on the Development Value.

- 11.128 The Financing charge or discount rate allows for the time value of money and should equal the developer's cost of money.
- 11.129 Infrastructure cost is the costs of providing services to the site.
- 11.130 No allowance was made for any increment fee payable to the Guangzhou authorities by either valuers. I understand this fee is payable upon sale of any portion of the land. The fee is charged on any profit made on the original land cost and ranges from 15 to 50% of that profit. As it is a tax on profits made, it can be argued that it does not represent a cost of development. However, if not allowed for in arriving at the Development Value, it should be taken into account when assessing the Developers' Profit margin. This project, according to the valuation reports prepared by the two valuers, would attract an increment fee of 50% of the profit, thus a Developers' Profit of 25% is clearly inadequate if calculated prior to that increment fee.
- 11.131 Solicitors for Mr Patrick Tsang have stated:

*"In . . . [your] Report it is correctly stated that no allowance was made in respect of the increment fees payable to the Guangzhou authorities. In this aspect . . . [your] Report clearly appreciates, and rightly so, that the increment fees is a kind of de facto Chinese taxation upon sale. Such item is not included and this is clearly spelt out in the valuation report as stated in page 11 of the valuation report which states that:*

*'No allowance has been made in our report for any charges, mortgages or amounts owing on any property nor for any expenses or taxation which may be incurred in effecting a sale.'*

*As to the allegation that in such case the Profit of the Developer should be increased in order to allow for the increment fee is, we submit, incorrect. The valuation report, when prepared, was confidential in nature and only intended for the eyes of Mr Mico Chung or his company, whom our client believed was fully apprised of the implication of the increment fees upon sale. On top of that the formula for the calculation of the increment fees is clearly stated in p. 10 of the Land Use Contract attached to the valuation report."*

- 11.132 Mr Patrick Tsang when preparing Chestertons' valuation used a selling price of \$7 a square metre higher and a construction cost of \$39 per square lower than Raine, Horne & Lau. Even after a 1% higher finance charge, this produced a Development Value of \$278,000,000 before deduction of the Additional Developers' Profit of \$70,000,000.
- 11.133 In explanation of the Additional Developers' Profit, solicitors for Mr Patrick Tsang have submitted:

*"We are instructed that in preparing the valuation report our client divided the estimated Developers profit into 2 heads. The 1st head comprised of profit calculated as a percentage of building costs, financial costs etc, but excluding land price. The 2nd head comprised of the estimated profit calculated as a percentage of the land price. Both components are elements of the total costs involved. The division of the estimated Developer's profit into 2 heads is merely a matter of presentation and does not affect the overall valuation. As a matter of fact in . . . [your] Report it is acknowledged that the Developer's profit may be based on the total costs, which would include the price of the land. Accordingly there is no impropriety whatsoever in relation to the deduction of the Additional Developer's Profit."*

- 11.134 Amongst Mr Patrick Tsang's working papers examined by me were a discounted cash flow analysis of the development project, dated 3 September 1990, with a valuation of \$174,411,059 for the land. Yet, on the same date, Mr Patrick Tsang sent Mr Mico Chung a draft copy of the final report valuing the land at \$208,000,000.
- 11.135 Another working paper dated 4 September 1990, valuing the land at \$208,000,000 was located in Mr Patrick Tsang's file. This adjustment in price was achieved by increasing the unit price in the latter analysis from \$1,500 to \$1,560 per square metre.
- 11.136 The draft report gave \$208,000,000 as the open market value on 3 September 1990, but the analysis matching this figure does not seem to have been printed until 4 September 1990. A note from Mr Stanley Wong to Mr Patrick Tsang dated 4 September 1990, states that *"Mico Chung will inform me [Wong] by phone whether there is any amendments to the first draft."*
- 11.137 Mr Patrick Tsang has advised me through his solicitor, that although the calculations were made on 3 September 1990, it is possible that his assistant did not print a copy until the following day.
- 11.138 It is curious to note the continued involvement of Mr Stanley Wong in the valuation process. Mr Stanley Wong, an employee of the Far East Group, not only introduced Chesterton Petty to WTCG, but appears to have adopted a supervisory role. In view of the Far East Group's association with the vendor of the Guangzhou Land, this does not impart confidence that the valuation is an independent and professional exercise.
- 11.139 Chestertons' fee note of \$60,000 was forwarded to Mr Mico Chung at WTCG on 5 September 1990. Chestertons' work should thus have been completed by that date.

11.140 However, further working papers dated 6 September 1990 were found in Mr Patrick Tsang's file. These gave valuations for the land at \$177,937,729, \$171,670,783, \$99,867,145, \$60,349,173 and \$236,388,836 by altering different variables other than the selling price, which was \$1,560 per square metre in each valuation. In these valuations, the differing results were produced by altering the "*growth rate*" figure for construction costs. Through his solicitors, Mr Patrick Tsang denies preparation of these working papers and believes that it must be his assistant who had used the programme for his own exercise.

11.141 In both the Raine, Horne & Lau and Chestertons reports it is stated that prices of industrial land in the area prior to Guangzhou Hammul's purchase were in the range of \$157-159 (A.V.) per square metre. "A.V." is an abbreviation of accommodation value. Raine, Horne & Lau point out in their submission to me that the land price can be calculated by multiplying A.V. by plot ratio by developable site area. On this basis, the Guangzhou Land was worth about \$149,460,000 undeveloped. When comparing the A.V.'s of various land sales, it is essential to compare like with like. The size, zoning, and location of the land are some of the factors which influence the A.V.

11.142 The following 4 lots were sold by Raine, Horne & Lau on behalf of the GETDD Land Administration Department during 1988/89 by Private Treaty to Hong Kong developers and are the basis of Raine, Horne & Lau's view that the industrial land in the area sold for between \$157-159 (A.V.) per square metre:

	<u>Lot No.</u>	<u>Date</u>	<u>Site Area (sq. m)</u>	<u>Plot Ratio</u>	<u>A.V. (HK\$/m<sup>2</sup>)</u>
1.	GQ-B7-3	12/88	10,144	3.6	159
2.	GQ-B7-4	12/88	8,494	3.6	159
3.	GQ-B7-5	1/89	8,419	3.67	157
4.	GQ-C7-1	2/89	10,903	3.5	158

### Analysis of Comparables

11.143 Both Mr Francis Lau and Mr Patrick Tsang allegedly reached their opinions as the valuation of the Guangzhou Land after consideration of comparable sales. Mr Francis Lau in particular was quite confident that the sales he had considered supported an accommodation value of \$20 per square foot or approximately \$215 per square metre.

*"It is submitted that the Development Value as assessed in the Feasibility Study of Raine, Horne and Lau was based on an analysis of the proposed development criteria, the estimated sale prices, the estimated construction cost and so on and was not based on comparable sales. However, it is submitted that the assessed Development Value can also be supported by comparables."*

11.144 Mr Francis Lau forwarded to me two schedules of comparable sales. These, together with an English translation, are included as Appendix 90.

11.145 Of the 38 sales he considered as comparable, 29 were zoned commercial and residential, and 4 as residential. These zonings are more valuable than industrial, and the accommodation values per square metre should be higher than those attributed to the Guangzhou Land.

11.146 The 5 sites zoned industrial were recorded sales from December 1988 to September 1990. In all instances, the site area was considerably less than that of the Guangzhou Land, and therefore their accommodation values should be higher than the Guangzhou Land. Albeit that they were, with one exception, sold at substantially different times.

11.147 The table below shows those 5 sites and the Guangzhou Land:

<u>Lot description</u>	<u>Date of sale</u>	<u>Lot size</u> (sq m)	<u>Plot ratio</u>	<u>Accommodation Value</u> <u>\$/m<sup>2</sup></u>
Guangzhou Land	8/90	260,076	4	217
GQ-B7-2	12/88	10,184	3.6	163
GQ-B7-3	12/88	10,146	3.6	159
GQ-B7-4	12/88	8,494	3.6	159
Mei Lin	11/89	28,036	1.5	148
Mei Lin	9/90	4,319	2.4	388

#### **DELIVERY OF THE SALE CONSIDERATION**

11.148 I am unable to determine what ultimately happened to the shares tendered as consideration, although I have traced their delivery from WTCG.

11.149 On 8 September 1990, Mr Mico Chung on behalf of Humphreys Estate (Strawberry Houses) Limited ("HESH") wrote to Mr Peter Mou of Chintung authorising the release of the following shares to Mr David Chiu:

<u>Share</u>	<u>Quantity</u>
First Pacific Bancshares	1,108,300,000
Tian Teck	2,478,000

11.150 On 10 September 1990, Patrick Lau of WTCG sent a copy of that authority to Madam Eva Hui of Far East Group. The remaining shares, being 400,000,000 First Pacific Bancshares and 14,183,077 Tian Teck, were held by WTCG. On 11 September 1990, King & Co advised Cheng, Yeung & Co that the shares held by WTCG would be delivered directly to the vendors. Copies of the delivery notes from WTCG show that Madam Rita Ng collected the shares held at WTCG on 10 September 1990.

11.151 Mr David Chiu wrote to Mr Peter Mou at Chintung on 11 September authorising the bearer of the letter to collect 2,478,000 Tian Teck shares. Mr Sit Chi Keung, an employee of the Far East Group collected the shares. Mr Peter Mou and Mr Gary Wong signed the delivery order on behalf of Chintung Finance.

11.152 On 11 September 1990, Madam Eva Hui wrote to Cheng, Yeung & Co stating:

*"This serves to confirm that we have received 1,508,300,000 First Pacific Bancshares Shares and 16,661,077 Tian Teck Land shares from Bond Corporation Ltd."*

11.153 Also on this day, WTCG drew a cheque for \$13,674,336.40 in favour of Mr David Chiu. The cheque was signed by Mr Jackson Chang and Mr Patrick Lau and was for reimbursement of the instalment of RMB 10,142,964.

11.154 On 2 October 1990, Madam Eva Hui on behalf of Saxton Corporation Limited, a Liberian company Madam Eva Hui claims to control, wrote to Mr Peter Mou at Chintung. The text of the letter read:

*"This serves to authorize your Company to release 100,000,000 First Pacific Bancshares Holdings Ltd. shares to the bearer of this letter."*

11.155 A Chintung delivery order also dated 2 October 1990 showed that 100,000,000 First Pacific Bancshares shares were withdrawn from HESH's account. Mr Peter Mou signed the delivery order with another unidentified person on behalf of Chintung Finance.

11.156 On 3 October 1990, Madam Eva Hui again wrote to Chintung on behalf of Saxton. The letter stated:

*"This serves to authorize your Company to release 1,008,300,000 First Pacific Bancshares Holdings Ltd. shares to the bearer of this letter."*



- 11.157 Those shares were delivered to a Mr Yan Kai Chi on 3 October. Mr Peter Mou and Mr Harry Poon of Chintung signed the delivery note on behalf of Chintung Finance.
- 11.158 Madam Eva Hui said that she received an instruction from Mr David Chiu to collect the shares in First Pacific Bancshares, and that she delivered them to Mr David Chiu.

### **COMMISSION PAID TO FULLDIAMOND**

- 11.159 On 24 August 1990, Mr Eddie Lo on behalf of Fulldiamond, wrote to Mr Jackson Chang at WTCG enclosing a debit note for commission of \$1,971,975.30 on total consideration of \$197,197,530.16.
- 11.160 The sum of \$197,197,530.16 is Mr Eddie Lo's assessment of the price paid by WTCG.
- 11.161 The debit note was passed to Mr Mico Chung who responded to Mr Eddie Lo by letter dated 13 September 1990 which stated:

*"I refer to your letter dated 24 August 1990 enclosing your debit note and our subsequent meeting relating to the above.*

*As agreed, I enclose our cheque for the sum of HK\$1,100,000, being the agreed commission in full settlement of your debit note ref: F/90/08/HK044, receipt of which kindly acknowledge by signing and returning to me the enclosed duplicate of this letter.*

*Once again, I thank you for your efforts in this transaction. "*

- 11.162 The commission of \$1,100,000 was paid to Fulldiamond on 14 September 1990 by WTCG. Mr Jackson Chang and Mr Patrick Lau signed the cheque which was drawn on WTCG's account with the Hongkong Bank.

- 11.163 The \$1,100,000 actually paid represented approximately 1% of what WTCG directly outlaid without allowing for the liability for Land Use Right instalments it also acquired.
- 11.164 Fulldiamond had received a commission although there was little evidence of Mr Eddie Lo's active role in the negotiations. When I asked him what he had done to deserve a commission and he said that in June or July of 1990 Mr David Chiu had asked him to see if any of his friends were interested in buying the Guangzhou Land. According to Mr Eddie Lo he approached Mr Jackson Chang to see if he was interested in the land. At the time he thought Mr Jackson Chang represented Rivera, Tomson Pacific and WTCG, not Martra.
- 11.165 Asked what he did after the property was introduced to Mr Jackson Chang, Mr Eddie Lo said:
- "No, I didn't do anything else because the two sides got together and then subsequently the lawyers did the negotiation and the contract was signed in August".*
- 11.166 As part of determining the facts surrounding Mr David Chiu's approach to Mr Eddie Lo I asked the latter what price Mr David Chiu was initially asking for the land. He said around \$200,000,000. Mr Eddie Lo told me that he thought this was a fair price because he had a surveyor's report that affirmed that value. However the first *"surveyor's report"* that mentions any value is the Raine, Horne & Lau feasibility study which was only released in August of 1990 whereas negotiations for the sale were taking place in July 1990 or earlier.
- 11.167 As discussed earlier in this chapter, and in Chapter 6, I have sighted notes of meetings between Mr Jackson Chang, Mr David Chiu and Mr Clarence Cheng of Cheng, Yeung & Co where the sale of the Guangzhou Land was discussed. These meetings took place from 23 to 30 May 1990. I cannot see why Mr Eddie Lo would be needed to introduce the Guangzhou Land to Mr Jackson Chang if Mr Jackson Chang already knew of Mr David Chiu's desire to dispose of the property as is evident from these notes.

11.168 Madam Hsu Jye has stated that she first came to know that the Guangzhou Land was for sale from Mr Eddie Lo:

*"Perhaps I should explain what happened at that time. At the time there was a Mr Eddie Lo, who came very often to visit Mr Jackson Chang in my company. In one of the talks we had he asked me, well, in the course of the talk he mentioned the land in Huangpu. Because he knew that I came from Taiwan and I had fairly good connections in Taiwan, so he asked me whether Taiwan people would be interested in this piece of land. Well, I said that I would try and then he said that if I was interested he would introduce a Mr Kam Kin-yat. "*

11.169 Mr Eddie Lo has told me that he contacted Mr Jackson Chang in relation to the sale of the Guangzhou Land, not Madam Hsu Jye.

11.170 Upon receipt of the commission on 15 September 1990, it was banked into a Fulldiamond account. On 18 September 1990, cash withdrawals of \$300,000 and \$350,000 were made by cheque from the account. Madam Stella Hui, an employee of Fulldiamond, claimed the money was taken by Mr Eddie Lo's wife, Madam Alice Lam. It is difficult to comprehend why two cheques were required if all the cash was to be paid to Madam Alice Lam.

11.171 Madam Alice Lam told me:

*"I used the money to pay for the purchase of jewellery, a car, and whatever my daughter needed for her dowry. "*

11.172 The daughter was getting married in the United States, and Madam Lam was unable to produce receipts for these purchases as *"I asked someone else to buy them for me. "*

11.173 During my examination of the books of Fulldiamond I discovered a separate telegraphic transfer to the United States which covered the purchase of a new BMW car so unless Madam Alice Lam's daughter was to receive two cars, it is unlikely that any of the cash was used for this purpose.

#### **SUBSEQUENT DEALINGS IN THE GUANGZHOU LAND BY WTCG**

11.174 Following my preliminary investigation however, I became aware that WTCG sold 40% of Hammul. This 40% was then repurchased by WTCG and the land was ultimately swapped for a smaller piece of land. Because these transactions were indicative of the value of the land involved I have examined these transactions.

#### The Interim Results - 31 December 1990

11.175 On Tuesday 30 April, 1991 WTCG published interim results for the six months to 31 December 1990.

11.176 Two paragraphs concerning the Guangzhou Land read:

*"During the period under review, the Company acquired from an unrelated third party the entire issued share capital and shareholders's loan of a company which, through its wholly-owned subsidiary incorporated in the People's Republic of China, holds long-term exclusive rights to use and occupy a piece of land of approximately 2.8 million square feet at the Dongji Industrial District in Huangpu, Guangzhou, the People's Republic of China for a total consideration of HK\$128 million.*

*In March 1991, the Company disposed of 40 per cent. of its interest in the aforesaid development property to Yu Hing Holdings Limited ("Yu Hing") for the aggregate consideration of HK\$64 million. The consideration was satisfied by the issue of 32 million new shares of HK\$1 each in Yu Hing to BCIL [WTCG] credited as fully paid."*

11.177 No mention was made of the Land Use Rights liability acquired with the land which would have increased the consideration from \$128,000,000 to \$197,800,000. On 2 May 1990 (3 days after the announcement), WTCG signed an agreement to sell the Yu Hing shares for \$49,000,000, some \$15,000,000 less than the attributed value above.

Annual Report - 31 March 1991

11.178 WTCG's Annual Report for the nine months ending 31 March 1991, dated 22 August 1991 included the following notes under Post Balance Sheet Events:

(1) *"By an agreement dated 6th March, 1991, the Group agreed to dispose of 40% of its interests in Hammul Limited, a wholly-owned subsidiary of the Group, to Yu Hing Holdings Limited ("Yu Hing") for a consideration of HK\$64 million payable by the issue to the Group of 32 million new ordinary shares in Yu Hing at a price of HK\$2 each. Hammul Limited ultimately holds a piece of land of approximately 2.8 million square feet in Guangzhou, People's Republic of China. Yu Hing is a company listed in Hong Kong engaged primarily in the business of property investment and development. The transaction, which gives rise to a profit on disposal of approximately HK\$24 million on completion, has been completed on 3rd April, 1991.*

*The 32 million shares in Yu Hing have been subsequently disposed of to an unrelated third party for a cash consideration of approximately HK\$49 million."*

(2) *"Agreement in principle has been reached with an unrelated third party, pursuant to which and subject to certain conditions being met, a formal sale and purchase agreement is expected to be entered into between the two parties on or before the end of October 1991 for the sale and purchase of the Group's 100% interests in Padbury Limited. Padbury Limited's only major asset is its 60% interests in Hammul Limited. The formal sale and purchase agreement to be entered into is expected to contain provisions for the consideration of the acquisition to be satisfied by cash instalments and a participation by the Group in the net development profit."*

11.179 While emphasising the profit on the sale of the 40% interest in Hammul of approximately \$24,000,000, note (1) does not specifically mention that the sale of the Yu Hing Shares received in consideration caused a loss of approximately \$15,000,000. The Yu Hing shares were sold to Pacific Star Holdings Limited, a company controlled by Mr Albert Yeung, who also controlled Yu Hing through the Emperor Group. The sale of the Yu Hing shares was made pursuant to an agreement dated 2 May 1991, less than one month after the completion date of the Hammul sale.

11.180 The unrelated third party mentioned in note (2) is Realnet Properties Limited ("Realnet") and this transaction is discussed below under *"The proposed sale to Realnet"*.

#### The Valuation for Yu Hing

11.181 Chestertons were retained by Yu Hing to value the Guangzhou Land. In its report addressed to Yu Hing, Mr Patrick Tsang valued the land at \$163,000,000.

11.182 Examination of the workpapers of this valuation show that the value of \$163,000,000 was arrived at after deducting the Land Use Rights liability outstanding to the Chinese Government. Mr Patrick Tsang did not deduct the Land Use Rights liability when preparing the September valuation.

11.183 Mr Patrick Tsang said he was requested to prepare the valuation by Mr Billy Kan of Yu Hing. Mr Billy Kan was also involved with the acquisition of 335 Nathan Road by WTCG (see Chapter 13).

11.184 The second valuation (after adjustment for the Land Use Rights liability) is actually higher than the first. Mr Patrick Tsang said that he had increased the sale price for the units to be sold. This increase in unit price was the major factor in the increase in overall value although some other variables changed. When I asked Mr Patrick Tsang the source of the new figures he said:

*"Well I check with the people again in the management office of the district . . . They verbally gave me some figures but no black and white support for the figures."*

11.185 Asked why he had deducted the discounted value of the Land Use Rights premium in the later report, and not the September 1990 report, Mr Patrick Tsang said:

*"Well, in my previous report I have stated the premium hasn't deducted from the valuation but this time Mr Kan asked me to deduct it from the valuation so I deduct it from the valuation."*

#### The proposed sale to Realnet

11.186 WTCG agreed to sell the remaining 60% interest in Hammul owned by Padbury to Realnet on 31 July 1991.

11.187 Mr David Tong and Madam Chang Yueh Chun signed the Memorandum of Agreement on behalf of Padbury and Realnet respectively.

11.188 I have found evidence to suggest that Madam Chang Yueh Chun has acted as a nominee for Mr David Tong for the purchase of WTCG shares. Madam Chang Yueh Chun is a Taiwanese and is discussed further in Chapters 20 and 25.

- 11.189 In essence, the 60% interest in Hammul was to be sold for \$90,000,000 cash, WTCG was to be responsible for infrastructure costs up to \$8,000,000, and on completion of the development WTCG was to share 10% of the net development profit.
- 11.190 On 29 August 1991, King & Co, acting on behalf of WTCG sent a notice of repudiation of contract to Realnet alleging that Realnet had breached the contract for failing to pay the Land Use Right instalment due on 26 August 1991. Further, the \$10,000,000 deposit paid by Realnet would be forfeited.
- 11.191 However a Cancellation Agreement was completed between WTCG and Realnet on 29 June 1992 which provided for the cancellation of the Memorandum of Agreement dated 31 July 1991, and the refund of the \$10,000,000 deposit to Realnet.
- 11.192 I understand from Mr K H Yeung of WTCG that the reason for the cancellation shown in the Agreement was that WTCG were of the view that Yu Hing, the 40% shareholder, would exercise its pre-emptive rights under a shareholders agreement.

The repurchase from Yu Hing

- 11.193 On 21 August 1992, Padbury repurchased the 40% of Hammul it sold to Yu Hing (now known as Bo Shing Real Estate (Company) Limited), which was held by it's wholly owned subsidiary, Sunrise Garden Company Limited.
- 11.194 The consideration was \$64,123,257 payable in cash; \$7,192,736.30 on signing the Agreement, and \$56,930,520.70 on completion.
- 11.195 A shareholders' loan of \$7,804,106 extended by Yu Hing to Hammul was purchased by WTCG from Yu Hing also on 21 August 1992.
- 11.196 Padbury now held 100% of Hammul.



## The exchange of land

- 11.197 The Raine, Horne & Lau development plan was approved by the Guangzhou authorities on 4 March 1991 although I understand it was never proceeded with. Ultimately the land was exchanged for a smaller site with different zoning. This is discussed below.
- 11.198 It can be seen from a memorandum dated 23 October 1991 from Mr Mak Wing Lung to Mr Ambrose So of Shun Tak that it was the intention of WTCG to investigate the possibility of exchanging or selling the land it had in Guangzhou. Appendix 91. The management committee of the GETDZ informed WTCG that they were currently granting fully serviced industrial sites at a rate of RMB 313 per square metre and requested WTCG to quote a price if it intended to sell the sites. Mr Mak's memorandum continued:

*"Hamel [Hammul] acquired the land at RMB 260 per square metre last year. However, the actual cost to us is RMB 703 per square metre and the present book value is RMB 628. (We have written down the value by RMB 75 per square metre previously). The cost of the land to our 40% partner, the Emperor Group [Yu Hing], would even be higher.*

*I have discussed in detail with the Emperor Group. We all agree that if we do not surrender our site, we shall face all kinds of difficulties from the committee in the future. Moreover, it would [be] highly unlikely that the committee would be willing to pay more than RMB 400 to repurchase the land from us.*

*Taking into consideration the various factors, the Emperor Group indicated that they would accept a land exchange rather than a sale at a price substantially below their book value. They urged us to accept this proposal as well.*

*I personally agree to the idea of land exchange as we do not have to incur any loss immediately. The land being considered for exchange is right in front of our lot. The land value will [be] virtually the same."*

11.199 Notes of a meeting between Mr Ambrose So and Mr David Tong dated 17 January 1992 stated in part:

*"Guangzhou land (World Trade has only 60%). The total cost (100%) is about 240 million including infrastructure which works out to be \$800 per square foot whereas the market price is only \$300 per square foot."*

11.200 It would appear that the above reference should be square metres not square feet.

11.201 Chesterton Petty, however, in their submission, do not accept that the market price could be \$300 per square metre.

11.202 These two memorandums suggest that the value of the land in 1991 and 1992 was substantially lower than that paid in 1990. I understand that during 1991 and 1992 the Chinese property market improved significantly from that in 1990. It would seem anomalous that with general property prices improving the Guangzhou Land was still worth considerably less than what was paid.

11.203 In relation to the statement in the memorandum dated 23 October 1991 that the GETDZ were granting land at RMB313 per square metre, Solicitors for Mr Francis Lau made the following submission:

*"Mr Lau's understanding of this is that industrial sites were granted to large foreign industrial enterprises such as Pepsi Cola, Colgate, Wrigley etc. for their own production plants at around RMB313 per square metre because GETDD was set up with special policy and tax provisions to attract foreign high-tech industrial investments. The grant of this type of land (which is different from the grant of land for development of flatted factory buildings*

*for sale and make developer's profit such as the five lots sold by Raine, Horne & Lau on behalf of the Land Administration Department of GETDD in 1988/89 and the 'Guangzhou Land') is restricted to applicants with specific approved items of industrial production, the plot ratio is usually low, the user must stick to that specified use in the original grant, and in non-transferable except with special permission from the Management Committee of GETDD. This type of industrial land is very similar to the industrial sites being granted in the Industrial Estates in Hong Kong, where the land price is near its production costs. "*

11.204 WTCG never proceeded with its development of the Guangzhou Land. By way of an agreement dated 10 December 1992, Hammul agreed to transfer the 260,076 square metres of the Guangzhou land to the Guangzhou Economic Skill Development Zone Management Committee in return for the grant of 97,000 square metres of land in the residential district of the GETDD.

11.205 In May of 1993 WTCG advised that the current plans were to develop the site in joint venture with a Chinese company into *"residential-cum-commercial units"*.

#### **AUDIT CONSIDERATIONS**

11.206 Mr Patrick Cheng of Deloitte told me that he asked Mr Jackson Chang the reason why WTCG paid a higher price for the Land Use Rights than the vendor and stated:

*"He told me that at that time the authorities didn't have any policy basis of allotting the land to the different parties and for audit purposes we rely on the cost based on the valuation"*

11.207 Apparently Mr Jackson Chang showed Mr Patrick Cheng details of some nearby comparable land, but Mr Patrick Cheng did not retain a copy in the audit file.

- 11.208 In respect of the price paid, Mr Paul Siu has advised me that it was supported by a professional valuation from Raine, Horne & Lau commissioned by Hammul. Mr Paul Siu told me that he had no knowledge of the Chesterton Petty valuation report commissioned by WTCG. He confirmed to me that he was aware that the vendor made a "*considerable gain*" on the transaction within a few days.
- 11.209 The audit workpapers show that Deloitte reviewed the minutes of the directors' meeting held on 24 August 1990 which shows Martra as one of the vendors (Appendix 81).
- 11.210 However the Sale Agreement reviewed by Deloitte did not include Martra. It appears that this was the amended Sale Agreement. The audit staff do not appear to have noticed the discrepancy between the names of vendors shown in the minutes of the directors' meeting held on 24 August 1990 and those included in the amended Sale Agreement.

## **CONCLUSIONS**

- 11.211 It is apparent that the vendors of Hammul achieved a profit of \$109,004,229 on the sale, based on the values attributed to the shares transferred as consideration.
- 11.212 Pursuant to the Sale Agreement, WTCG was paying a premium or goodwill element of \$109,004,229, and reimbursing the vendors for their past expenditure and adopting the liability for future Land Use Rights instalments.
- 11.213 The premium or goodwill element had been established some time before the Sale Agreement was completed. I believe that it was agreed between the parties at the time the Heads of Agreement were drawn up.
- 11.214 The same purchase price figure was used in the Heads of Agreement. It was simply the Hong Kong dollar equivalent of the Land Use Rights Payment, calculated at an exchange rate of about HKD1.00 : RMB0.6203.

- 11.215 This means that WTCG agreed to pay double the cost of the land (ie. the Land Use Rights instalments to the GETDZ). I consider this quite arbitrary.
- 11.216 Raine, Horne & Lau and Chestertons both argued in their reports that using the unofficial rate to convert Renminbi to Hong Kong Dollars was more appropriate than the official rate.
- 11.217 At the time the Sale Agreement was signed the official rate was HKD1.00 : RMB 0.6063, and the unofficial rate was HKD1.00 : RMB 0.78.
- 11.218 Had the unofficial rate been used at that time, the profit would have been reduced to \$86,692,000.
- 11.219 The premium or goodwill element had been established prior to receipt of either the Raine, Horne & Lau or Chestertons reports.
- 11.220 I am not persuaded that either of the valuation figures provided by Raine, Horne & Lau or Chestertons are indicative of the market value of the Guangzhou Land at that time. Raine, Horne and Lau maintain that their report was a Feasibility Study, and it was never their intention to reflect the market value of the land. However, they did provide a "*Valuation*" and this has been used as such.
- 11.221 Valuations are subjective. Independent expert advice provided to me concluded that the selling prices used by both valuers were too high and that the construction costs (particularly in Chestertons' report) and professional fees were too low.
- 11.222 Neither valuers factored into their calculations, the effect the increment fee would have on the development.
- 11.223 No allowance for marketing or selling the land had been made.

- 11.224 Mr Patrick Tsang's working papers dated 6 September 1990 in which the altered variables, other than the selling price, which resulted in Development Values ranging from \$236,388,836 to \$60,349,173, show how sensitive the variables were (Appendix 92).
- 11.225 Rather than enter into a debate as to the most appropriate numbers to be used as variables, it is sufficient to look at the market value in January 1992. The note dated 17 January 1992 of the meeting between Mr Ambrose So and Mr David Tong placed a value of only \$300 per square metre on the land compared to a cost price of \$800 per square metre.
- 11.226 Certainly there is evidence that Chestertons' report was prepared for the purpose of justifying the price agreed to by the parties some time before.
- 11.227 It is possible to infer that not only did Mr Stanley Wong of the Far East Group select Chestertons, but that its appointment was conditional on achieving a similar price to that arrived at by Raine, Horne & Lau.
- 11.228 This conditional offer to Chestertons also raises a suspicion as to the accuracy of the Raine, Horne & Lau report. I believe that had WTCG wished to obtain an independent confirmation of Raine, Horne & Lau's valuation, they would not have apprised Chestertons of the details of the Raine, Horne & Lau valuation. In addition, had the Far East Group been confident of the value of the Guangzhou Land, it would not be necessary to request such an undertaking as to Development Value before retaining a valuer.
- 11.229 It is also difficult to understand how Chestertons could give an undertaking to Mr Stanley Wong as to the Development Value of the Guangzhou Land, before they inspected the site and made the necessary inquiries, particularly in relation to market value and construction costs.

- 11.230 The continued involvement of Mr Stanley Wong, an employee of the Far East Group, with the Chestertons valuation does not contribute to the perceived independence of the report.
- 11.231 Mr Patrick Tsang also states that on the instructions of Mr Mico Chung, the cost of the Land Use Rights was excluded from his report.

Martra

- 11.232 I have been unable to establish the reason behind the involvement of Martra.
- 11.233 Martra was a shareholder of Hammul at the time the Sale Agreement was executed.
- 11.234 However the reasons why the shares were transferred to Mr Kam Kin Yat, and the Sale Agreement altered to exclude any reference to Martra elude me. Mr Kam Kin Yat is said to be another nominee of Mr David Chiu.
- 11.235 I am not convinced by the evidence that Martra was introduced to encourage the Chinese authorities to grant favourable terms of sale, although it is possible that some Taiwanese were shown the land and introduced to the Chinese authorities in order to achieve this concession.
- 11.236 The evidence of both Madam Hsu Jye and Mr David Chiu is inconsistent in this regard. Madam Hsu Jye claims the shares were issued to Martra before detailed terms were agreed with the Taiwanese. At best this would mean that the Taiwanese only advised Madam Hsu Jye that they would not take up the land because of Taiwanese Government restrictions in early July 1990. Madam Hsu Jye claims she then approached Mr David Tong who asked Mr Jackson Chang to negotiate to acquire the shares. Therefore around 3 July 1990 Mr Jackson Chang spoke to Mr David Chiu.
- 11.237 About three days later Mr Jackson Chang came back and said Tomson Pacific would buy the whole project for cash.

- 11.238 A date in July 1990 for the negotiations and agreement is not supported by the key points of the Heads of Agreement.
- 11.239 Mr David Chiu's evidence fits in well with the Heads of Agreement being signed in late June 1990 in all respects except that it conflicts with the timing of the issue of the shares to Martra. That is, because his evidence specifically states that negotiations with Mr Jackson Chang only began after Madam Hsu Jye's Taiwanese investors withdrew their interest. Therefore if Martra truly represented the Taiwanese interests it would be illogical to issue them two shares in Martra after they withdrew.
- 11.240 I believe Martra was to represent the personal interests of Mr Jackson Chang and/or Mr David Tong. In support of this are several factors:
1. The unorthodox method by which Martra was removed from the Heads of Agreement;
  2. Madam Magdalene Ho's instruction to King & Company (who were acting for WTCG) to refer to Mr Jackson Chang for details of Martra;
  3. Cheng, Yeung & Co's note to Far East Group that King & Co would affix the chop of Martra on the original sale agreements; and
  4. Mr Kam Kin Yat's advice that the Martra transfer was signed in his presence in Hong Kong when there is no evidence that a representative of Mr Danny Koo was in Hong Kong at that time, therefore I have concluded that the signature was affixed by either Mr Jackson Chang and someone else being directed by him.
- 11.241 I have not been able to interview Mr Danny Koo despite my repeated requests. This has hampered my investigation into these matters.
- 11.242 Mr David Chiu is unable to remember the names of other Taiwanese who were introduced to the Chinese to persuade them that Taiwanese were interested in the land.



- 11.243 Despite the fact that Mr Danny Koo is the sole shareholder of Martra, and that he and Madam Sun Huei Chuan were its directors, as is set out in Chapter 19, I believe at this time that Martra was firmly under the control of Mr Jackson Chang, Madam Hsu Jye and Mr David Tong.
- 11.244 This would explain the issue of the two shares to Martra on 26 June 1990 on the basis that there never were any Taiwanese involved and it was always intended that the land should be purchased by WTCG for an inflated price.
- 11.245 This inference is supported by the notes of Mr Clarence Cheng covering a meeting on or about 23 May 1990 between Mr David Chiu and Mr Jackson Chang.
- 11.246 It was five days after this meeting with Mr Clarence Cheng that Mr David Chiu became a director of Hammul. Assuming that there had been ongoing negotiations between the parties, Mr David Chiu must have been negotiating the sale to Tomson Pacific or WTCG in May 1990.
- 11.247 This is supported by the undated Heads of Agreement document, which indicates that settlement on the Guangzhou Land was scheduled for 19 July 1990 and was postponed. This may have occurred because Mr David Chiu did not obtain the right to use the land until 25 July 1990. The undated Heads of Agreement document is also stated to be conditional upon Tomson Pacific acquiring effective control of WTCG. This occurred on 28 June 1990 and I therefore conclude that the Heads of Agreement must have been signed and the terms therein contained must have been negotiated prior to this date.
- 11.248 Another interesting feature of the documentation on the transaction is what I believe to be an attempt made by the parties to disguise Martra's involvement.
- 11.249 In the Sale Agreement, dated 24 August 1990, Martra was stated to be the owner and vendor of two of the four shares.

- 11.250 On 12 September 1990, King and Co., the purchasers' solicitors, wrote to Cheng, Yeung and Co enclosing pages to be substituted into the 24 August 1990 Sale Agreement. These pages delete all reference to Martra, one of the original parties to the Sale Agreement and included Mr Kam Kin Yat as a new party. The methods usually adopted to amend a contract previously executed by the same parties are either by amending the original agreement and signing and dating such amendments, or by the same parties setting out the amendments in a separate signed and dated document; in either case what constituted the original agreement and the amendments to it are made clear to any subsequent reader. But the method adopted here of inserting substitute pages into the original agreement and removing the original pages was not only a most unusual method but also had the side-effect of concealing from any subsequent reader the terms and nature of the original agreement.
- 11.251 It is my view that all reference to Martra was removed from the Sale Agreement because it may have been too obvious on subsequent examination that Mr David Tong and/or Mr Jackson Chang were connected to Martra.
- 11.252 I find Mr David Chiu's explanation that he had simply forgotten about the transfer to Martra when the Sale Agreement was being prepared extremely implausible, if detailed negotiations with Martra through Madam Hsu Jye had truly been going on in April and May, and does not explain, if a correction had to be made, why it was made in such an unusual manner. I believe that the parties did this deliberately to conceal the involvement of Martra, and hence of the connection with Mr David Tong and/or Mr Jackson Chang.

#### Other Issues

- 11.253 Whilst I believe that the purchase of Hammul by WTCG was not at arms' length and at overvalue, and that an excessive profit was generated by the sale, I have been unable to ascertain how that profit was distributed.

- 11.254 The notes of Mr David Chiu's and Mr Jackson Chang's meetings, between 23 and 30 May 1990, could lead to an inference that the purchase of the Guangzhou Land was part of a larger scheme, which involved the Far East Group providing a loan of \$100,000,000 on the security of (and later for the purchase of) 100,000,000 shares of Regal Hotels Limited, the sale by the Far East Group of 3,000,000,000 shares in First Pacific Bancshares, and perhaps providing places in the WTCG placement.
- 11.255 Mr David Chiu took up 60,000,000 WTCG shares in the placement at a cost of \$135,000,000. The Far East Group realised a profit of \$40,000,000 on the Regal Hotel shares purchase and subsequent placement, and the Hammul deal showed a profit of \$109,004,229. These profits are discussed further in Chapter 13.
- 11.256 I have been unable to establish whether or not Mr David Tong and/or Mr Jackson Chang shared any of the profit made on the purchase by Padbury of the Hammul shares.
- 11.257 Fulldiamond's part in this transaction is difficult to determine. It seems that Mr Eddie Lo commissioned the report from Raine, Horne & Lau, but I am confident that Mr David Chiu and Mr Jackson Chang discussed the purchase of the Guangzhou Land during their meeting on 23 May 1990.
- 11.258 Mr Eddie Lo's evidence is inconsistent; he states the Metrotown was asked to make arrangements to break up and sell the Guangzhou Land in small pieces, yet he also claims to have introduced WTCG as the buyer of the Hammul shares.
- 11.259 Given the other circumstances of this transaction, it would appear likely that Fulldiamond was introduced to give the impression that the transaction was "*at arms' length*", and not a contrived arrangement.

- 11.260 I am concerned that \$650,000 of the \$1,100,000 commission was paid out by Fulldiamond by way of two cash cheques, but I have not been able to trace the beneficiaries of this money. I do not believe the explanation given to me that the cash was required for the dowry of Madam Alice Lam's daughter. Madam Alice Lam has been unable to produce any receipts for the use of any of the \$650,000 and I find her inadequate explanation of the use of those proceeds lacks credibility..
- 11.261 The subsequent disposal to Yu Hing of the 40% interest in Hammul was reported as being at a profit and was supported by a revised valuation. The repurchase from Yu Hing at the approximate purchase price and the file note concerning value taken at that time indicates that the property was not attractive and both WTCG and Yu Hing stood to realise substantial losses if the site was sold off.
- 11.262 In view of the fact that it appears that Deloitte's relied on the Raine, Horne & Lau valuation report commissioned by Hammul at the time it was controlled by Mr David Chiu, and as they were aware that the vendor had made a considerable gain on the transaction within a few days, I find it surprising that Deloitte's did not obtain a Letter of Representation from the directors of WTCG.
- 11.263 Rather than sell the land at a loss it has been exchanged for a smaller, but more attractively zoned plot.

## **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 12

### THE ACQUISITION OF 50% OF THE ISSUED SHARE CAPITAL OF FAR EAST BISCUIT FACTORY (HK) LIMITED

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#### 12 INTRODUCTION

12.1 My terms of reference directed that I consider the acquisition by Tomson Pacific on 14 August 1990 of a 50% interest in Far East Biscuit Factory (HK) Limited ("Far East Biscuit (HK)").

12.2 The Chairman's statement of the Tomson Pacific annual report disclosed that in November 1990:

*"The investment portfolio of your Company has been diversified into the manufacturing industry in late 1990. By placing new shares in your Company, 50% interest in Far East Biscuit Factory (HK) Ltd ("Biscuit HK") was acquired.*

*Biscuit HK operates a biscuit factory in Shenzhen and holds 50% interest in another biscuit factory in Shanghai. Having the Shanghai factory commenced operation in May 1991, exports of products of the factories increase substantially."*

- 12.3 In or about March 1990, Mr Eddie Lo acting as an agent, offered to sell Far East Consortium China Limited's ("Far East Consortium China") 50% interest in Far East Biscuit Factory (HK) Limited ("Far East Biscuit (HK)") to Rivera for \$63,700,000.
- 12.4 Rivera's financial advisers were opposed to the acquisition on the grounds that Far East Biscuit (HK)'s Price Earnings ratio was too high and that it had a low asset base.
- 12.5 In July 1990 however, Tomson Pacific agreed to acquire the 50% interest in Far East Biscuit (HK) from Far East Consortium China for \$62,000,000.
- 12.6 Payment was effected by issuing 68,888,888 fully paid Tomson Pacific shares, at a nominated value of 90 cents each.
- 12.7 Fulldiamond Limited ("Fulldiamond") received a \$1,000,000 commission from Tomson Pacific and allegedly 5% of the shares allotted as consideration from Far East Consortium China.

### **THE PROPOSAL**

- 12.8 Far East Biscuit (HK), a company incorporated in Hong Kong, held the following investments:
- (1) 100% of the issued shares in Far East Biscuit Factory (China) Limited ("Far East Biscuit China");
  - (2) 50% interest in Shanghai Eastern Asia Food Products Co Ltd ("Shanghai Food"); and



(3) 15% interest in Khong Guan Can (Shenzhen) Co Ltd ("Khong Guan Shenzhen").

- 12.9 Far East Biscuit China and Shanghai Food are companies incorporated in China.
- 12.10 Far East Biscuit (HK) was principally engaged in investment holding and trading in biscuit products. Its wholly owned subsidiary, Far East Biscuit China, operated a biscuit factory in China and its major customers were retail shop distributors, department stores, food bureau stores and duty free shops in China.
- 12.11 Madam Eva Hui, a director of Far East Consortium China, has told me that Far East Consortium China wanted to sell its shareholding because of differences with the two other shareholders of Far East Biscuit (HK), Khong Guang Overseas Investment Limited ("Khong Guan Overseas") who held 28.33% of the issued capital, and Khong Guan Biscuit & Confectionary ("Khong Guan Biscuit") who held 21.67%.
- 12.12 Mr David Chiu has alleged that Mr Eddie Lo of Fulldiamond told him that Tomson Pacific, WTCG and/or Rivera were keen to invest in China and that Mr Eddie Lo had been retained by Mr David Chiu to promote the sale of Mr David Chiu's assets in China, which included Far East Biscuits (HK).
- 12.13 In March 1990, Mr Eddie Lo wrote to Mr Jackson Chang in the latter's capacity as a director of Rivera, referring to an earlier meeting and, on behalf of Far East Consortium China, offering to sell the 50% interest in Far East Biscuit (HK) for \$63,700,000. Fulldiamond requested a commission of 3% of the purchase price upon the signing of the Share Purchase Agreement.
- 12.14 Mr Jackson Chang appears to have passed the matter to the General Manager of Rivera, Mr Daniel Lui. Mr Daniel Lui told me:

*"This is passed to me by Mr Jackson Chang and that transaction should be referred by Eddie Lo, and he passed it to me for my consideration. Initially I looked at it and I checked it with our auditor and I think the transaction is not good . . . [because] the P/E [price earnings ratio] is too high and the assets are too low, and I think it's not a good transaction".*

12.15 In April 1990, Mr Daniel Lui wrote to Fulldiamond requesting further information on the background, corporate structure, borrowings, guarantees and other financial information relating to Far East Biscuit (HK), to enable him to consider the offer. A copy of his letter was forwarded to Mr Jackson Chang. A few days later, Fulldiamond provided the information.

12.16 When I asked Mr Daniel Lui whether a feasibility study was undertaken to assess the value of Far East Biscuit (HK) for Tomson Pacific, he replied:

*"No, I only have an analysis and I asked my assistant to do some analysis of the Company and I looked at all the agreements. . . I calculated the NAV [investment's net asset value] and also I calculated the profit potential and the P/E . . ."*

12.17 Mr Mico Chung, an employee of Standard Chartered Asia at the time, has recalled the proposal being brought to his attention by either Mr Jackson Chang or Mr Daniel Lui. After considering the figures provided, he concluded that it was:

*"not a deal that we would recommend . . . they were intending to pay 10 times P/E [ratio as consideration] . . . even blue chips in Hong Kong at the time traded about 7 or 8 times in the stock market . . . P/E is really a subjective matter and Standard Chartered Asia at that time was giving a subjective opinion . . . it cannot be taken to be the market value you know, it depends on what you can do with the factory."*

- 12.18 It is not clear whether Tomson Pacific attributed any special value to Far East Biscuit (HK) at the time which justified paying higher than the market would pay on a price earnings ratio basis.
- 12.19 In May 1990, Fulldiamond wrote to Rivera confirming an *"agreement"* for Rivera to purchase the 50% interest in Far East Biscuit (HK) for \$62,000,000. The price would be satisfied by issuing the required number of Rivera shares at an issue price of 69 cents per share.
- 12.20 This *"agreement"* between Rivera and Far East China Consortium was not finalised. Two months later however, on 13 July 1990, a Heads of Agreement was signed by Mr Jackson Chang and Mr David Chiu on behalf of Tomson Pacific and Far East Consortium China respectively. The Heads of Agreement was similar to the earlier *"agreement"* in that the purchase price remained \$62,000,000. However, Tomson Pacific had replaced Rivera as purchaser and the number and issue price of the shares to be allotted as consideration had also changed.
- 12.21 Under the Heads of Agreement, Tomson Pacific would purchase the entire shareholding of Far East Consortium China, in Far East Biscuit (HK). This amounted to 6,000,000 shares. The agreed consideration of \$62,000,000 was to be satisfied by the allotment of 68,888,888 fully paid and listed shares in Tomson Pacific, with an attributed value of 90 cents per share, plus 80 cents cash to bring the value to exactly \$62,000,000. The Heads of Agreement also required a formal Sale and Purchase Agreement to be approved by both parties on or before 23 July 1990.
- 12.22 At the time the Heads of Agreement was signed the market price of Tomson Pacific's shares was 78 cents.

12.23 According to Mr Daniel Lui, Mr Jackson Chang had negotiated with Mr Eddie Lo and Mr David Chiu to determine the share price of 90 cents. That value had been established during negotiations (being conducted at the same time) by Tomson Pacific to acquire property in Macau, where the consideration Tomson Pacific paid also took the form of an allotment of its shares.

12.24 When I asked Mr Daniel Lui the reason for Tomson Pacific proceeding with the purchase of the interest in Far East Biscuit (HK), he stated:

*"After six months Mr Jackson Chang came to me again and he said that they've [Far East Consortium China] changed the conditions, we can issue shares instead of cash and I have received additional information regarding the company. . . They have a Shanghai operation and they have verbally given us that they have a plan to go public in China and also the other partner, Mr [David] Tong knows the other partner, it's a Singapore company and it's quite good. And even then I'm also not so comfortable but because that is not my decision and Jackson said that he had agreed to proceed with the transaction. And at that time Tomson do not have a recurring income and that company can produce Tomson with recurring income. And we issued shares at 91 cents or 90 cents, I can't exactly remember, and it's quite attractive. Because Tomson at that time we don't have sufficient cash to pay it, but if we issue shares that can expand Tomson's asset base, so we decided to do it."*

12.25 When asked whether the Far East Biscuit (HK) transaction was related to any other transaction of the Tomson Group, Mr Daniel Lui advised me that he had *"no idea"*.

12.26 When I asked Mr David Chiu whether the transaction was the first that the Far East Group of companies had negotiated with Tomson Pacific, he replied:

*"I think so, to the best of my recollection, yes . . . I know of Jackson Chang and David Tong through Mr Eddie Lo . . ."*

- 12.27 However this appears to be inconsistent with evidence that the Far East Group was actually holding discussions with the Tomson Pacific Group or people associated with it, on other proposed transactions. For example, notes taken by Mr Clarence Cheng of Cheng Yeung & Co, solicitors for Far East Consortium International Holdings Ltd, concerning a meeting held on 30 May 1990 (at which I believe Mr David Chiu and Mr Jackson Chang were present) show that the Far East Biscuit (HK) transaction was being contemporaneously discussed with the following other transactions:
- (1) Sale and Purchase of 100,000,000 shares in Regal Hotels (Holding) Limited and First Pacific Bancshares (see Chapter 6)
  - (2) Guangzhou Land (Hammul) (see Chapter 11)
- 12.28 Mr Daniel Lui alleged he told Mr Jackson Chang that in his opinion they should not acquire the shares in Far East Biscuit (HK), although Mr Jackson Chang made the final decision.
- 12.29 On 10 August 1990, Mr Daniel Lui and Mr Jackson Chang, both directors of Kalesbridge (a wholly-owned subsidiary of Tomson Pacific), ratified at a directors meeting of Kalesbridge, the Sale and Purchase Agreement, and authorised two company directors to do all things necessary or desirable for the acquisition. Similarly, at a Tomson Pacific directors meeting on 10 August 1990, Mr David Tong and Mr Jackson Chang ratified the Sale and Purchase Agreement signed by Mr Daniel Lui on behalf on Tomson Pacific and authorised two company directors to do all things necessary or desirable to effect the acquisition. The minutes of both meetings refer to the purchase price, but neither minutes show that there was any discussion about the price.
- 12.30 The Sale and Purchase Agreement was executed on 13 August 1990 by Mr Daniel Lui, a director of Kalesbridge, on behalf of Tomson Pacific and Kalesbridge. Completion was subject to Tomson Pacific obtaining the approval of the Stock Exchange to list the shares which were to be allotted as part of the consideration.

12.31 On the day before the Sale and Purchase Agreement was signed, Tomson Pacific shares closed on the market at 70 cents per share.

12.32 On 14 August 1990, Tomson Pacific announced that it had acquired a 50% interest in Far East Biscuit (HK) after arms length negotiations and that the consideration would be satisfied by a proposed share issue.

12.33 I summarise in the table below the consideration paid and the price earnings ratios calculated in respect of the Tomson Pacific shares assuming:

- (1) the market value of the Tomson Pacific shares at the time the Sale and Purchase Agreement was executed (70 cents).
- (2) the market value of the Tomson Pacific shares at the time the Heads of Agreement was signed (78 cents).
- (3) the nominated value of the Tomson Pacific shares under the Sale and Purchase Agreement (90 cents).

Value of Tomson Pacific Shares \$	Price Earnings Ratio		Value of Consideration \$	50% Interest in Far East Biscuit (HK)'s net tangible assets	
	1989 (times)	1990 (times)		1989 \$	1990 \$
0.70	8.51	5.75	48,222,222	17,855,416	21,591,147
0.78	9.48	6.40	53,733,333	17,855,416	21,591,147
0.90	10.94	7.39	62,000,000	17,855,416	21,591,147

#### **COMMISSION PAID TO FULLDIAMOND BY TOMSON PACIFIC**

12.34 Fulldiamond invoiced Tomson Pacific for \$1,860,000 commission, being 3% of the \$62,000,000, but Tomson Pacific only paid Fulldiamond \$1,000,000. Mr Daniel Lui,

who authorised the payment of the commission to Fulldiamond, advised me:

*". . . I don't know why they cut the commission, maybe Jackson [Chang] thinks that the commission is too high . . ."*

12.35 Fulldiamond's commission cheque was signed by Mr Jackson Chang and Mr David Tong.

12.36 Mr Eddie Lo stated that there was *"nothing we could do"* when Tomson Pacific reduced the commission, though he added they *"were not honourable to have done so."*

12.37 The commission of \$1,000,000 was deposited into Fulldiamond's Shanghai Commercial Bank (Tsim Sha Tsui East) account on 13 August 1990. These commissions were used to fund three disbursements:

<u>Date</u>	<u>Details</u>	<u>Amount</u>
		<u>\$</u>
14.9.90	Transfer to Canada	525,421.99
18.9.90	Cash withdrawal	250,000.00
18.9.90	Cash withdrawal	<u>250,000.00</u>
		<u>\$1,025,421.99</u>

12.38 The transfer of \$525,421.99 to Vancouver, Canada was made by Madam Stella Hui, a director of Fulldiamond. These funds were converted to C\$78,561.90 and remitted to a firm of Canadian solicitors Boughton Peterson Yang & Anderson. The transfer was recorded as a *"cash advance to shareholders"* in Fulldiamond's ledger.

- 12.39 Madam Eva Hui, a director of Spinus, told me that Mr David Chiu, Mr Felix Wong, Mr Clarence Cheng and Fulldiamond were partners in the purchase of a commercial building situated at 570 Dunsmuir Street, Vancouver, Canada ("the Dunsmuir property"). Madam Eva Hui identified various payments Spinus made to Boughton Peterson Yang & Anderson as being payments for the purchase of the Dunsmuir property. This is discussed in Chapter 23.
- 12.40 Although Fulldiamond was named as a partner, Mr Eddie Lo claims that his wife, Madam Alice Lam, had a share in the property.
- 12.41 The two cheques of \$250,000 each were both drawn and cashed by Madam Stella Hui on 18 September 1990. These cash withdrawals were classified as cash advances to shareholders in Fulldiamond's ledger.
- 12.42 According to Madam Stella Hui *"it was very common for her (Madam Alice Lam) to do that, to withdraw cash like that, so I rarely would ask her the reason why."*
- 12.43 In a similar manner to the way in which she explained how the commissions had been disbursed for Guangzhou Land (see Chapter 11), Madam Alice Lam explained that she requested the two cheques be drawn because:
- "Again, I was simply playing safe, I was worried that half a million would be too large a sum and that's why I asked her to sign two separate cheques"*
- 12.44 Both cheques were presented together and were obviously withdrawn at the same time but Madam Alice Lam told me:
- "Well, I did instruct her [Madam Stella Hui] to collect the money in two separate batches."*
- 12.45 Madam Alice Lam stated that these funds were withdrawn for her daughter's wedding dowry.



## **COMMISSION PAID TO FULLDIAMOND LIMITED BY FAR EAST CONSORTIUM**

- 12.46 Mr David Chiu claimed he fought with Mr Eddie Lo over the commission payable. Mr David Chiu told me that he had agreed to pay Fulldiamond a 5% commission in cash, but claimed the Tomson Pacific shares were not worth \$62,000,000 at the time the transaction was settled, as the market value of Tomson Pacific shares had fallen.
- 12.47 Mr David Chiu asserted that these shares could now be valued only at between \$30,000,000 and \$40,000,000. As such if he were to have paid Mr Eddie Lo 5% of \$62,000,000 he would have effectively been paying a 10% commission on the market value of the shares at the time. Mr David Chiu claimed he reasoned with Mr Eddie Lo that it would be more equitable to pay 5% of the shares he received as consideration as Fulldiamond's commission, and this occurred.

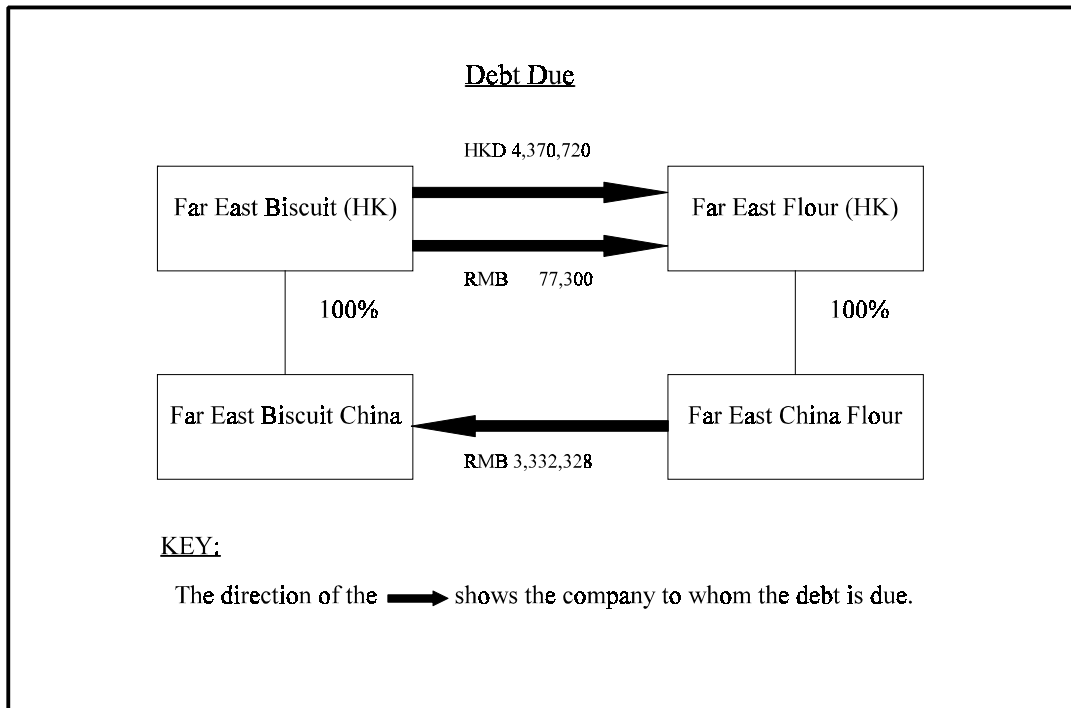
## **ISSUE AND LISTING OF THE CONSIDERATION SHARES**

- 12.48 Standard Chartered Asia applied for and obtained approval from the Stock Exchange to list the shares allotted as consideration, which represented an increase in 2.7% of Tomson Pacific's issued share capital.
- 12.49 Upon the instructions of Far East Consortium China, Tomson Pacific issued its shares to Everkent Limited ("Everkent"), a subsidiary of Far East Consortium International, making it the 8th largest shareholder. Between October 1990 and December 1990 Everkent reduced its shareholding from 68,888,888 to 47,742,888 shares and by 31 January 1992 was not shown on the list of the top ten shareholders of Tomson Pacific.
- 12.50 Approximately one year after Tomson Pacific acquired the 50% interest in Far East Biscuit (HK), a number of loan agreements between Far East Biscuit (HK), Far East Biscuit China and Far East China Flour Mills Ltd ("Far East China Flour") and Far East Flour (HK) Ltd ("Far East Flour (HK)") (companies associated with Far East Consortium International) were agreed to be offset. I examined this transaction to ascertain whether

any favours were extended from the settlement.

12.51 Far East Biscuit China is a wholly owned subsidiary of Far East Biscuit (HK). Far East China Flour is a wholly owned subsidiary of Far East Flour (HK).

12.52 In summary, the position was:



12.53 The agreement made on 12 September 1991 appears to simply set-off all intercompany loans as follows:

<u>Amount due from Far East Biscuit (HK)</u>	<u>\$4,370,720</u>
	<u>RMB</u>
Amount due from Far East China Flour to Far East Biscuit (China)	3,332,329
Less: Amount due from Far East Biscuit (HK) to Far East Flour (HK)	<u>(77,300)</u>
<u>Amount due to Far East Biscuit (HK)</u>	RMB <u>3,255,029</u>

12.54 After converting the RMB loan at both the Official and Unofficial rates, the loan of RMB3,255,029 due from Far East Flour (HK) to Far East Biscuit (HK) becomes:

Official (\$100 = RMB 60)	\$5,425,048
Unofficial (\$100 = RMB 75)	\$4,340,038

12.55 At the official rate the net effect of the settlement is in favour of Far East Flour (HK). At the unofficial rate the net effect of the loan settlement is marginally in favour of Far East Biscuit (HK).

### **CONCLUSIONS**

12.56 My examination of the events surrounding the acquisition by Tomson Pacific of a 50% interest in Far East Biscuit (HK) from Far East Consortium International did not reveal any evidence that the Tomson directors or directors of Kalesbridge breached their duties as directors or committed offences by their involvement in this transaction. However, it is noteworthy that the timing of, and the parties to, this transaction are significantly the same as the timings of, and parties to, many other transactions covered by this report where I have found considerable evidence of breaches of duties and offences.

12.57 Mr Daniel Lui and Mr Mico Chung told me that Mr Jackson Chang gave approval for the acquisition against their advice. Mr Daniel Lui and Mr Mico Chung implied that the price Tomson Pacific paid was in excess of the investment's worth.

12.58 The audited financial statements of Far East Biscuit (HK) for the two years prior to Tomson Pacific acquiring a 50% interest show that the company had been profitable. The value attributed to the issue of the Tomson Pacific consideration shares may not have fully reflected the true value of the acquisition price, as the Tomson Pacific shares were given a value which appeared to be in excess of their market value at the time the Heads of Agreement was signed.

- 12.59 Mr David Chiu recalls that the Far East Biscuit (HK) proposal was the first involvement between Far East Group and Tomson Pacific/WTCG. However, a number of other transactions were being conducted between Far East Group and Tomson Pacific, WTCG and related companies at the time the Heads of Agreement was signed.
- 12.60 According to Mr Daniel Lui the investment only became attractive when Mr Jackson Chang proposed the issue of shares rather than paying cash. This change in attitude also occurred about the same time as the Far East Group agreed to partake in the subscription of WTCG shares, as discussed in Chapter 6, and shortly after South View Properties sold shares in Regal Hotels to Far East Consortium International, as discussed in Chapter 7.
- 12.61 I found no evidence to show that any of the directors of Kalesbridge or Tomson Pacific received any personal benefit from the payment of commissions to Fulldiamond. However, I believe that it was unusual business practice for an employee of Fulldiamond to cash two cheques for \$250,000 at the same time. I have been unable to confirm who received these funds.
- 12.62 I found no evidence to suggest that the settlement of intercompany loans between a subsidiary of Far East Consortium International and Far East Biscuit (HK) was not a genuine commercial transaction.

## CHAPTER 13

### TRANSACTIONS INVOLVING COMPANIES OR INDIVIDUALS CLOSELY ASSOCIATED WITH MR DAVID CHIU

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#### 13 INTRODUCTION

13.1 Most of the transactions and many of the companies which I have investigated have shown a connection to Mr David Chiu and companies within the Far East Group which he and his family control:

1. The placement of WTCG shares in July 1990 (Chapters 5 and 6);
2. Dealing in the shares of Regal Hotel and First Pacific Bancshares (Chapter 7);
3. Acquisition of the World Trade Centre Building (Chapter 8);
4. Acquisition of the 145,000,000 Tian Teck shares (Chapter 9);
5. Acquisition of Guangzhou Land (Chapter 11); and
6. Acquisition of 50% interest in Far East Biscuit (HK) Limited (Chapter 12).

13.2 I set out below a brief analysis of the involvement of Mr David Chiu and the members of his family in each of these transactions. A full account and analysis of each of these transactions is set out in the chapters referred to above. In addition, I analyze the share dealing by Forty Enterprises Company Limited ("Forty") a subsidiary of Rivera, in the shares of Far East Consortium Limited.

13.3 The purpose of this chapter is to provide an overview of the Chiu family involvement. The scenario that emerges suggests that Mr David Chiu was involved in obtaining favours from and giving favours to WTCG, Tomson Pacific and Rivera. It is also apparent that Mr Eddie Lo acted as the agent on behalf of Mr David Chiu in three of the transactions.

13.4 In a submission to me by solicitors for Mr David Chiu they state:

*"It does appear to us that you have assumed that our client is synonymous with the Far East Group, FEHIL and FEC. This is not the case. Your criticisms appear to be personal to our client and that must be made clear so that there is no unnecessary criticism of public companies, or their directors or shareholders. Our client does not control the Far East Group of companies or FEHIL and is Managing Director of FEC."*

## TRANSACTIONS

13.5 I set out below a brief analysis of the involvement of Mr David Chiu and his associates in chronological order.

### Share dealing by Forty in Far East Consortium

13.6 The first transaction which links the Far East Group with Mr Jackson Chang and Mr David Tong took place in March 1990. Forty, a subsidiary of Rivera:

- (i) sold 33,350,000 shares in Far East Consortium between 14 and 16 March 1990;
- (ii) purchased 7,103,000 shares in Far East Consortium during the same period; and
- (iii) took up 30,000,000 shares on 19 March 1990 in a placement by Far East Consortium at \$1.00 each.

13.7 Mr Jackson Chang and Mr David Tong were both directors of Rivera at this time.

13.8 Although these share dealings have not been the subject of my investigation I understand that Forty sold its shares at prices lower than the placement price and the price of its purchases in the market. It may also have sold short Far East Consortium shares.

13.9 Forty therefore suffered a loss on its dealings in Far East Consortium shares. Far East Consortium gained from finding a placee for its shares. I have not investigated whether there was any arrangement between Mr David Chiu, Mr Jackson Chang and Mr David Tong in respect of this transaction.

Meetings between Mr David Chiu, Mr Jackson Chang and Mr Clarence Cheng

13.10 I have retrieved notes of various meetings and telephone calls between Mr David Chiu, Mr Jackson Chang and Mr Clarence Cheng (a partner of the law firm Cheng, Yeung & Co), which took place between 23 and 30 May 1990. The notes, prepared by Mr Clarence Cheng, show that discussions were held in respect of proposed transactions between WTCG, Tomson Pacific and companies within the Far East Group. A copy of the notes of these discussions is produced at Appendix 86. In summary, the proposed transactions were:

- (1) The purchase by Rivera of 3,000,000,000 shares in First Pacific Bancshares then owned by Parma Investments Limited, a company controlled by Mr David Chiu. These shares were subsequently bought by Supreme Enterprises Limited;
- (2) The grant of an option to Far East Holdings International Limited ("FEHIL") to purchase the 3,000,000,000 shares in First Pacific Bancshares sold by Parma Investments Limited;
- (3) The loan by FEHIL to South View of \$100,000,000 on the security of 100,000,000 Regal shares;
- (4) The grant of an option for FEHIL to purchase those same Regal shares. This purchase was effected 12 days after the loan was made;
- (5) The grant of an option to an unnamed party to purchase the 100,000,000 Regal shares sold to FEHIL by South View;
- (6) The loan by party A (undefined) to party B (undefined) of \$80,000,000 on the security of not less than \$250,000,000 in the form of shares in WTCG, Tomson Pacific and Rivera;
- (7) The sale by the Far East Group of land in China; and



(8) The sale by the Far East Group of an interest in the Far East Biscuit Factory.

13.11 All of the above transactions were to be subject to Tomson Pacific gaining effective control of WTCCG.

13.12 Of the above transactions only transaction (6) appears not to have completed.

13.13 It is evident that in the latter part of May 1990 Mr Jackson Chang and Mr David Tong were endeavouring to arrange financing for various transactions which would lead to Tomson Pacific acquiring effective control of WTCCG. It is also evident, from my enquiry, that neither of these two had, at that time, the personal resources to satisfy those requirements.

13.14 Mr David Chiu has given evidence to me that the substance of his negotiations with Mr Jackson Chang in late May 1990 was only in relation to the loan of \$100,000,000 and the sale of the Regal shares. In this respect, Mr David Chiu's evidence contradicts the documentary evidence presented by the notes of the meetings taken by Mr Clarence Cheng.

#### Dealings in the shares of Regal and First Pacific Bancshares

13.15 I discuss in detail in Chapter 7 the dealings in the shares of Regal and First Pacific Bancshares. By a Loan Agreement dated 30 May 1990 between FEHIL (a company in the Far East Group) and South View (a company significantly under the influence of Mr David Tong and Mr Jackson Chang) FEHIL agreed to lend \$100,000,000 to South View. This loan is mentioned at point (3) above. I have traced payments of approximately \$70,000,000 out of the \$100,000,000 loan to bank accounts of David Tong Company. I have traced the balance to Mr Tung Ming Hsun and Madam Hsieh Hui Ching.

- 13.16 On 12 June 1990, South View sold 100,000,000 Regal shares to FEHIL at \$2.25 through Chintung for \$225,000,000 (exclusive of brokerage fees). The amounts owing were set-off resulting in FEHIL owing South View \$125,000,000. South View received \$65,000,000 from Chintung on 15 June 1990 and \$60,000,000 was withheld.
- 13.17 Also on 12 June 1990, Parma Investments Limited (a company controlled by Mr David Chiu) sold 3,000,000,000 shares in First Pacific Bancshares for 4.1 cents per share to Supreme Enterprises (or Hauxton) (both companies I believe being associated with Mr David Tong and Mr Jackson Chang) for \$121,648,350. This is mentioned in (1) above.
- 13.18 On 18 July 1990, Supreme Enterprises (or Hauxton) sold 1,100,000,000 of its First Pacific Bancshares to Humphreys Estate (Strawberry Houses) Limited ("HESH") (a wholly owned subsidiary of WTCG) for 4.1 cents per share. These shares were to form part of a larger parcel of shares used as consideration for the acquisition by WTCG of the Guangzhou Land from the Far East Group.
- 13.19 The balance of 1,900,000,000 First Pacific Bancshares were sold back to companies within the Far East Group.
- 13.20 FEHIL, which purchased the 100,000,000 Regal shares received a dividend of \$3,500,000 and shares in a 1 for 5 bonus issue on 14 June 1990. On 16 July 1990 FEHIL placed 110,000,000 of the Regal shares at \$2.275 per share and sold the remaining 10,000,000 Regal shares also for \$2.275 per share. In total FEHIL made a profit of \$43,500,000 within 38 days of their purchase of the Regal shares.

#### The placement of WTCG shares

- 13.21 I discuss in detail in Chapters 5 and 6 the sale and placement of WTCG shares which resulted in effective control of WTCG being vested in Tomson Pacific. Mr David Chiu actively participated in this transaction. Of the 419,950,494 WTCG shares placed by Chintung in July 1990, 87,000,000 (20.7%) of them were taken up by companies associated with the Chiu family:

<u>Placee</u>	<u>No of Shares</u>	<u>Total Cost \$</u>
Cathay General	60,000,000	135,951,750.00
Brentford	20,000,000	45,317,250.00
Saxton	<u>7,000,000</u>	<u>15,861,037.50</u>
	<u>87,000,000</u>	<u>\$197,130,037.50</u>

Note: The "Total Costs" above are those shown on the placement letters. The amounts shown on contract notes differ.

13.22 Of the shares acquired in the WTCG placement most have been retained by the placees.

The acquisition of the World Trade Centre Building

13.23 Mr David Chiu has told me that he suggested to Mr Jackson Chang that WTCG should acquire the World Trade Centre from Hongkong Land to give WTCG prestige.

13.24 Mr David Chiu allegedly sought the assistance of Mr George Tan to contact Hongkong Land as the latter was well connected with the company. Mr David Chiu and, I believe, Mr George Tan agreed with Mr Jackson Chang that a commission would be payable should the sale be completed. The payment of the commission was subsequently ratified by Mr Jackson Chang and Mr David Tong.

13.25 On 2 August 1990, WTCG and Hongkong Land signed Heads of Agreement whereby WTCG agreed to acquire the World Trade Centre Building for \$1,720,000,000.

13.26 On 7 August 1990, the Board of Directors of WTCG ratified the acquisition. Also on that day, Spinus (a company controlled by Mr David Chiu) received \$34,400,000 (2% of the purchase price). Mr David Chiu told me that he was entitled to one third of this amount (\$11,466,666) which appears to have been used to acquire a share in a commercial property situated at 570 Dunsmuir Street, Vancouver, Canada.

- 13.27 According to Mr David Chiu, the balance of the commission received by Spinus (\$22,933,332) was paid to Mr George Tan.
- 13.28 A further \$17,200,000 commission (1% of the purchase price) was paid to Cheung On Fat. As I concluded in Chapter 8, I believe these funds were ultimately received by Mr George Tan. Mr David Chiu however claimed he was entitled to one third of this commission although he told me he had not received any benefit from it. I have received evidence that the 3% commission paid was at least three times higher than normal for this type of transaction.

Acquisition of 145,000,000 Tian Teck shares

- 13.29 On 8 August 1990 Great Eagle sold 145,000,000 Tian Teck shares to Spinus (a company I believe was controlled by Mr David Chiu) at \$2.25 per share. On 8 or 9 August 1990, Spinus sold the Tian Teck shares to HESH (a subsidiary of WTCG) at \$2.60 per share.
- 13.30 Spinus made a gross profit of \$50,750,000 in a very short time and ultimately received \$46,600,000 of this. Integrally linked to the purchase of the 145,000,000 Tian Teck shares by HESH was the concurrent sale of 116,500,000 WTCG shares by Hauxton to Great Eagle. The source of 95,000,000 of these WTCG shares was primarily from a Singaporean syndicate trading under the name of Madam Loo Kwee Huay through the stockbroker, Ban Hin. Mr David Chiu has told me that Mr Jackson Chang approached him in August 1990 and asked for a loan to buy back some WTCG shares. Mr David Chiu drew a FEHIL cheque dated 8 August 1990 for \$50,000,000 made payable to Chintung. As security for the loan he was given a cheque post-dated to 15 August 1990 for \$50,125,000. The \$50,000,000 was deposited into Grand Ocean's margin account to assist in covering a margin call arising from its acquisition of 118,200,000 WTCG shares.

### Acquisition of Guangzhou Land

- 13.31 On 25 July 1990 Guangzhou Hammul Limited, a wholly owned subsidiary of Hammul Limited ("Hammul")(a company controlled by Mr David Chiu) was granted the Land Use Rights for 260,000 square metres of land at the Dong Shan Tai Industrial District, Huangpu, Guangzhou. The consideration payable was RMB67,619,760 payable over five years. This amounted to \$86,692,000 at the unofficial exchange rate (say, HKD1.00 : RMB0.78), or \$111,528,550 at the official rate (say, HKD1.00 : RMB0.6063).
- 13.32 On 24 August 1990, WTCG through its wholly owned subsidiary, Padbury Limited, agreed to acquire the issued capital of Hammul for \$197,868,097 placing a value on the land of \$195,696,229.
- 13.33 Accordingly, a profit of \$109,004,229 was booked by Hammul. The consideration paid by WTCG comprised 1,431,850,000 shares in First Pacific Bancshares and 15,811,546 Tian Teck shares. The shares in First Pacific Bancshares had been part of the 3,000,000,000 shares in First Pacific Bancshares bought by Supreme Enterprises (a company controlled by Mr David Tong) from Parma Investments Limited (a company controlled by Mr David Chiu) on 12 June 1990. That transaction was referred to earlier in this chapter.

### Sale of 50% of Far East Biscuit (HK) Limited

- 13.34 On 13 August 1990, Tomson Pacific acquired a 50% interest in Far East Biscuit (HK), a company controlled by Far East Consortium, for \$62,000,000.
- 13.35 Payment was effected by Tomson Pacific issuing Far East Consortium with 68,888,888 Tomson Pacific shares at an attributed value of 90 cents per share. At the time the market price was 70 cents per share.

13.36 Although Standard Chartered Asia and Tomson Pacific's internal financial controller, advised the company that it was paying in excess of the investment's worth, I have found no evidence of impropriety in this transaction. The objections raised by Standard Chartered Asia and the financial controller were apparently overruled by Mr Jackson Chang.

Mr David Chiu's submission

13.37 Solicitors for Mr David Chiu made a submission on his behalf, extracts of which are reproduced below:

*"Your conclusion, in short, appears to be that the four August transactions were all rewards for our client from Messrs Jackson Chang and David Tong for "favours" he had given to Tomson Pacific and Rivera and, in particular, for taking 20% of the placing in July 1990.*

*. . . these conclusions are founded on the premise that there was such an agreed package and that this is evidenced by discussions in May. We categorically refute the suggestion, however, that there is any direct evidence to support this and neither is there any circumstantial evidence from which such an inference could reasonably be drawn.*

*We believe that you may unwittingly have been misled by the composite bills rendered by Cheng Yeung and Co. which use words such as 'conferences' and 'meetings' with 'you'. These bills should not be relied upon as indicating, for example, actual face to face conferences with our client as opposed to telephone calls or attendances at FEC with other senior employees. Mr Cheng has confirmed that he does not necessarily mean either Jackson Chang or David Chiu or both when he uses the word 'you' in their bills.*

*There is, therefore, no evidential basis for concluding as you do in [Chapter 2] that the four August transactions were 'arranged' with Jackson Chang 'prior to Tomson Pacific acquiring control of WTCG'. It would be pure speculation to cling to such a conclusion on the basis that WTCG could not otherwise 'have negotiated and executed these transactions in such a limited period.' "*

13.38 Despite the submission by Mr David Chiu's Solicitors, I am satisfied that the notes prepared by Mr Clarence Cheng were a contemporaneous account of meetings between Mr David Chiu and Mr Jackson Chang attended by Mr Clarence Cheng, and of discussions which Mr Clarence Cheng had with either Mr David Chiu or Mr Jackson Chang to clarify items arising from these meetings.

13.39 The submission does not persuade me to change my view that agreement had been reached between Mr David Chiu and Mr Jackson Chang in May 1990 to complete the transactions specified in these notes (subject to Tomson Pacific acquiring WTCG), and in consideration for Mr David Chiu to assist Tomson Pacific to acquire WTCG.

#### **SUMMARY OF PROFITS MADE**

13.40 The following profits were made by Mr David Chiu and/or the Far East Group:

	\$
Profits on sale of Regal Shares	43,500,000
Dividend on Regal Shares	3,500,000
Commission on World Trade Centre Building acquisition	11,466,666
Profit retained from Tian Teck share transaction	15,533,333
Sale of Guangzhou Land	109,004,229
Interest earned on loan	<u>125,000</u>
<b>TOTAL</b>	<b><u>\$183,129,228</u></b>

13.41 In addition \$62,000,000 was generated from the sale of the 50% interest in the Far East Biscuit Factory, whilst \$197,423,622 was outlaid in respect of the acquisition of 87,000,000 WTCG shares.

## CONCLUSIONS

13.42 Mr David Chiu has given evidence that the substance of his negotiations with Mr Jackson Chang in May, 1990 related only to the loan of \$100,000,000 and the sale of the Regal shares. In this respect, Mr David Chiu's evidence contradicts the documentary evidence presented by the notes of the meetings taken by Mr Clarence Cheng. Mr Clarence Cheng was then acting as, and continues to act as, Mr David Chiu's solicitor. I have no reason to believe that the notes taken by Mr Clarence Cheng do not present an accurate summary of the discussions which took place between Mr David Chiu and Mr Jackson Chang in May, 1990. Accordingly, I discount Mr David Chiu's evidence about the limited nature of the discussions. I believe that the transactions discussed at the meetings were intended to take place as part of a package.

13.43 One of the matters discussed at the meeting was the acquisition of effective control of WTCG. As I have concluded in Chapters 5 and 6, for Tomson Pacific to gain effective control of WTCG without having to make a mandatory offer for all the WTCG shares it was necessary for the placement of the 31.5% of the WTCG shares to be successfully completed to third parties independent of Tomson Pacific and its directors. In addition, I have concluded in Chapters 5 and 6 that Mr David Tong and Dr Stanley Ho, as secondary underwriters of the placement, may have been among the parties required to take up placement shares had the placement not been successful. Such an event is likely to have evoked the mandatory offer requirements of Rule 33 of the Hong Kong Code on Takeovers and Mergers. Accordingly, I believe that in arranging for parties associated with him to take up placement shares, Mr David Chiu was assisting Tomson Pacific and its directors to avoid the expense of acquiring control of WTCG by means of a general offer. Mr David Chiu has told me that Mr Jackson Chang told him at the time of the placement that if he suffered a loss in taking up shares in the placement he would "*make it up*". I believe it likely that the primary motive for taking up WTCG shares in the



placement was to assist Tomson Pacific and its directors, to acquire effective control of WTCG.

- 13.44 I have concluded in Chapter 8, in respect of the acquisition of the World Trade Centre Building, the payment of such a large commission and the manner in which the monies were dealt with, arouses considerable suspicion. Mr David Chiu clearly assisted in WTCG's acquisition of the World Trade Centre Building. I believe that the assistance of intermediaries such as Mr David Chiu may well have been necessary to facilitate such a substantial acquisition involving Hongkong Land. Nevertheless, I question the rationale of WTCG paying a commission of at least three times that which would have been payable under the then market conditions.
- 13.45 I have concluded in Chapter 9 that the three trades in shares in the Tian Teck share transaction were part of a prearranged scheme which had two principal purposes. Firstly, and I believe most significantly, they afforded a mechanism for the disposal of a large parcel of WTCG shares acquired during the WTCG placement in an off market transaction which thereby avoided the adverse effect on the WTCG share price that the disposal of this number of WTCG shares through the market would have had. Secondly, it allowed Spinus to extract a substantial profit at the expense of WTCG. There is no evidence to suggest that Mr Tsoi Mow Hung, an acquaintance of Mr David Chiu, (upon whose instructions this transaction was allegedly based) received the benefit of the profit made.
- 13.46 Mr David Chiu has denied involvement in the Tian Teck share transaction. However, the involvement of Spinus in the sale of the 145,000,000 Tian Teck shares to WTCG which resulted in Spinus making an almost immediate gross profit of \$50,750,000, points strongly to the involvement of Mr David Chiu. I have concluded in this report that Mr David Chiu controlled Spinus and benefitted from its activities.

13.47 I have concluded in Chapter 11 that the price paid by WTCCG for the Guangzhou Land was excessive and that the land was acquired at an overvalue. The sale by Hammul, a company controlled by and operated for the benefit of Mr David Chiu, of the Guangzhou Land realised a profit of \$109,004,229. I believe that the price paid by WTCCG did not represent the true value of the land and that this price had been agreed some considerable time before.

### **SUMMARY**

13.48 Of the transactions investigated by me, in which Mr David Chiu or his associates were involved, Mr David Chiu has benefitted considerably from all with the exception of the acquisition of the WTCCG shares in the placement. In most instances, I believe that the benefit passed to Mr David Chiu has been at the expense of WTCCG and its shareholders. I have concluded that it is reasonable to infer from the notes of the meetings taken by Mr Clarence Cheng, and from looking at the events which subsequently occurred, that many of the transactions were structured so as to provide Mr David Chiu with benefit. I believe it reasonable to infer that this may have been done to reward him for his and his associates' assistance to Tomson Pacific and its directors in acquiring shares in the WTCCG share placement, thus, in part, enabling Tomson Pacific to acquire effective control of WTCCG.

## CHAPTER 14

### THE ACQUISITION OF THE PROPERTY SITUATED AT 335 NATHAN ROAD KOWLOON

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## 14 INTRODUCTION

- 14.1 Although this transaction was not referred to in my terms of reference, I considered it worthy of investigation due to the substantial commissions which were paid by both the buyer and seller.
- 14.2 In October 1990 WTCG, acquired 100% of the issued share capital of Loywick Development Limited ("Loywick") from Tse Sui Luen Jewellery Holdings Limited ("TSL Jewellery") for \$129,250,000. Loywick's only significant asset was a property located at 335 Nathan Road, Kowloon, Hong Kong ("335 Nathan Road"). The purchase consideration was satisfied by:
- (1) The issue of 33,000,000 fully paid and listed WTCG shares (valued for the purpose of this acquisition at \$2.25 each);
  - (2) WTCG acquiring Loywick's existing bank loan and accrued interest of \$41,378,786, plus net current liabilities of \$2,264,747; and
  - (3) A cash payment of \$11,406,467.
- 14.3 Commissions were paid by WTCG and TSL Jewellery in suspicious circumstances and may have been received by parties closely connected with those companies.

### **THE PROPOSAL**

#### The involvement of Mr Chan Wai Hung

- 14.4 I have been informed by Mr Billy Albert Che Kin Kan ("Mr Billy Kan"), a former consultant to the TSL Group, that he was retained by TSL Jewellery to reduce the company's debt by selling a number of its properties. One such property was a partially renovated commercial building situated at 335 Nathan Road.

14.5 According to Mr Chan Wai Hung, a garment dealer and property agent, Mr Billy Kan informed him that 335 Nathan Road was for sale. Mr Chan Wai Hung has told me that he:

*"floated the offer around in the market and informed everyone I knew."*

*"I did make many contacts with numerous potential clients and eventually, by coincidence, I recommended the deal to . . . Mico Chung of Bond Corporation [WTCG]"*

14.6 Mr Chan Wai Hung has stated that he had known Mr Mico Chung for more than ten years and considered him a friend. Mr Mico Chung has confirmed that he had previously used Mr Chan Wai Hung as an agent for personal property investments and paid him commissions.

14.7 Mr Mico Chung has stated that he inspected the 335 Nathan Road property with Mr Chan Wai Hung. They also spoke about the renovations being conducted and the price of the building which he recalled was in the range of \$125,000,000 to \$130,000,000.

14.8 According to Mr Mico Chung, he discussed the property's potential with Mr Jackson Chang and Mr David Tong. It was agreed that if WTCG was able to pay for half of the agreed price by issuing WTCG shares at \$2.25 and the balance in cash then WTCG would be interested in entering into an agreement.

14.9 Mr Mico Chung told me that he put the aforementioned offer to Mr Chan Wai Hung and also requested a guaranteed rental yield of 10% per annum from the vendor. As the negotiations became more complicated, Mr Mico Chung apparently requested that he deal directly with the vendor.

14.10 Mr Chan Wai Hung therefore introduced Mr Mico Chung to Mr Billy Kan. According to Mr Billy Kan, after a further inspection of the property with Mr Mico Chung, the transaction proceeded very quickly:

*"I showed them the property and the next day we were up at Richards Butler . . . drawing up the documents . . ."*

- 14.11 Mr Mico Chung has said that the Agreement to acquire the property took only a few days but was not as short a time as suggested by Mr Billy Kan.

### **THE AGREEMENT**

- 14.12 The Sale and Purchase Agreement was executed on 25 October 1990 by Mr Mico Chung and Mr Tse Sui Luen on behalf of WTCG and TSL Jewellery respectively ("the Agreement"). WTCG agreed to pay TSL Jewellery the agreed consideration of \$129,250,000 in the following manner:

	\$
Acquisition of existing loan and interest outstanding with the Bank of China	41,328,786
Acquisition of Loywick's net current liabilities	2,264,747
Cash	<u>1,406,467</u>
Cash compensation as defined in the Sale and Purchase Agreement	45,000,000
WTCG Consideration shares (33,000,000 @ \$2.25 each)	74,250,000
Cash deposit	<u>10,000,000</u>
Total Consideration	<u>\$129,250,000</u>

- 14.13 On the same day, TSL Jewellery entered into a separate agreement with Loywick. This agreement provided that TSL Jewellery would indemnify Loywick for any shortfall if the latter did not receive \$12,000,000 rental income per annum for a period of two years.

- 14.14 On 19 November 1990, the Stock Exchange approved WTCG's application to list and deal in 33,000,000 shares of \$1.00 each. This represented approximately 2.5% of WTCG's issued share capital.
- 14.15 The issue of 33,000,000 WTCG shares to TSL Jewellery was approved at a meeting of WTCG directors on 20 November 1990. The two directors present at this meeting were Mr Jackson Chang and Mr Mico Chung. The issue of the shares occurred the following day (see Appendix 93).

Calculation of the value of 335 Nathan Road, Kowloon

- 14.16 Mr Tse Sui Luen told me that TSL Jewellery had hoped to receive between \$100,000,000 and \$105,000,000 for the 335 Nathan Road property. When asked how the terms of the consideration had been negotiated, Mr Tse Sui Luen replied:

*"I think I did some calculation after he [Mr Billy Kan] told me about the offer and when I added up the value of the shares and the cash concerned it came to roughly about \$108 million".*

- 14.17 Mr Tse Sui Luen explained the difference between the consideration of \$129,250,000 as stated in the Agreement and the value which he attributed to the property:

*"That price was worked out on the basis of the value of the [WTCG] shares on the day of the transaction . . . which was \$1.62 per share and I was given 33 million shares. . . . On the day the transaction was effected, the total value of the cash and the shares, worked out on the basis of its face value on that day, was \$108 odd million. "*

- 14.18 Mr Billy Kan also told me that he considered the purchase price to be the market value of the WTCG shares at the time, as the "true" value of the sale was significantly less than the reported value:

*". . . The price is a bit of a tricky one. . . the price [per WTCG share] when we talked was about [\$]1.60 something and if you convert that price of [\$]1.60 . . . into cash terms, I think it [the price] was just about [\$]105 million . . . But the 126 [\$126 million] is based on the share price what they [WTCG] claim to be the net asset value, they insisted on putting that. But according to us it is just the share price. "*

- 14.19 Effectively, Mr Tse Sui Luen and Mr Billy Kan considered the value of the WTCG shares to be \$1.62 each, the price at which WTCG shares were trading at the close of trading on 24 October 1990.
- 14.20 I summarise in the table below the consideration paid assuming, in the first instance, the market value (\$1.62 each) and in the second instance, the agreed value (\$2.25 each).

Consideration paid for Loywick

<u>Purchase Consideration</u>	<u>Using \$1.62 each for WTCG shares</u>	<u>Using \$ 2.25 each for WTCG shares</u>
	<u>\$</u>	<u>\$</u>
Deposit	10,000,000	10,000,000
Cash (including adjustment for acquiring Loywick's loan facility)	45,000,000	45,000,000
WTCG shares		
- 33,000,000 @ \$1.62 each	53,460,000	
- 33,000,000 @ \$2.25 each		74,250,000
Consideration	<u>\$108,460,000</u>	<u>\$129,250,000</u>

- 14.21 The directors statement in WTCG's Annual Report for the nine months ended 31 March 1991 noted the price paid as approximately \$129,300,000.



- 14.22 Mr Patrick Tsang of Chesterton Petty, a firm of property valuers (also discussed in Chapter 11), provided WTCG with a preliminary estimate of \$118,000,000 for the property's value on 24 October 1990. This was calculated on the basis that a total rental income of not less than \$12,000,000 was guaranteed by the vendor for the period of 2 years from the completion of the Agreement which represented a yield of approximately 10.17%. This preliminary estimate was confirmed by a formal valuation on 14 November, 1990.
- 14.23 The agreed price of \$129,250,000 plus commissions and stamp duty totalling \$2,972,760 (which were capitalised), was written down to \$118,000,000 (being the value attributed to the property by Chesterton Petty) and this became the carrying value of the investment in WTCG's records.

### **THE COMMISSIONS**

- 14.24 Commissions for this transaction were paid by both WTCG and TSL Jewellery. WTCG paid a commission of 2% (\$2,585,000) of the transaction amount to Maddis Co. Limited ("Maddis"). TSL Jewellery paid a 1% commission to Chintung and a \$5,000,000 agency fee to Frenes Limited ("Frenes").

#### Commission Paid by WTCG to Maddis

- 14.25 On 22 October 1990, 3 days prior to the execution of the Agreement, Mr Chan Wai Hung wrote to WTCG on behalf of Maddis requesting *"an introductory commission equivalent to 2% of the total purchase consideration."*
- 14.26 According to Mr Chan Wai Hung, TSL Jewellery had refused to pay a 1% commission and it was for this reason that he had demanded WTCG pay 2%. Mr Tse Sui Luen denied knowing Mr Chan Wai Hung or that he had requested payment of a 1% commission from TSL Jewellery. Mr Mico Chung advised that he was told by Mr Chan Wai Hung that the TSL Jewellery refused to pay a commission to him.

- 14.27 Mr Mico Chung acknowledged and approved Mr Chan Wai Hung's demand note for a 2% commission on behalf of WTCG. A copy of the demand note with Mr Mico Chung's acknowledgement is enclosed as Appendix 94.
- 14.28 I was appointed to investigate the affairs of Maddis on 13 January 1993. Maddis was incorporated in Hong Kong on 15 December 1989 and has its registered office at 2/F DD 226 Lot 858 Clearwater Bay Road, Sai Kung, New Territories. At 23 January, 1992 Mr Chan Wai Hung, Mr Fong Yuk Leung and Mr Chan Wai Keung were the directors and shareholders of Maddis. I understand from Mr Chan Wai Hung that Mr Fong Yuk Leung is an old friend and a business partner and Mr Chan Wai Keung is his elder brother. Mr Chan Wai Hung has added that Maddis was principally involved in property development in the New Territories and acted as an agent in property transactions.
- 14.29 Maddis operated a current account with the Hongkong Bank. Any one director was authorised to sign withdrawal vouchers.
- 14.30 Subsequent to this transaction, Maddis' business address was moved to:
- Room 525, East Ocean Centre  
98 Granville Road  
Tsim Sha Tsui
- 14.31 A further company known as City Enterprises Ltd ("City Enterprises") shares the same business premises. A search of that company's records at the Companies Registry revealed that it was registered on 13 August 1991. Mr Mico Chung and Mr Jackson Chang were named as two of its five directors, collectively holding 59.6% of its issued shares. Mr Chan Wai Hung held 2.6% of its issued shares. These shares were issued in January 1992, 15 months after the acquisition of 335 Nathan Road.
- 14.32 Mr Chan Wai Hung has said that he was made a shareholder to assist the company in finding investment opportunities.

- 14.33 Mr Mico Chung has told me that he formed City Enterprises with Mr Jackson Chang in September 1991 in anticipation of his resignation from WTCG.
- 14.34 Mr Billy Kan told me that he believed Mr Chan Wai Hung was acting for City Enterprises when the latter had approached him on behalf of WTCG, although both Mr Mico Chung and Mr Chan Wai Hung dispute this, saying that City Enterprises did not exist at that time, having been incorporated on 13 August 1991.
- 14.35 WTCG issued a cheque for \$2,585,000 on 25 October 1990 payable to Maddis. Mr Billy Kan has told me he did not know that Mr Chan Wai Hung through Maddis had received a commission.
- 14.36 Those funds were deposited into Maddis' current account with the Hongkong Bank on 25 October 1990 and disbursed as follows:

<u>Date</u>	<u>Details</u>	<u>Amount</u>
		<u>₹</u>
30 October 1990	Cheque cashed	620,000
1 November 1990	Cheque cashed	995,075
3 November 1990	Cheque cashed	<u>1,000,000</u>
		<u>\$2,615,075</u>

- 14.37 Any one director of Maddis was authorised to sign withdrawal vouchers on the Company's Hongkong Bank current account.
- 14.38 Hongkong Bank has informed me that these cheques were drawn by Mr Chan Wai Hung and Mr Chan Wai Hung has confirmed that he cashed all three cheques.

14.39 Mr Chan Wai Hung told me that he:

*" . . . withdrew the money and use it . . . all up myself . . . the two million odd dollars were earned by me and I had spent them myself. "*

14.40 He added that he deposited cash into a safe deposit box with the Hongkong Bank and gradually disbursed it to cover various expenses, for example to assist his sick father and to pay persons involved in developing a property in the New Territories. Although requested, he has failed to produce receipts to substantiate these payments, claiming that he does not generally keep receipts for expenses.

14.41 When asked how he had been able to spend all the commission without reference to the other two shareholders of Maddis he stated:

*" . . . we had an agreement among the three of us that whatever commission that we earned from real estate transactions, then I would be entitled to all the commission earned. "*

14.42 Minutes of a meeting of the Board of Directors of WTCG held on 20 November 1990 note that Mr Jackson Chang and Mr Mico Chung were present with Mr K H Yeung, the company secretary in attendance. The acquisition of the entire issued share capital of Loywick was referred to by the Chairman of the meeting Mr Mico Chung. The Board resolved among other matters that in accordance with the Agreement that 33,000,000 WTCG shares be issued to TSL Jewellery.

14.43 The minutes of the meeting contain no reference to the payment of \$2,585,000 (being the 2% commission) to Maddis on 25 October 1990. In a submission to me, Mr K H Yeung stated that *" . . . it was not unusual in such transactions or . . . not to record details . . . in the board minutes unless the amount . . . is very large or the nature of the expense is unusual"*.

- 14.44 I have not been able to obtain Mr Jackson Chang's view of this matter. Mr Mico Chung, however, has submitted that he strongly disagrees with any implication that he may have shared in the commission.
- 14.45 His submission is that the payment of a 2% commission is not unusual, stating that a 2% commission in the investment banking world is the norm for the issue of new share placements. In this case, a large part of the purchaser price was in the form of a new share issue. In addition, he claims that Mr David Tong, Mr Jackson Chang and Mr Patrick Lau, being two other directors and the financial controller, were well aware of the commission payment and hence it was properly authorised. He disputed the necessity of recording the commission in the minutes stating through his solicitors:

*"It was not then WTCC normal practice for the Board to be required to approve professional fees including Agency Fees unless they amounted to such a huge sum as should be ratified by the Board, as in the case of commission payment for the acquisition of World Trade Centre. The existing normal practice at the time for WTCC was for a Director (in this case Mico Chung) to seek verbal approval from other Board Directors (in this case David Tong and/or Jackson Chang) as the other members of the Board. This was done."*

#### Audit considerations

- 14.46 The audit working papers noted that a copy of the paid invoice for the commission, which was authorised by two directors, was sighted, although no board minutes approving the commission existed.
- 14.47 Mr Paul Siu advised that he was satisfied as Mr Jackson Chang and Mr Mico Chung had approved the payment.

- 14.48 It appears that no direct enquiries were made of the management of WTCG by the audit staff to determine why the commission was at least double that paid in normal property dealings of this type and of the identify of the persons behind Maddis.

Commission paid by TSL Jewellery and Super Fortana Company Limited ("Super Fortana")

- 14.49 By letter dated 24 October 1990 from Mr Raymond Lai of Chintung to Super Fortana a wholly owned subsidiary of TSL Jewellery, the former advised:

*"This is to confirm that we act as broker and agent for the sale of the above property [335 Nathan Road Kowloon] for a price not less than HK\$126,000,000.00 for the fees as follows:-  
1% on transaction price - brokerage fee and HK\$5,000,000 being agent fee  
..."*

- 14.50 Mr Tse Sui Luen acknowledged these terms by signing the bottom of the letter on behalf of Super Fortana. A copy of this letter is enclosed as Appendix 95.

- 14.51 This letter was written in English although Mr Tse Sui Luen has told me he does *"not speak, read or write any language other than Cantonese"*. I have not established whether this letter was translated for Mr Tse Sui Luen.

Payment of \$1,292,500 to Chintung

- 14.52 When asked what Chintung had done to earn its commission, Mr Tse Sui Luen replied:

*"I don't know about the exact details of what they had done with regard to this transaction but Chintung had a long business relationship with us and we were satisfied with the offer, so we didn't mind Chintung earning a commission. Furthermore, they were able to give us the relevant invoices and so on, so we didn't mind."*

14.53 Mr Tse Sui Luen acknowledged that there was no record of these commissions to Chintung and Frenes being discussed and ratified by the Board of TSL Jewellery.

14.54 On 21 November 1990, Super Fortana and TSL Jewellery directed its solicitors, Fairbairn Catley Low & Kong ("Fairbairns"), to pay a brokerage fee of \$1,292,500 to Chintung and an agent's fee of \$5,000,000 to Frenes. Fairbairns deducted these amounts from the deposit of \$10,000,000 it was holding in its client account.

14.55 According to Mr Billy Kan, Chintung was to receive a commission because:

*"Dickson [Ho] had been lining up the deal, this sale of the property for me with another quoted company and it was near to completion, and it was all along that I have given him the indication that we would sell them the property . . . I think because I have known Dickson also for many, many years, so I sort of squared up the embarrassment of agreeing to sell the property and then not by saying that I would give him part of the commission which I am entitled to, and that's why Chintung was issued with a certain amount of deposit . . ."*

14.56 Mr Dickson Ho, a director of Chintung at the time, denied any knowledge of this arrangement with Mr Billy Kan, stating:

*"No, no. That was not in discussion, obviously because I think if the deal fail, how Chintung got the commission? It is not logical because if it fails, it fails. I think we only get commission when its done. So that's not true."*

14.57 When asked the reason for Mr Raymond Lai's involvement in this transaction, Mr Dickson Ho added:

*"I don't know. In the first place, Raymond didn't tell me that he is involved. Nor Billy, he didn't tell me that he negotiated with Raymond to sell the building"*

14.58 Mr Raymond Lai on the other hand made no reference to Mr Dickson Ho and the work undertaken by him. He stated that:

*"There was a fee to be made by us [Chintung] for doing very little and he [Mr Billy Kan] came to us on that basis.*

14.59 I have been advised by Mr Edmund Hung, the new Senior Vice President and Group Compliance Officer of Chintung (who joined Chintung in April 1991) that Chintung received the 1% commission (\$1,292,500) on 22 November 1990. It was then divided accordingly:

*"1/4 of the 1% commission ie \$323,125.00 was recorded in Chintung Finance['s] Account as "Sundry Income. "*

*"3/4 of that 1% commission ie \$969,375.00, was rebated, in accordance with Raymond Lai's instruction, to a Mr Seow Woon Ping on 22 November 1990 . . ."*

14.60 According to Mr Raymond Lai, Mr Billy Kan had explained to him that he, Mr Billy Kan, was to receive the \$969,375 paid to Mr Seow Woon Ping:

*". . . the money was supposed to go to Seow Woon Ping and Seow Woon Ping was supposed to arrange for that money to go back to Billy Kan. "*

14.61 During Mr Billy Kan's interview on 2 September 1993, he responded to Mr Raymond Lai's evidence:

*"So as far as I'm concerned, I never got the money, so I don't see why I would have arranged it that way. But it does ring a bell that they have asked the transactions to be done in certain manners. "*



14.62 At the second examination on 6 September 1993, which Mr Billy Kan had requested, he amended his evidence by stating:

*"I have to come clean with you because . . . I am on oath. I have given the commission to Chintung and I have told them that I would be willing to give them part of my commission . . ."*

*"So I am sure I have received a majority of the [\$] 1.292 [million]. I can't remember whether I received all of the [\$] 969 [thousand] or part of the 969 . . ."*

14.63 Mr Raymond Lai, Mr Dickson Ho, Mr Billy Kan and Mr Tse Sui Luen have each denied knowing Mr Seow Woon Ping.

14.64 The \$969,395 cheque payable to Mr Seow Woon Ping was cleared by the Overseas Trust Bank Ltd, Central Branch. I have been unable to trace these funds due to confidentiality provisions or to locate Mr Seow Woon Ping.

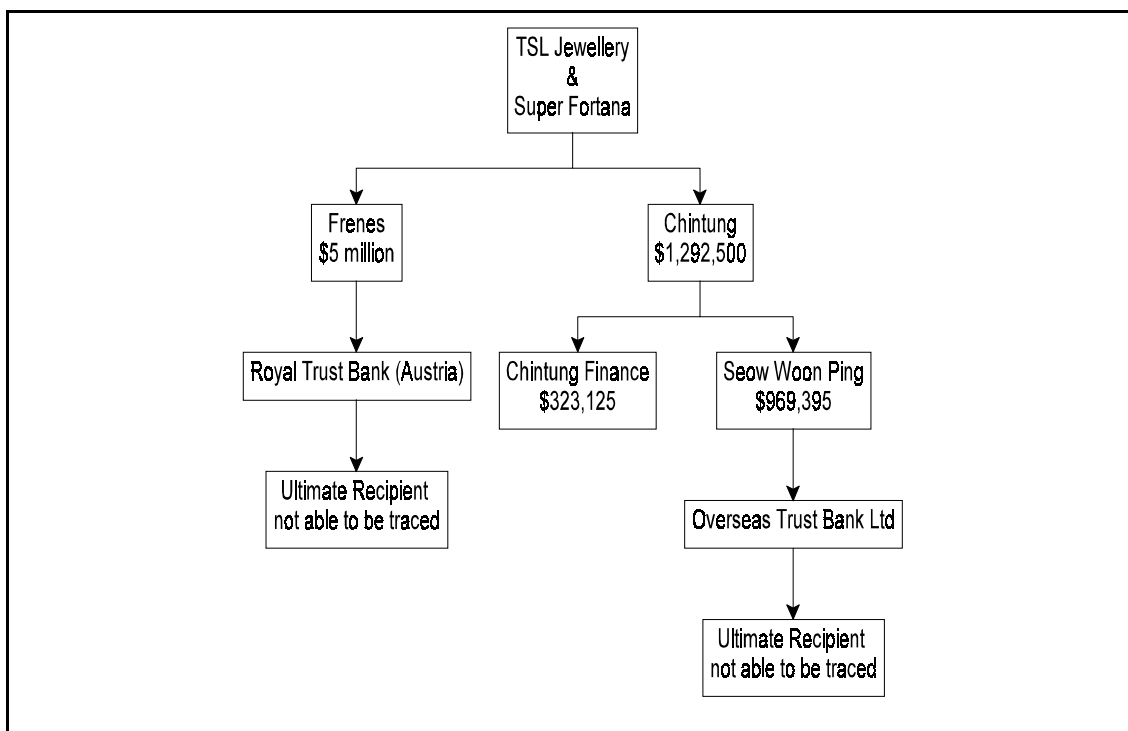
14.65 Mr Seow Woon Ping has come to my attention in respect of a another transaction involving Chintung. On 26 July 1990, 31,400,000 WTCG shares were rebooked from Chintung Nominees to:

<u>Client</u>	<u>No of Shares</u> (million)
Seow Woon Ping	11.40
Teng Tan Jong	19.50
Lee Sut Ying	0.25
Lee Hee Ryung	0.25
	<hr/>
	<u>31.4</u>

14.66 I understand that Madam Teng Tan Jong is a relative of Mr Jackson Chang. I have been unable to locate Lee Sui Ying and Lee Hee Hyung.

14.67 The 31,400,000 WTCG shares were purchased for \$75,026,180.23. Settlement was effected by two cash transactions on 30 July 1990 and 3 August 1990. Standard Chartered Securities has been unable to provide me with any further information about the rebooking of these shares or the payment.

14.68 The diagram below shows the disbursement of the two commissions.



14.69 Although Mr Billy Kan claims that he received the \$5,000,000 agency fee paid to Frenes and the majority of the \$1,292,500 paid to Chintung, he has been unable to provide me with any documentary evidence to support this claim. Mr Billy Kan has also denied operating an account at Overseas Trust Bank Ltd.

Payment of \$5,000,000 to Frenes

14.70 When I asked Mr Tse Sui Luen why Fairbairns had been authorised to make a payment of \$5,000,000 to Frenes, he replied:

*"All I know was I just remember that I need to pay Chintung. As to how the money was eventually received, I didn't know the details."*

- 14.71 Mr Tse Sui Luen added that Frenes was not in any way related to the TSL Group of companies or to himself. Mr Tse Sui Luen told me he did not know who controlled it, although he *"assumed Frenes was a subsidiary of Chintung"*.
- 14.72 Mr Raymond Lai on the other hand told me that he believed Frenes was controlled by Mr Tse Sui Luen.
- 14.73 Frenes is not registered in Hong Kong. As such I have been unable to determine where it was incorporated. I have established however, that Frenes cleared its cheque with the Royal Trust Bank of Austria.
- 14.74 During Mr Billy Kan's interview on 2 September 1993, he told me that he did not know about the \$5,000,000 commission paid to Frenes.
- 14.75 During his further examination of 6 September 1993, Mr Billy Kan amended his evidence by stating:

*"The [\$] 5 million, it was actually money paid to me and it has always been an arrangement between me and the Tse Sui Luen Group, or the Chairman of the Tse Sui Luen, that he would give me a price as to how much to sell his property; anything above that price, I have an arrangement with me that if I can manage to sell it, it belongs to me, and he knows that."*

*"The 5 million went to an offshore company. The offshore company, after it received the money was wound up . . . The money was paid into one of my company's accounts . . . I used the money to purchase Tse Sui Luen shares . . . which I made a loss."*

14.76 Mr Tse Sui Luen, on the other hand, has stated that he had not agreed to Mr Billy Kan obtaining a commission.

14.77 According to Mr Billy Kan there were *"two or three lawyers"* from Fairbairns *"who have been dreaming up this scheme."* He stated:

*"I am sure I have received one [proportion of the commission paid to Chintung] because, as I said, I have talked to my lawyer. It was on advices that we do it this way. So first of all, the company [TSL Jewellery] would understand that they'd pay a commission, a commission for the sale for the property, and we'd distinguish the [\$] 5 million mainly because the 5 million was a price - it's like a confirmor that because there was an undertaking that if I sell [335 Nathan Road] for more than [\$] 100 million, okay, the differences would go to me. So that review should have been separated so that the Chairman of Tse Sui Luen [Jewellery] could explain to its directors why there was so much payment instead of a commission of such a big amount because they have given the undertaking to sell the property at a certain value.*

14.78 I have obtained a letter of authority from Mr Billy Kan to review all documentation held by Fairbairns. I was advised by that firm that they did not act for Mr Billy Kan in this transaction.

14.79 I also obtained a letter of authority from Mr Billy Kan on the basis that he was the authorised signatory of Frenes's account to review the documents held at Royal Trust Bank of Austria. I have since been informed by that bank that Mr Billy Kan is not the authorised signatory for that account and accordingly no information can be provided.

14.80 Mr Tse Sui Luen acknowledged in his submission the payment of \$6,292,000 as commission and agent fee was a substantial fee for the sale of 335 Nathan Road. He added:

*"The way it seemed to me at the time was that the fee charged by Chintung was exceptional but so was the scheme and so was the potential result. I do not agree that the fee could sensibly have been expected to be that which applied to a normal property agent or transaction. "*

*"I do acknowledge that there was no record of this payment [the commission payment and the agent fee] being discussed and ratified by [the Board of Directors of] TSL Jewellery and I accept that there should have been. "*

Mr Tse Sui Luen's submission

14.81 Following receipt of my provisional conclusions, Mr Tse Sui Luen submitted:

*"I explained to the Inspector during my interview in which my evidence was necessarily confined to the specific questions asked of me that in 1990 I decided to reduce the Group's debt and, therefore, to sell 335 Nathan Road. I further explained:*

*". . . one of my employees was responsible for handling all the liaison and all the work related to that transaction. "*

*That employee was Billy Kan, a senior manager, who was generally regarded as both able and dynamic in the buying and selling of real estate. I would have had no hesitation at that time in giving Billy Kan, who had far more expertise in this field than I, full authority to dispose of 335 Nathan Road. Maybe with hindsight, I should have done things differently. However, it was and still is my practice particularly in areas not directly concerned with jewellery to set down my objectives and delegate others with the function and responsibility of achieving them. That is my style and the way things work within my Group of companies.*

*When Billy Kan recommended a sale of 335 Nathan Road to World Trade Centre Group Limited (WTCG) at a price which substantially exceeded not only my expectations but also the only other offer (made through Knight Frank, Kan & Baillieu) I regarded both my faith in him and my approach to dealing with such matters as fully justified. The scheme which I was told by Billy Kan had been put together with considerable effort by Chintung was in many ways ingenious. It seemed to me that Tse Sui Luen Jewellery (Holdings) Limited (TSL Jewellery) stood to realise more cash net of all costs to other alternatives. I was also very much influenced by the fact that in July 1990 one of my wholly owned subsidiaries, Clever Life Limited ('Clever Life') bought and sold 500,000 BCIL [WTCG] shares at a profit. I adverted to this matter at my interview when questioned about the activities of Clever Life. It is worth noting that that purchase was recommended by Chintung. Accordingly, I regarded the deal proposed by Billy Kan as creative, clever and potentially extremely profitable and, however one rated the value of the shares (whether actual share price or 'net asset value'), it far exceeded my original expectations or any rival offer. That is the background and that is the context in which the HK\$6,292.500 payment came to be made.*

*So far as the splitting of the payment into a brokerage fee of HK\$1,292.500 and an agency fee of HK\$5,000,000, I did not and do not find that surprising or sinister at all. As I have said I am myself Chairman of a company with at least 75 wholly owned subsidiaries. In Hong Kong that practice is commonplace. I assumed Frenes was a subsidiary of Chintung. I believe it is also a notorious fact that many large corporations set up a separate and subsidiary company, the sole purpose of which is to receive unusually large payments whether it be to provide tax and liability shelter or to facilitate certain types of investment or for whatever reason. It did not occur to me that the split payment, which was after all requested by Chintung by letter of 21st November 1990 (referred to at my interview as 'A'), was in any way peculiar or untoward.*

*It follows that, whether I should have been or not, I was not concerned as what or who Frenes ultimately was. Furthermore, I have stated quite categorically that Frenes was not my own company, nor was it under my control, nor was it in any way related to me personally or the TSL Jewellery Group. I repeat those statements unequivocally and regret that it appears necessary for me to do so in the light of Mr Raymond Lai's unsubstantiated belief that I do control Frenes. I have not at any time been a director, shareholder, authorised signatory or held any capacity whatsoever in Frenes nor have I ever authorised anyone to act in any capacity on my behalf in that company nor have I been in any connection related to it. If the Inspector would like me to furnish a letter of authority to assist his enquiries with the Royal Trust Bank of Austria, I shall be happy to do so. It seems that the suspicion surrounding the true identify of Frenes has unfairly impinged on my conduct so as to render the whole payment something which it is not.*

*I do accept, however, that HK\$6,292,500 is a substantial fee for the sale of 335 Nathan Road. Indeed I have always acknowledged that. I have above endeavoured to explain why I considered this deal to be exceptional particularly when seen against my original objectives. I wish to add that it was my understanding from what Billy Kan told me that although the actual market value of the shares at the time of our discussion was HK\$1.62 per share the true value was the 'net asset value' which Billy Kan considered was a minimum of HK\$2.25 per share. As a result I felt confident (a confidence encouraged by the July share dealing to which I have referred) that we could indeed realise cash of at least HK\$2.25 per share. That was why I was reluctant to sell at a lower market price immediately upon receiving them although the price initially went up. I now understand that the 'net asset values' of property companies has soared since 1991 which has confirmed Billy Kan's view. But in any event the current market price of WTCG shares as at 24th October 1990 would have resulted in a deal worth HK\$108,460,000 which I believed to be not only a minimum valuation but also HK\$13,000,000 higher than any other offer. The way it seemed to me*

*at the time was that the fee charged by Chintung was exceptional, but so was the scheme and so was the potential result. I do not agree that the fee could sensibly have been expected to be that which applied to a normal property agent or transaction and I said so at interview. I do not resile from that position.*

*I would also like to stress, as I mentioned at my interview, that Chintung has had a long business association with my Group of companies. I fully expected that relationship to continue. To me not only has Chintung provided an exceptional service in the past, it has a breadth of service which ordinary stockbrokers are not often able to offer. To put it simply, it is more akin to a merchant bank. That is certainly my own experience of Chintung over many years. Indeed I tried to explain my perception of Chintung at interview when asked why the fee charged was higher than the normal fee to be expected from a real estate agent. I also drew the comparison then between Chintung and a merchant bank.*

*I do acknowledge that there was no record of this payment being discussed and ratified by TSL Jewellery and I accept that there should have been. I can only say that commissions payable in the ordinary course of commercial business invariably do not get singled out for special consideration since they are regarded as normal and expected expenditure. I accept, however, that given the size of this particular payment it would have been prudent to have done so."*

#### Subsequent sale of 335 Nathan Road

- 14.82 WTCG sold 335 Nathan Road, Kowloon, to Puising Investment Limited for \$138,888,000 in July 1992.



## CONCLUSION

- 14.83 Three particular matters arose from my examination of the events surrounding this transaction.

### The investment acquisition value recorded in WTCG's books

- 14.84 Mr Mico Chung, Mr Tse Sui Luen and Mr Billy Kan told me that the value of the transaction depended upon how the WTCG shares issued as consideration were valued. Based on the market value of the WTCG shares at the time, TSL Jewellery effectively received \$108,000,000.
- 14.85 The effect of WTCG issuing the shares at \$2.25 rather than \$1.62 (the market value of the WTCG shares at the time), increased the commission paid to Maddis and Chintung by \$415,800 and \$207,900 respectively.
- 14.86 TSL Jewellery guaranteed that Loywick would receive an amount of rental income for the property which was higher than that which was being received by Loywick before WTCG acquired the property, and also higher than when WTCG disposed of the property. This would affect both the value Chesterton Petty placed on the building and the amount of commissions paid, which were calculated as a percentage of the transaction value. Mr Mico Chung has submitted that the rental guarantee was high *"because substantiated improvements had been effected to the premises and a much higher rental income would be expected for new tenancy and renewal of existing tenancy"*.

### Commission paid by WTCG to Maddis

- 14.87 As mentioned above, a consequence of increasing the attributed value of WTCG shares, was that the commission payable to Maddis was also proportionately increased.

- 14.88 I can find no evidence that Mr Mico Chung and/or Mr Jackson Chang shared in the 2% commission paid to Maddis.
- 14.89 However the fact that Maddis and City Enterprises share the same business address and Mr Chan Wai Hung, Mr Mico Chung and Mr Jackson Chang are co-shareholders of City Enterprises suggests a connection between these parties.
- 14.90 My enquiry was further heightened by the fact that Mr Chan Wai Hung received a 2% commission from WTCG for "*introducing*" the property when payment of 0.5%-1% is considered common market practice for a transaction of this size. The \$2,585,000 was then disbursed by three cash tranches shortly after receipt. Mr Chan Wai Hung has failed to produce receipts to justify these payments.

Commission and agents fee paid by TSL Jewellery and Super Fortana

- 14.91 I find it difficult to accept that as the Chairman of TSL Jewellery Mr Tse Sui Luen allowed the payment of \$5,000,000 to Frenes and \$1,292,500 to Chintung without knowing what either of these entities had done to deserve these monies or who was to ultimately benefit from them. The fact that such conflicting evidence surrounds their payment and that no documentary evidence has been produced to me that the TSL Jewellery Board approved them, has aroused my concern as to their probity.
- 14.92 Although Mr Billy Kan has alleged he controls Frenes. I do not accept this evidence. He has been unable to provide me with any material to support his contention that he was the ultimate beneficiary of the \$5,000,000 agency fee. In addition Royal Trust Bank of Austria has denied that Mr Billy Kan is the authorised signatory for Frenes' account. Fairbairns have also refuted any involvement in this transaction on behalf of Mr Billy Kan.

- 14.93 The payment of the \$1,292,500 commission to Chintung also appears to lack foundation. Mr Dickson Ho stated that Chintung should not have been paid any monies as his client did not buy the property. He has also denied agreeing to any arrangement to share in the commission with Mr Billy Kan or any knowledge of it at all. Mr Raymond Lai's involvement appears to have only been in relation to the letter sent to Super Fortana on 24 October 1990.
- 14.94 I do not accept that none of the persons examined knows of Mr Seow Woon Ping. However, without assistance I have been unable to determine the ultimate beneficiary of the \$969,395.

#### **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 15

### ACQUISITION OF THREE UNITS IN THE MANDARIN PLAZA, NEW YORK

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15      **INTRODUCTION**

15.1      Pursuant to my appointment as Inspector of WTCG and Tomson Pacific I was directed by the Financial Secretary of Hong Kong to investigate and report on all the events surrounding:

*"the acquisition by WTCG on 13 February 1991 of Astbury International Limited."*

15.2      Astbury International Limited ("Astbury") ultimately owned three units in the Mandarin Plaza, New York through wholly owned subsidiary companies.

15.3      In WTCG's 1990 - 1991 Annual Report, the acquisition of the three units in the Mandarin Plaza, New York was referred to as follows:

*"In April 1991, the Company also acquired the entire issued share capital of a company which owns three investment properties in New York, United States of America from an unrelated third party for a consideration of HK\$51 million (US\$6.5 million) to strengthen the property portfolio of the Company."*

15.4      At the time of the acquisition in February 1991, Dr Stanley Ho held a 42% interest in 374 Broadway Associates, the developer and vendor of the Mandarin Plaza. He was also the Chairman of WTCG.

15.5      WTCG acquired the three units from Mr Li Chi Keung. He is a close associate of Dr Stanley Ho and introduces gamblers to the Golden Room at the Lisboa Casino, a casino controlled by STDM. Dr Stanley Ho is the Managing Director of, and a large beneficial shareholder in, STDM. Dr Stanley Ho personally holds the licence to operate casinos in Macau.

- 15.6 Mr Li Chi Keung has stated that he purchased the units in January 1991 from Dr William To, the Project Manager of 374 Broadway Associates and Dr Stanley Ho's brother-in-law for US\$4,400,000.
- 15.7 An agreement was reached between Mr Li Chi Keung and Dr William To that the latter would find a buyer for a higher value, allowing Mr Li Chi Keung to realise a profit to be offset against the monies owed to him by Dr William To. According to Mr Li Chi Keung, as promised, WTCG (through its subsidiary Pearl Treasure Limited ("Pearl Treasure")) agreed to buy the units for US\$6,500,000. The acquisition was completed in February 1991.
- 15.8 On the other hand, Mr Mico Chung, the then General Manager of WTCG, has stated that he was told that WTCG was to purchase the units two months prior to Mr Li Chi Keung acquiring them in January 1991. According to Mr David Tong, he was told by Mr Jackson Chang that the transaction was introduced to WTCG by Dr Stanley Ho. Dr Stanley Ho has denied this.
- 15.9 Prior to completing the acquisition, WTCG had not obtained a valuation of the properties. Rather it relied upon a valuation prepared by Raine, Horne & Lau on the instructions of Mr Anthony Chan of Shun Tak which clearly stated it was for "*disposal purposes*". By definition however, the valuation could only substantiate the US\$6,500,000 purchase price from the sellers prospective.
- 15.10 Mr Mico Chung has told me that the Raine, Horne & Lau valuation was requested by him through Mr Jackson Chang.



15.11 I obtained an independent valuation of the units from Appraisal Group International, real estate appraisers and consultants of New York. Set out below is a comparison of its findings as against those of Raine, Horne & Lau.

	<u>Appraisal Group</u> as at 21 January 1991	<u>Raine Horne &amp; Lau</u> as at 22 January 1991
	<u>US\$</u>	<u>US\$</u>
Penthouse 1	550,000	575,000
Penthouse 2	375,000	405,000
Commercial Unit	4,000,000	5,375,000
	—————	—————
	<u>US\$4,925,000</u>	<u>US\$6,355,000</u>

15.12 One day prior to the completion of the transaction, WTCG received an urgent advice from its lawyers, Baker & McKenzie, who emphasised their concern that WTCG was potentially liable for US capital gains tax of US\$950,000.

15.13 Although Baker & McKenzie strongly recommended an indemnity be obtained from Mr Li Chi Keung, WTCG has not received one. Mr Mico Chung has told me that he asked Baker & McKenzie to prepare a Deed of Indemnity, but as no-one at WTCG knew Mr Li Chi Keung, it was left to Mr Ambrose So to arrange for it to be executed.

15.14 On 13 February 1991 at Pearl Treasure's meeting of directors, Mr David Tong and Mr Jackson Chang approved the Share Purchase Agreement. No reference in the minutes was made as to whether the purchase price was reasonable, the manner in which it had been assessed or the potential tax liability.

- 15.15 At a meeting of WTCG's Board of Directors on 26 March 1991, the acquisition of the units was raised and the issue of the potential tax liability noted. The Board resolved that the acquisition of the properties be ratified and confirmed. Dr Stanley Ho made no mention of his 42% interest in 374 Broadway Associates, or that Mr Li Chi Keung introduced gamblers to the Golden Room at the Lisboa Casino. Mr David Tong was not present at that meeting.
- 15.16 Mr David Tong has confirmed to me that these units have been neither leased or sold since they were acquired in 1991 and have at all times remained empty. Although Mr Mico Chung has told me efforts were made to lease the units.

### **BACKGROUND OF 374 BROADWAY ASSOCIATES AND HFT CORPORATION**

- 15.17 374 Broadway Associates is a New York general partnership of which Target Development Corporation and HFT Corporation serve as partners. It is the owner and developer of a 27 storey mixed use condominium building (3 commercial floors and 27 residential floors) at 374 Broadway, New York, commonly known as the Mandarin Plaza.
- 15.18 I have been advised by Shun Tak's solicitors, that HFT Corporation *"held a constant 60% partnership interest in 374 Broadway Associates."*
- 15.19 At the time of the incorporation, the shareholding of HFT Corporation was divided equally as follows:

<u>Shareholder</u>	<u>Office</u>	<u>Shareholding</u>
Dr Stanley Ho	President	25%
Madam Winnie Ho Yuen Ki ("Madam Winnie Ho")	Treasurer	25%
Dr To Shiu Ning ("Dr William To")	Vice President/ Secretary	25%
Mr Fang Hang ("Kenneth Fang")	Investor	<u>25%</u>
		<u>100%</u>

The above shareholders were related and had the following other interests :

- (1) Dr Stanley Ho is, and was at the time, the chairman of STDM and Shun Tak Holdings Limited ("Shun Tak") and a major beneficial shareholder in each;
- (2) Madam Winnie Ho is one of Dr Stanley Ho's sisters and is, and was at the time, a director and executive director of Shun Tak and STDM respectively;
- (3) Dr William To was Madam Winnie Ho's late husband and practised as a dentist in Hong Kong for many years. In addition, he introduced wealthy gamblers to the Golden Room operated by Mr Li Chi Keung at the Lisboa Casino in Macau. He died in early 1991 from cancer.
- (4) Mr Kenneth Fang is the Managing Director of Fang Brothers Knitting Limited. He has told me that Dr William To was his dentist and that he was only a passive investor in this development. I accept this to be so.

15.20 During his first examination in February 1993, Dr Stanley Ho stated that he had less than a 20% interest in 374 Broadway Associates. I was subsequently advised through his solicitor that:

*"Throughout 1990 and up to 28 January 1991, Dr Ho owned 50 shares in HFT Corporation representing a 25% shareholding.*

*His effective equity interest over this period in 374 Broadway Associates was therefore 15%.*

*On 28 January 1991 Dr Ho entered into an agreement to purchase 45 shares in HFT Corporation from each of Dr [William] To and Winnie Ho. This was done when Dr To was attempting to put his affairs in order having been advised that he was very ill with terminal cancer. Dr Ho therefore had an interest of 140 shares or 70% of HFT Corporation.*

*After 28th January 1991, Dr Ho's effective equity interest in 374 Broadway Associates was 42%. "*

- 15.21 It follows that at the completion of the sale of the three units in Mandarin Plaza to WTCG, Dr Stanley Ho had a 42% beneficial interest in 374 Broadway Associates and at the time of the transaction with Mr Li Chi Keung a 15% beneficial interest.

#### **DEVELOPMENT OF MANDARIN PLAZA**

- 15.22 Madam Winnie Ho explained her husband's involvement in the development of the Mandarin Plaza:

*"Dr To was bored with his practice so he pleaded with my brother, Stanley Ho, to help him change his profession - - he wanted to get into the construction business - - and he located this site in New York but he didn't have any money. So he asked Dr Ho, my brother, to help and I also chipped in a bit myself.*

*He [William To] arranged everything. My brother [Dr Stanley Ho] and myself didn't play any part at all. "*

- 15.23 When asked whether Dr William To had been involved in any other construction venture before, Madam Winnie Ho responded:

*"No, that is why my brother laughed at me and asked why, you know, a dentist would suddenly be involved in the construction industry. "*

- 15.24 Pannell Kerr Forster, Certified Public Accountants, were engaged by 374 Broadway Associates to evaluate the potential market acceptance for the 27-storey, 164-unit residential condominium. In its report dated 15 August 1988 provided to Dr William To, Pannell Kerr Forster concluded that:

*"The site, located approximate to area amenities and transportation, would be well suited for the high quality residential condominiums proposed by the developer.*

*The economics of the market area suggest there is underlying market support for the subject project.*

*The demographic and economic levels and trends within the anticipated target markets exhibit attributes which are consistent with the orientation of the subject development.*

*Given the development concept and pricing for the units we estimate an absorption rate of approximately 6 units per month beginning in September 1988 throughout sell-out in December 1990. The total sell-out period is estimated to be 28 months. The developer expects the project to obtain its temporary certificate of occupancy in March 1990."*

- 15.25 Documentation produced by the Hongkong Bank, Church Street Branch, New York, shows that 374 Broadway Associates obtained a US\$27,000,000 facility effective from 30 June 1987 and expiring on 30 November 1990 to fund the development of the project.
- 15.26 As I have been unable to obtain an accurate description of the development of Mandarin Plaza from witnesses examined, I have relied on excerpts from a report prepared by Koeppl Tener Riguardi Inc., Commercial Real Estate Services dated 9 June 1992 for the Hongkong Bank, New York:

*". . . the construction of the development was completed in late 1989. Marketing of Mandarin Plaza began in July 1989 and focused on the local Chinese community. It was apparently one of the first fully serviced high condominiums that was constructed in China Town. Sales were brisk in 1990 with 41 units sold (3.4 units per month) at an average price of US\$372 per square foot. The one-bedroomed models sold very well representing almost one half of all sales. Generally apartments sold at their listed prospectus asking price which averaged about US\$365 per square foot overall.*

*Sales slowed significantly in 1991 with only 14 units sold by year end (1.2 unit per month) representing a 66% decline. "*

### **THE SALE OF 3 UNITS IN MANDARIN PLAZA TO MR LI CHI KEUNG**

- 15.27 Mr Li Chi Keung (who is also mentioned in Chapter 6) stated that Dr William To in addition to introducing overseas gamblers to the Golden Room at the Lisboa Casino, also acted as guarantor for the cheques issued by these gamblers. In return, he received a commission which was paid to him in the form of cash or food coupons; the latter could be converted to cash if required. Mr Li Chi Keung told me:

*"the maximum commission he [Dr William To] could earn was between one to two million dollars but it doesn't necessarily mean that he'd make that much commission every time because it would depend on the turnover brought to the casino by the clients he introduced. "*

- 15.28 Madam Winnie Ho has denied any knowledge of her husband providing any such guarantees, but I accept Mr Li Chi Keung's direct evidence on this point.
- 15.29 Mr Li Chi Keung has alleged that over a 2 to 3 month period in 1990 Dr William To owed him approximately \$18,000,000 in respect of the debts of such gamblers which he had guaranteed.

15.30 When asked why he did not deduct the outstanding monies from the commission payable to Dr William To, Mr Li Chi Keung replied:

*"Well, I think in our line of business we depend on these agents to bring gamblers to us to gamble and we have to pay them a commission otherwise they would simply stop bringing clients to us. I did withhold some of the commission due to him. I told him that you have to find a way to repay the full amount of the debt first."*

15.31 In September or October 1990, Mr Li Chi Keung has told me in evidence that Dr William To spoke to him about a proposal that if he purchased three units in the Mandarin Plaza, being Penthouse 1 ("PH-1"), Penthouse 2 ("PH-2") and the ground floor commercial unit ("C-1"), he would be able to sell them on at a higher price within a short period of time to a buyer Dr William To would provide:

*"there was this property - - well, he [Dr William To] talk about this New York property, 374, he said that he had full control over that property . . . . . if I sell this property to you then and subsequently arrange for a buyer to buy the property from you then the money I owe you can be taken off, so you needn't worry."*

*Dr To told me that the property would let me make some profit and he told me the market value of the property would be around six to seven million [US dollars]."*

15.32 When Mr Li Chi Keung was asked why Dr William To did not himself sell the units at the higher price and pay him the profit, he responded that:

*"to the best of my knowledge he [Dr William To] was the managing director in full control of the property. He said that he only had a small share of that property but, however, he had full authority to sell it at a cheaper price. But if he had sold it at a higher price then he would not get any benefit out of it because the profit made would have to go to the other shareholders."*

- 15.33 Although Dr William To was the Project Manager and was allegedly in charge of making the major decisions regarding the development, it is surprising to find that he did not have authority to sign upon any of 374 Broadway Associates' bank accounts.
- 15.34 Mr Li Chi Keung told me that, there was no negotiation to determine the price of the units. Dr William To simply told him that the purchase price for PH-1, PH-2 and C-1 would be US\$4,400,000. Mr Li Chi Keung added that he accepted that price without having a valuation done because he *"trusted Dr To"*.
- 15.35 The quoted price for the three units as set by 374 Broadway Associates previously during 1990 before the slump in the market was in fact US\$6,500,000. According to Mr Kenneth Fang, the partners were not asked to approve a substantial discount to the set value as there were *"guidelines"* which allowed a certain percentage to be discounted. He added that due to the property market slump 374 Broadway Associates wanted to sell as many of the properties as possible.
- 15.36 Mr Kenneth Fang added that, although he did not know the name of the buyer who had purchased PH-1, PH-2 and C-1, the sale of these units for US\$4,400,000 had been reported to him. Sales and accounting reports in respect of Mandarin Plaza were received by him *"from time to time"*.



15.37 When I asked Dr Stanley Ho whether he had any involvement in pricing the units he replied:

*"No, not at all, because my sister and I are in big business and this is really tiny business and I left it entirely to him [Dr William To]. Besides when I heard he's got a very bad illness, the more I didn't want to interfere, you know."*

15.38 He continued that he had not discussed it with Madam Winnie Ho as:

*". . . I don't even have time to talk about this kind of small business."*

15.39 According to Mr Li Chi Keung, Dr William To told him that he would only need to pay a 10% deposit (US\$440,000) for the 3 units and that the completion date would not be until April or May 1991. Further, to assist with the details of the purchase of the units, Dr William To directed Mr Li Chi Keung to speak to Mr So Yu Keung ("Mr Y K So") of Shun Tak.

15.40 I have sighted a file note dated 1 October 1990 signed by Mr S Krsulich, an employee of the Hongkong Bank in New York. It reads in part:

*"Writer received a call from Dr. William To.*

*To stated that he had spoken with the HFT partners in Hong Kong and confirmed that he is entirely out of the picture with respect to management of the Mandarin Plaza project."*

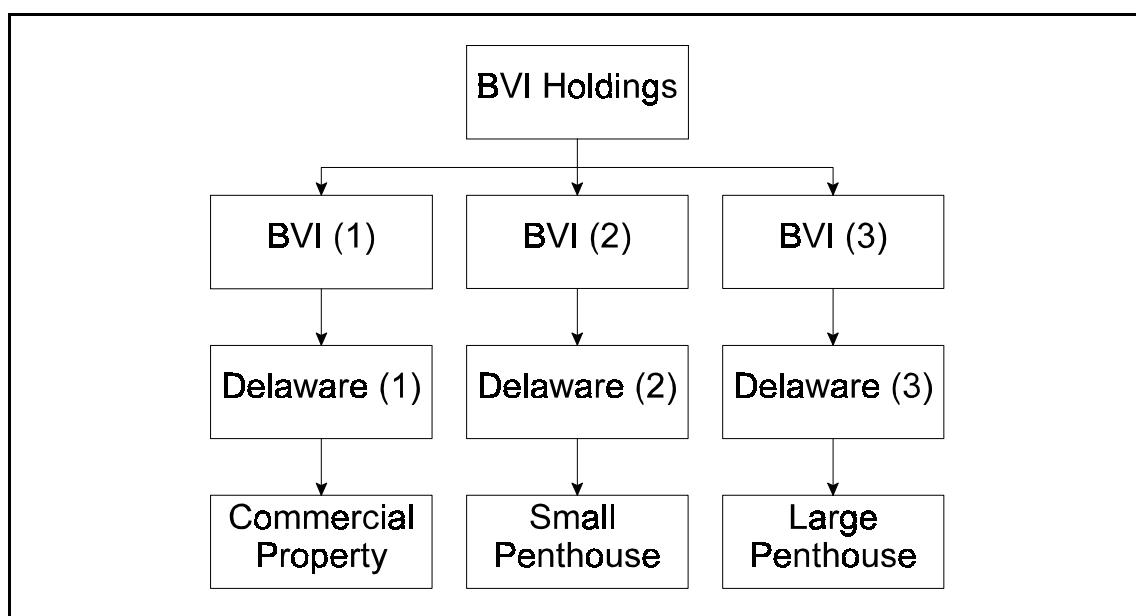
15.41 This evidence conflicts with that provided by Mr Li Chi Keung. However, as I received the file note only recently, and did not have an opportunity to speak with the writer, I have placed little reliance upon this evidence when forming my conclusions.

**THE INVOLVEMENT OF SHUN TAK IN THE ACQUISITION OF THE 3 UNITS  
BY MR LI CHI KEUNG**

- 15.42 Mr Y K So is the manager of investment projects for Shun Tak and STD. He is also involved in the administration of private projects done on behalf of Dr Stanley Ho and the other directors of Shun Tak.
- 15.43 He reports to Mr Patrick Huen, a director of Shun Tak. Mr Patrick Huen emphasised to me that he had very little involvement in this matter. Mr Y K So confirmed that Dr William To requested that he assisted Mr Li Chi Keung as he was familiar with the Mandarin Plaza project. He had apparently been involved with the development project "*from the beginning*" when he had been asked by Dr William To to review the terms of Hongkong Bank's loan facility to 374 Broadway Associates.
- 15.44 Mr Y K So has told me in evidence that he contacted an employee of 374 Broadway Associates in New York on Mr Li Chi Keung's behalf to ascertain what was required to effect the sales of the units to him. He then telephoned Mr Li Chi Keung and advised him that contracts would need to be signed and deposits paid in respect of each unit. It was at this time that Mr Li Chi Keung told me that he asked Mr Y K So to provide advice as to the most tax-effective way of purchasing and holding the three units.
- 15.45 Mr Y K So gave evidence to me that in December 1990, whilst dealing with lawyers from the Hongkong office of the Canadian law firm Boughton Peterson Yang & Anderson ("BPYA") on another matter, he raised the acquisition of the 3 units by Mr Li Chi Keung. He was advised by BPYA that, "*it may be suitable to have a structure of companies to hold them*".

15.46 Rita Wong Hoi Ping ("Madam Rita Wong"), Mr Li Chi Keung's wife, who liaised with Mr Y K So on behalf of her husband and Mr Li Chi Keung have both confirmed to me, and I believe them, that they had no contact whatsoever with BPYA. However, when I sought access to BPYA's files, it became necessary to explain to that firm that Mr Li Chi Keung was their client, and therefore he had to waive client confidentiality. It was made clear to me that BPYA considered that Shun Tak was their client.

15.47 On 14 December 1990, Mr Victor Yang, a partner of BPYA forwarded the diagram reproduced below to Mr Y K So and Mr Patrick Huen of Shun Tak, and to Mr William Chan ("Mr Bill Chan") and Mr Yan Lau of Price Waterhouse.



15.48 Mr Bill Chan and Mr Yan Lau are Canadian tax advisers with the Hong Kong office of Price Waterhouse, the international accounting firm. Mr Bill Chan told me that the probable reason the diagram was forwarded to them was because Mr Victor Yang was working with them on an unrelated investment for Dr Stanley Ho in Canada. However as they were Canadian and not U.S. tax advisers no advice was given by them and the matter was referred to the U.S. tax group in Price Waterhouse. I have reviewed Price Waterhouse's file and could see no correspondence or notes relating to this transaction until February 1991. The subsequent advice provided by Price Waterhouse is discussed below.

15.49 The letter attached to the diagram and addressed to Mr Y K So stated in part:

*"Enclosed are the BVI companies that are available today. Please confirm the structure as discussed with Patrick Huen. We will secure 3 names from Delaware and propose to issue shares to each of the three BVI companies respectively.*

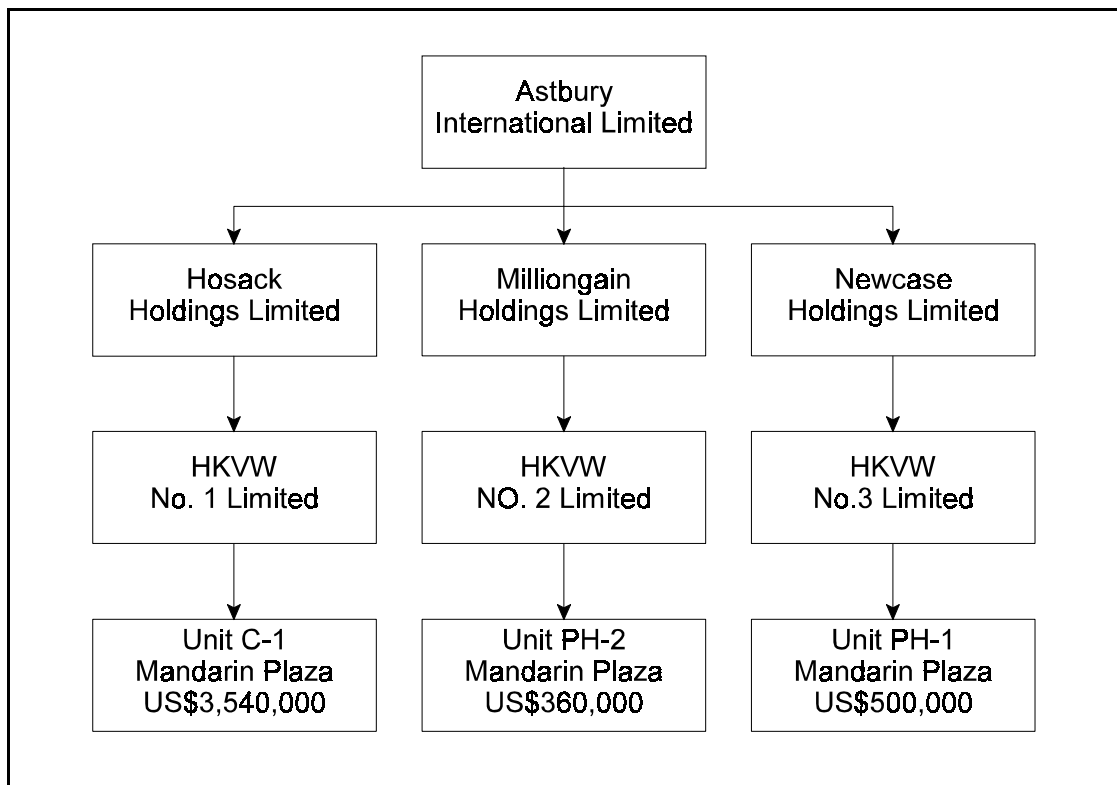
*We look forward to also receiving your retainer to cover the cost of the BVI and Delaware companies . . . "*

15.50 A cheque for \$72,000 was forwarded by Mr Y K So to BPYA on 14 December 1990 as requested. The cheque was drawn from the account of Somemore Co. Ltd. ("Somemore") with the Hong Kong branch of Banque Indosuez. A company search of Somemore shows it to be a company incorporated in Hong Kong, having its registered office at the Penthouse, 39th Floor Shun Tak Centre, Hong Kong. Both Mr Ambrose So and Mr Patrick Huen hold one share each in the company and are named as its two directors. Mr Patrick Huen has confirmed to me that Somemore is a subsidiary of STD M and is used for the purpose of *"handling some payments for STD M"*. He clarified that he and Mr Ambrose So held the two shares *"on trust for STD M."*

15.51 Mr Victor Yang of BPYA advised Mr Patrick Huen, Mr Y K So and Mr Ambrose So of Shun Tak by letter dated 15 December 1990 that:

*"with respect to the set-up of the acquisition structure from 374 Broadway Associates, we are pleased to advise that we have now secured the names of the BVI and the Delaware companies. We have inserted the names of those companies beside the sketch that we sent to you yesterday and trust that would help to make future references easier."*

15.52 That sketch showed :



15.53 Astbury would therefore become the ultimate holding company which would indirectly "own" the three units in the Mandarin Plaza.

15.54 By letter dated 24 December 1990, Mr Patrick Huen forwarded three standard-form Purchase Agreements as used by 374 Broadway Associates to Mr Kevin Lee of BPYA. The Purchase Agreements named HKVW No. 1 Limited ("HKVW No. 1"), HKVW No. 2 Limited ("No. 2") and HKVW No. 3 Limited ("No. 3") as the purchasers of C-1, PH-2 and PH-1 respectively for US\$3,540,000, US\$360,000 and US\$500,000 (total US\$4,400,000). Each Purchase Agreement was signed by Madam Winnie Ho and Dr Stanley Ho on behalf of 374 Broadway Associates. An extract of the purchase agreement for C-1 is shown at Appendix 96.

15.55 Dr Stanley Ho told me that he could not recall signing the Purchase Agreements. I was subsequently advised through his solicitor that:

*"to the best of everyone's recollection, the purchase contracts were executed by Dr Ho and Winnie Ho between 14 and 24 December 1990."*

15.56 I have examined a number of executed Purchase Agreements in relation to other units sold in the Mandarin Plaza. The majority of these have been signed by Mr James Lee on behalf of 374 Broadway Associates. The three Purchase Agreements relating to HKVW No 1, No 2 and No 3 appear to be the only ones that have been signed by Dr Stanley Ho and Madam Winnie Ho.

15.57 Mr Kevin Lee of BPYA forwarded copies of the Purchase Agreements, now executed by Mr Victor Yang of BPYA as director of HKVW No. 1, No. 2 and No. 3 to Mr Patrick Huen of Shun Tak under cover of a letter dated 7 January 1991.

#### **PAYMENT OF THE DEPOSIT BY MR LI CHI KEUNG**

15.58 Documentary evidence produced by Mr Li Chi Keung shows that on 3 January 1991 the 10% deposit in relation to each unit was forwarded by the Seng Heng Bank, Macau, to the Hongkong Bank, New York Branch in favour of 374 Broadway Associates, and three separate remission receipts were issued totalling US\$440,000.

15.59 To fund these payments, Mr Li Chi Keung has given evidence to me that he used gambling chips from the Golden Room:

*"I changed the chips to money and used the money to pay the deposits . . . I instructed the accountant at the casino to pay the deposit to the Seng Heng Bank in Macau and afterwards I contacted Seng Heng Bank saying that it was the deposit for the property . . . Seng Heng Bank would remit the money to somewhere else as a deposit."*

15.60 It is evident that neither Mr Li Chi Keung or his wife, Madam Rita Wong, had conducted a valuation of the units at the time the deposits were paid.

### **THE SALE OF THE 3 UNITS BY MR LI CHI KEUNG TO PEARL TREASURE**

15.61 Mr Li Chi Keung told me that following the payment on 3 January 1991 of the deposits for the three units he asked Dr William To frequently whether a buyer had yet been found to purchase from him at a profit as promised:

*"I chased Dr To a number of times as to whether the property could let me earn some profit and Dr To finally, around ten days after I had paid the deposit, introduced Bond [Corporation] as the buyer of the property."*

15.62 Mr Mico Chung has given evidence contrary to that of Mr Li Chi Keung. He recollects that in November or December 1990 Mr David Tong and/or Mr Jackson Chang requested that he consider a proposal for WTCG to purchase PH-1, PH-2 and C-1 in Mandarin Plaza. He recalled that as the units were not worth a significant amount of money and as he was busy at the time making arrangements for his impending marriage which was to take place on 14 December 1990, he did not give the transaction his full attention. He explained his involvement as follows :

*". . . the deal was agreed I think between Mr David Tong, Jackson Chang and Dr Stanley Ho and our view is, you know, your view meaning the management, my view is that Dr Ho is known to be an international real estate developers, well known in Canada, USA, he must have his reason for recommending a deal to the World Trade Centre Group, being the chairman, . . . and the amount is only \$50 million . . . so it must be a reasonable deal, that's our deduction . . . in the later part of December I was asked to look at the agreement to try to complete the deal by the year end or something, and I was asked to contact the Shun Tak people, Ambrose So and Patrick Huen on the transaction. Again, we were given some valuation report later on . . . We were not, from the management point of view, . . . particularly*

*happy with that acquisition for two reasons. Firstly we don't have any management agent in New York and we know that managing a property in New York costs a lot of money and we don't have any local office there, because from our experience in Rome which told us that operating a foreign office costs a lot of money and certainly its not worth it just to operate an office because of a \$50 million investment. The second reason is that we know that in the New York market the yield for US property was pretty low at that time, . . and we formed an opinion that maybe it is not the best deal we should do. So I suggested to David Tong that . . . instead of signing, completing the deal so quickly, why don't I take the opportunity to have a visit of the New York property myself because I was going to Vancouver for my honeymoon. . . . so Mr Tong agreed with my suggestion, so I went to New York for two days and I went to see the property by myself and I went to see the agent there, a guy called Mr Lee, James Lee, who showed me the property. I didn't tell him I was from BCIL, [WTCG] so I told him, you know, I come from Hong Kong, I'm quite interested in buying the penthouse, because only the penthouses are available, three penthouses and the basement. I asked him about the penthouses, he said I can certainly show you the penthouse, but he had heard that, you know, a company in Hong Kong connected to Dr Ho had already agreed to buy, so if you want I got to talk to them, so I went to see the property, make comment, you know, pretending that I was interested. Then I took some photographs back to Hong Kong and I reported to David Tong on the situation and also took with me a price list showing the Mandarin Plaza sales office, and I asked one of my assistants, Sam Cheung to do a comparison on the price that the promoters sell to us, on the developer price, the price compare, you know, it's really a similar price. So on that front we are reasonably comfortable that the deal, you know, we are not getting a sour deal, it is a reasonable deal, because we are not paying more than ordinary people in the street are paying, apart from the tax implication, you know, which are going to come later on.*



*So after a while, I think in January [1991] I was asked to look at the agreement again, so I passed the whole file to Sam Cheung and said you deal with Shun Tak because for me to deal with Shun Tak, there might be some conflict of interest, I know the vendor was introduced by them, the vendor probably knows them well, if I deal directly with Ambrose So there might be a possibility of conflict, so I delegated all my power to Sam Cheung and said, you know, do the agreement as if it was, you know just acting for World Trade Centre forget about Ambrose So and Shun Tak, but I think one comment was made by Shun Tak, they asked me not to, well they suggested that I should not use a lawyer, because you are a lawyer, Mico Chung, that sort of comment was made by them because they want to complete the deal quickly."*

- 15.63 Mr David Tong denies that he requested Mr Mico Chung to consider the proposal for WTCG to purchase the properties and, although he could not recall, doubted that Mr Chung would have reported to him, as in the ordinary course, Mr Chung would report to Mr Jackson Chang.
- 15.64 Dr Stanley Ho disputed the accuracy of Mr Mico Chung's evidence. When asked whether he had introduced the proposed purchase of the units to WTCG, Dr Stanley Ho stated that he recalled discussing them with Mr David Tong:

*". . . at one stage I remember he [Dr William To] was trying to interest David Tong, in other words, to buy some [units] . . . because they know one another . . . The only time I can recollect was Tong told me that "well, we would like to buy something in New York and we want to buy from your brother-in-law", so I said, "By all means, if you think it is a good deal, I don't mind", but it was a small transaction . . ."*

*". . . Well it all started that my late brother-in-law at one time did ask me, 'why don't you buy something in this beautiful building I built, now that you hold so many firms?'. I don't know whether I told David Tong that: Well, maybe it is worthwhile having a look . . . "*

15.65 Mr David Tong on the other hand stated in evidence that Mr Jackson Chang (from whom I have been unable to obtain evidence) told him:

*". . . the deal was introduced by Dr Ho. That these properties were purchased because all that was required was for two of our directors to sign, and the deal could be put through. Because at that time . . . I was quite sick . . . whatever business could then be done and it was Jackson Chang and Michael [Mico] Chung . . . "*

15.66 When Dr Stanley Ho's evidence was put to Mr David Tong he stated:

*"I think Dr Ho might have been mistaken. Dr To might have approached my wife or Jackson Chang or Mico Chung . . . but he had not approached me . . . Jackson Chang was responsible for all the areas of business co-operations with Dr Ho and STDM during that period of time. "*

15.67 Mr Mico Chung has told me that he has never met Dr William To.

15.68 Mr Y K So of Shun Tak recalled that at about the time the deposit was paid (on 3 January 1991), he was approached by Dr William To and Mr Li Chi Keung, who told him that the units were being sold to WTCG. They asked him to continue to liaise with BPYA, to complete the acquisition of the units from 374 Broadway Associates by HKVW No. 1, No. 2 and No. 3 and also to arrange for the sale of the issued share capital of the holding company, Astbury to WTCG.

15.69 By facsimile dated 16 January 1991, Mr Victor Yang of BPYA advised Mr James Lee of 374 Broadway Associates:

*"we have had several meetings with our clients [Shun Tak] and had no instructions at this time for closing date or when the funds are wired. Please contact Mr Patrick Huen directly."*

15.70 On 17 January 1991, Mr Kevin Lee of BPYA wrote to Mr Y K So of Shun Tak:

*"James Lee has faxed us asking when closing will take place and when the money will be transferred to New York. We have advised Mr Lee that we are still awaiting confirmation from you in Hong Kong. We confirm that we will hold everything in abeyance pending further instructions from you after your discussions with the ultimate purchaser."*

## **THE VALUATIONS**

15.71 Madam Rita Wong told me she requested Mr Y K So to arrange a valuation of the units because she did not *"know how much of a bargain"* they were. When I asked Mr Li Chi Keung why a valuation had been requested by his wife, he told me:

*"I think my wife would not have the time to do that so I think it was probably Shun Tak who engaged the surveyor and subsequently informed my wife."*

15.72 I do not believe that the valuation was commissioned by or on behalf of the vendors, but rather for WTCG who, at that time it appears, had agreed to purchase the properties for USD6,500,000.

- 15.73 Mr Y K So consulted Mr Anthony Chan, a director of Shun Tak's property division, to arrange the valuation, as he was experienced in this area. Mr Anthony Chan contacted Mr Francis Lau, the Executive Chairman of Raine, Horne & Lau property consultants, valuers and real estate agents in Hong Kong.
- 15.74 Mr Francis Lau told me that Raine, Horne & Lau had done a considerable amount of business with Shun Tak, especially over the previous three years and that he had received oral instructions from Mr Anthony Chan to obtain the valuation.
- 15.75 According to Mr Anthony Chan's evidence, he instructed Mr Y K So to forward to Mr Francis Lau all relevant details which included an appraisal report prepared by Raymond J Paulsen Associates Inc, New York for 374 Broadway Associates dated 25 October 1990. This report provided a detailed analysis of the Mandarin Plaza and an estimate of its fair market value as at 28 August 1990 based on the sale and asking prices of condominium apartments and commercial units in the general area.
- 15.76 I have reviewed Raine Horne & Lau's file and found that the actual valuation of the units was carried out by Mr Edmund Y.M. Lau, chartered surveyor of E.Y. Lau Co. Inc., 230 Park Avenue, New York, New York. Mr Francis Lau told me that he had known Mr Edmund Lau since 1969/70 when he had lectured to him at the Hongkong Technical College.
- 15.77 Mr Francis Lau instructed Mr Edmund Lau by facsimile dated 19 January 1991, which stated in part:

*"we urgently require a confirmation of the valuation of the three units PH-1, PH-2 & C1 . . . as shown in the attached sheet. The valuation was conducted by Mr. Raymond J Paulsen . . . on 28 August 1990. We have their full report in hand and therefore we do not need a full valuation. What we require is:*

- (1) *An inspection of the property (or site);*
- (2) *Its progress, if it is in the process of construction;*
- (3) *Your opinion whether the value as stated in the attached sheet (i.e. PH-1 - US\$582,000, PH-2 - US\$418,000 and C1 - US\$5,500,000) on 1 January 1991 is fair and reasonable.*

*A willing buyer and a willing seller have reached agreement on sale and purchase of the above premises and we are asked to give a second opinion on Paulsen's valuation.*

*We will issue a valuation report base on your advice as stated above and the information in Paulsen's report. The report is required urgently and so please reply before 21st of this month. "*

15.78 On 20 January 1991, Mr Edmund Lau provided Mr Francis Lau with a report (an extract of which is shown as Appendix 97) valuing each unit "for the purposes of acquisition" as detailed below:

	<u>Net</u>	<u>(US\$)</u>	
	<u>Saleable Area</u>	<u>per sq. ft.</u>	<u>Value (US\$)</u>
PH-1	1,150 sq. ft.	450	550,000
	+ terrace		
PH-2	830 sq. ft.	435	375,000
	+ terrace		
		<u>Rental</u>	
		<u>per sq.ft.</u>	
C-1 (G/F)	3,545 sq.ft.	40 }	
C-1 (Bsmt)	6,583 sq.ft.	20 }	3,800,000
C-1 (Sub-Bsmt)	6,357 sq.ft.	15 }	_____
		<u>TOTAL</u>	<u>US\$4,725,000</u>

15.79 In the report, Mr Edmund Lau made the following comment about the valuation of the commercial unit:

*"There are few sales of retail condos in the City, let alone the immediate vicinity. Sales of similar properties in distant locations are hardly comparable and do not provide a sound guideline for the valuation of the subject. Retail condo sales nowadays give an annual return of about 10%"*

15.80 Mr Edmund Lau stated that to value the commercial unit, he had relied on the *"investment method"* and capitalized the rental per square foot at 10% per annum.

15.81 Mr Francis Lau has submitted to me that he telephoned Mr Edmund Lau and requested him to further check the price difference between his valuation and the *"attached sheet"* which he sent to Mr Edmund Lau on 19 January 1991, and discrepancies on the areas.

15.82 Mr Edmund Lau forwarded a further report to Mr Francis Lau by facsimile dated 21 January 1991 (Appendix 98). The covering letter stated:

*"As discussed, I attach hereto the "refined" letter and report totalling 9 pages. Please destroy the original letter and report except for the Certificate of Occupancy (Extract) and my invoice."*

15.83 The valuation again stated that it was for the *"purposes of confirming a purchase"* but the valuation was increased by US\$1,015,000. The details from the report are tabled below:

		<u>(US\$)</u>	
	<u>Net Saleable Area</u>	<u>per sq. ft.</u>	<u>Value (US\$)</u>
PH-1	1,150 sq. ft.	460	560,000
	+ terrace		
PH-2	830 sq. ft.	440	380,000
	+ terrace		
		<u>Rental</u>	<u>Value</u>
		<u>per sq.ft.</u>	<u>per sq.ft.</u>
C-1 (G/F)	3,545 sq. ft.	55 }	550
C-1 (Bsmt)	6,583 sq. ft.	25 }	270
C-1 (Sub-Bsmt)	6,357 sq. ft.	18 }	170
		<u>TOTAL</u>	<u>US\$5,740,000</u>

15.84 Mr Edmund Lau also changed his comments in relation to the commercial unit to the following :

*"There are few sales of retail condos in the city, let alone the immediate vicinity. On an investment basis, retail condo sales nowadays give an annual return of about 9% to 10%. It is understood that there have been enquiries from a bank for the entire commercial unit in question. There have also been offers for leases of the ground floor units".*

15.85 The commercial unit was now valued by the "investment method" and "comparison method". The value in this instance had been assessed by applying a capitalization rate of 9.5% per annum.

15.86 Mr Edmund Lau has told me that his first report dated 20 January 1991 report was "conservative" as he was unclear of the purpose for the valuation. But in his original instructions he had been told a willing buyer and seller had reached agreement and his valuation does state that it valued each unit "for the purposes of acquisition". He stated that Mr Francis Lau had then subsequently told him that the parties involved in the transaction had already agreed on a price for the units, "a done deal", in other words. Mr Edmund Lau told me that Mr Francis Lau did not tell him the agreed price; Mr Francis Lau had simply requested he be more "aggressive" and assess the properties from a seller's perspective. In particular, Mr Edmund Lau stated that he revised the value of the commercial unit on the basis of being told by a representative of the Mandarin Plaza that a bank was "pretty close" to signing a lease.

15.87 In a submission by a solicitor acting for Mr Francis Lau, it was submitted:

*". . . that Mr Francis Lau did not tell Mr Edmund Lau 'the agreed price' as Mr Francis Lau never knew of any 'agreed price' at all."*

*". . . that this statement showed that Mr Francis Lau did not tell Mr Edmund Lau to be more 'aggressive' and assess the properties from a seller's perspective until after Mr Francis Lau has spoken to Mr Anthony Chan in the evening of the 21st January, 1991 when Mr Anthony Chan confirmed that C1 included G/F and that the Valuation was for the purpose of disposal. It is submitted that prior to this conversation, Mr Francis Lau did not know that the Valuation was for disposal purpose."*

15.88 I believe because he was dissatisfied with the two values Mr Edmund Lau had attributed to the units, that Mr Francis Lau then prepared his own figures which increased the last valuation to a total of US\$6,355,000, an increase of US\$615,000. He forwarded these to Mr Edmund Lau on 22 January 1991 seeking his approval that they be incorporated into his report for Shun Tak in the following terms :



*"After consultation with Mr Edmund Y.M. Lau, A.R.I.C.S. (Chartered Surveyor) of E.Y.Lau Co. Inc. in New York, we are in the opinion that you should dispose the said property at a price as stated below:-*

<i>Unit PH1, 25/F</i>	<i>US\$ 575,000</i>
<i>Unit PH2, 25/F</i>	<i>US\$ 405,000</i>
<i>C1</i>	<i>US\$5,375,000</i>

*Please reply immediately that you have no objection to this. "*

15.89 By facsimile dated 22 January 1991, Mr Edmund Lau advised Mr Francis Lau, that *"for the purposes of disposal"* the prices stated above were *"fair prices"* (Appendix 99).

15.90 Mr Francis Lau subsequently forwarded Raine, Horne & Lau's report dated 22 January 1991 to Astbury (Appendix 100). I understand from Mr Anthony Chan that the report was delivered to him at Shun Tak.

15.91 The introduction to the report stated:

*"In accordance with your instructions for us to assess the current open market value of the captioned property for disposal purpose, we confirm that we have made relevant enquiries and searches and obtained such further information as we consider necessary through Mr. Edmund Y. M. Lau. . ."*

15.92 The body of the report restated Mr Edmund Lau's descriptions of the locality, the building, the management and each of the units. It did not however make reference to the difficulty in assessing the value of the commercial unit as had been done in Mr Edmund Lau's reports dated 20 and 21 January 1991. It concluded that the units should be disposed of at the following prices:

	<u>Net Saleable Area</u>	<u>(US\$)</u> <u>per sq. ft.</u>	<u>Value (US\$)</u>
PH-1	1,150 sq. ft. + terrace	470	575,000
PH-2	830 sq. ft. + terrace	470	405,000

		<u>Rental</u> <u>per sq. ft.</u>	<u>Value</u> <u>per sq.ft.</u>	
C-1 (G/F)	3,545 sq. ft.	60 }	660	
C-1 (Bsmt)	6,583 sq. ft.	28 }	300	5,375,000
C-1 (Sub-Bsmt)	6,357 sq. ft.	21 }	200	

TOTAL US\$6,355,000

- 15.93 With respect to the commercial unit, a capitalization rate of 9.5% per annum had been applied to the rental figures.
- 15.94 It will be noted that as set out above within the space of three days the valuations of the properties were variously put at US\$4,725,000 then US\$5,740,000 and finally at US\$6,355,000.
- 15.95 When I asked Mr Francis Lau of Raine, Horne & Lau about the reason for these overnight increases in the values of the units, he suggested that it was due to the change of Shun Tak's instructions from acquisition to disposal purposes. He was unable to explain the inconsistency in that reasoning when the report of 20 January 1991 had been to value the property "for purposes of acquisition" and the report of 21 January 1991 was for the "purpose of confirming a purchase". The first mention of "disposal purposes" was in his facsimile to Mr Edmund Lau dated 22 January 1991.

15.96 To test the validity of the various valuations described above I obtained an independent valuation of the units as at 21 January 1991 from Appraisal Group International, real estate appraisers and consultants of New York. Set out below is a comparison of its findings as against those of Raine, Horne & Lau :

	Mr Edmund Lau <u>20 January 1991</u> <u>US\$</u>	Appraisal Group <u>21 January 1991</u> <u>US\$</u>	Raine, Horne & Lau <u>22 January 1991</u> <u>US\$</u>
Penthouse 1	550,000	550,000	575,000
Penthouse 2	375,000	375,000	405,000
Commercial Unit	<u>3,800,000</u>	<u>4,000,000</u>	<u>5,375,000</u>
	US\$ <u>4,725,000</u>	US\$ <u>4,925,000</u>	US\$ <u>6,355,000</u>

15.97 I am satisfied that the independent valuation by Appraisal Group International is substantially accurate and reflects the true value of the three units in January 1991. I am fortified in this conclusion by its close similarity to Mr Edmund Lau's first valuation.

15.98 Mr Francis Lau has denied to me that he had been instructed by Shun Tak to increase the value of the units to justify the agreed sale price. Similarly, Mr Anthony Chan has denied instructing Mr Francis Lau to increase the values. He also said that he was unaware that Mr Li Chi Keung had bought the units for only US\$4,400,000 some four weeks earlier having still only paid a 10% deposit even by the time he was on-selling them for US\$6,500,000 to WTCG. Both Mr Anthony Chan and Mr Francis Lau denied any knowledge that WTCG had relied on the Raine, Horne & Lau valuation.

15.99 Mr Y K So told me that he forwarded a copy of the valuation to WTCG "*because they had requested it*". Mr Cheung Sum Sam ("Mr Sam Cheung") who assisted Mr Mico Chung with the financial activities at WTCG recalled reviewing and comparing it to the price list obtained by Mr Mico Chung when he was in New York.

15.100 In the course of reviewing the files of the Hongkong Bank on their facilities maintained in connection with the New York Properties, I have noted that the Bank's appraisers placed the following values on the units in August 1990.

C-1	3,500,000
PH-1	592,000
PH-2	<u>418,000</u>
	US\$ <u>4,510,000</u>

15.101 As I have not sighted the actual valuation reports or the instructions to the appraisers, I have not relied upon this evidence in forming my conclusions.

15.102 Valuations of the properties were required to be shown in the audited accounts of WTCG as at 31 March 1992.

15.103 Jones Lang Wootton USA provided the following open market values by letters addressed to WTCG dated 21 July 1992:

PH-1	460,000
PH-2	315,000
C-1	<u>2,250,000</u>
	US\$ <u>3,025,000</u>

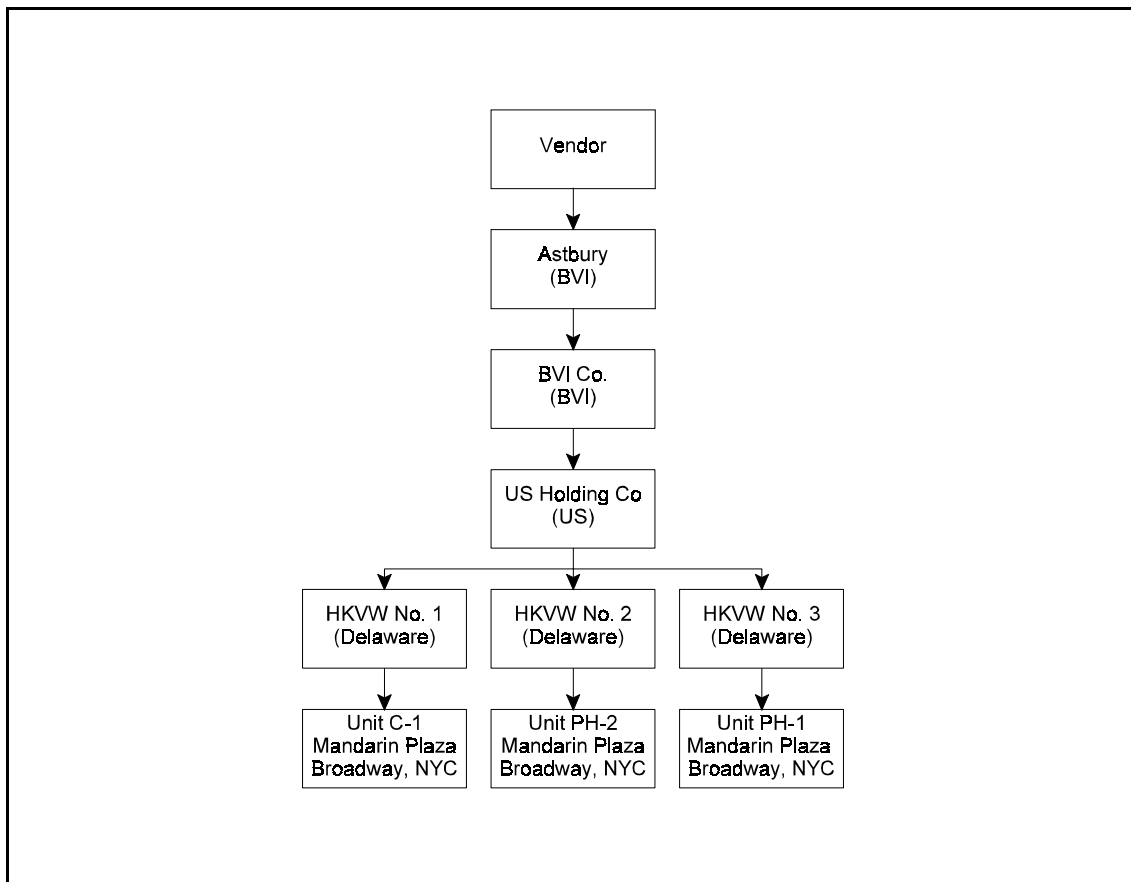
15.104 A copy of the valuation for C-1 is enclosed as Appendix 101.

## DRAFTING THE SHARE PURCHASE AGREEMENT

15.105 BPYA drafted the Share Purchase Agreement for the sale of the issued share capital of Astbury and forwarded it to Mr Patrick Huen and Mr Y K So both of Shun Tak under cover of letter dated 22 January 1991. The Share Purchase Agreement referred to the three Purchase Agreements entered into by HKVW No 1, No 2 and No 3 for C-1, PH-2 and PH-1 and the fact that completion had not yet taken place under these three Agreements.

## TAX AND THE CORPORATE STRUCTURE

15.106 In addition, WTCG forwarded a modified corporate structure designed for tax purposes to Shun Tak for its approval. In a file note prepared by Mr Sam Cheung and dated 31 January 1991, he referred to Shun Tak finding the new structure acceptable. That diagram showing the modified structure was as follows :



15.107 A copy of the above revised diagram was forwarded to Mr Kevin Lee of BPYA by Mr Y K So of Shun Tak on 31 January 1991, together with a demand draft for US\$15,000 payable to BPYA being *"initial payment towards the retainer of US counsel"*.

#### **TAX ADVICE**

15.108 A further copy of the diagram was forwarded by Mr Kevin Lee to Mr Bill Chan of Price Waterhouse on 1 February 1991. The facsimile stated:

*"Faxed herewith is the revised proposed structure for the acquisition of the New York properties following Shun Tak Group's discussions with the ultimate Purchaser.*

*My understanding after discussions with Mr Y K So is that the vendor will likely sell its shares in Astbury prior to the three Delaware companies actually taking title to the three properties. One issue that has not been addressed in detail by our clients is how the money paid by the ultimate Purchaser for the shares in Astbury will then be used to purchase the three properties. It may be preferable, at least, notionally, for the Vendor to loan a sufficient amount to Astbury to cover the purchase price of the three properties and to be immediately repaid by the ultimate Purchaser (plus the agreed premium) as consideration for the shares in Astbury.*

*In any event, we are not qualified to comment on the US tax implications for the Vendor, and Mr Victor Yang has ask me to fax you the proposed structure for your review. "*

15.109 On 5 February 1991, Mr Y K So of Shun Tak forwarded a copy of the draft Share Purchase Agreement to Mr Sam Cheung of WTCG. By facsimile dated 8 February 1991, Mr Y K So advised Mr Kevin Lee that Mr Li Chi Keung was to be named as the vendor and Pearl Treasure, a subsidiary of WTCG as the purchaser.

- 15.110 Further it was noted that WTCG had requested Shun Tak to assess the amount of the capital gain tax liability. WTCG wanted it to be deducted directly from the purchase price rather than to accept an Indemnity Clause. Mr Anthony Tong, a partner in the U.S. tax department of Price Waterhouse, had been retained by Shun Tak to advise upon this.
- 15.111 On 8 February 1991 Mr Anthony Tong forwarded a compilation of the estimated tax liability to Mr Y K So of Shun Tak. The analysis showed that a profit of US\$1,927,000 (being the difference between the two purchase prices of US\$6,500,000 and US\$4,400,000 less US\$173,000 legal expenses) carried a tax liability of US\$890,000.

#### **REVISED DRAFT SHARE PURCHASE AGREEMENT**

- 15.112 The revised draft Share Purchase Agreement was sent by Mr Kevin Lee of BPYA to Mr Y K So who forwarded it to Mr Sam Cheung at WTCG. The recitals to the Share Purchase Agreement summarise the manner by which Astbury was to indirectly acquire the 3 units in Mandarin Plaza:

*"A) The vendor [Mr Li Chi Keung] is the registered and beneficial owner of all the issued and outstanding shares in the capital of Astbury International Limited (hereinafter called "Holdco"), a British Virgin Islands company registered under No. 37823, having its registered office at P.O. Box 71, Craigmuir Chambers, Road Town, Tortola, British Virgin Islands.*

*B) Holdco is the registered and beneficial holder of all issued and outstanding shares in the capital of HKVW Holdings Limited ("HKVW Holdings"), a company incorporated under the laws of the State of Delaware, United States of America.*

*C) HKVW Holdings is the registered and beneficial holder of all issued and outstanding shares in the capital of each of the following companies, each of which has been incorporated under the laws of the State of Delaware, United States of America:*

*HKVW No. 1 Limited ("HKVW 1")*

*HKVW No. 2 Limited ("HKVW 2")*

*HKVW No. 3 Limited ("HKVW 3")*

*D) HKVW 1 has entered into an agreement (the "C-1 Contract") to purchase Unit C-1 at Mandarin Plaza, 374 Broadway, New York City, New York ("Unit C-1") from 374 Broadway Associates.*

*E) HKVW 2 has entered into an agreement (the "PH-2 Contract") to purchase Unit PH-2 at Mandarin Plaza, 374 Broadway, New York City, New York ("Unit PH-2") from 374 Broadway Associates.*

*F) HKVW 3 has entered into an agreement (the "PH-1 Contract") to purchase Unit PH-1 at Mandarin Plaza, 374 Broadway, New York City, New York ("Unit PH-1") from 374 Broadway Associates.*

*G) The vendor has agreed to sell the said shares of Holdco and the Purchaser has agreed to purchase them upon the terms and conditions hereinafter contained."*

15.113 At Astbury's first meeting of directors on 9 February 1991, Mr Victor Yang of BPYA was appointed director, president and secretary. Mr Li Chi Keung applied to the company for an allotment of 100 shares for US\$100 which was approved. These shares were issued to him on that day. Copies of the Purchase Agreements entered into by HKVW No 1, No 2 and No 3 for C-1, PH-1 and PH-2 were also forwarded.



## **BAKER & McKENZIE'S ADVICE**

15.114 Mr Mico Chung gave evidence that in early February 1991 the transaction became more urgent. He said that Mr David Tong told him that Dr Stanley Ho would like to complete as soon as possible. Mr Mico Chung told me that he was uncomfortable about the Share Purchase Agreement and he requested it be sent to Mr John Atkinson of Baker & McKenzie, solicitors in Hong Kong, for it to be reviewed. Copies of the Purchase Agreements entered into by HKVW No 1, No 2 and No 3 for C-1, PH-1 and PH-2 were also forwarded.

15.115 In a recent submission to me, solicitors for Mr David Tong have stated:

*"Mr Tong denies that he ever told Mr. Mico Chung that Dr. Ho would like to complete the sale as soon as possible. At no time did Dr. Ho say anything to Mr. Tong about completion of the acquisition and Mr. Tong is unaware of Dr. Ho's putting any pressure on any other director at WTCG to complete the acquisition. As we have already said, Mr. Tong recalls only one brief conversation with Dr. Ho at which the New York properties were mentioned, and there was no mention of price, let alone completion or even proprietorial interest, on that occasion."*

15.116 On 11 February 1991 Mr Richard Weisman of Baker & McKenzie, Hong Kong faxed to Mr Dennis Hellman and Mr William Rohrer, of Baker & McKenzie, New York asking that consideration be given to the effect the New York State Real Property Transfer Tax Gains ("Gains Tax"), the New York State Real Property Transfer Tax ("NYS Transfer Tax") and the New York City Transfer Tax ("NYC Transfer Tax") might have upon a sale of the issued share capital of Astbury. A memorandum attached to the facsimile gave a brief outline of the transaction and discussed the various taxes which could apply. It stated in part:

*"Each of the New York taxes is imposed by law on the seller and the custom in New York is that the buyer does not directly pay any portion of these taxes. However the buyer is secondarily liable if the seller doesn't pay the taxes which are ultimately determined by the governmental agencies to be owing. Therefore if the transaction were to proceed in a manner that would attract the taxes, we would recommend that BCIL [WTCG] obtain appropriate indemnities (which would survive the closing) in case the seller were to fail to pay the potentially applicable tax. "*

15.117 Mr William Rohrer responded to Mr Richard Weisman's enquiries by facsimile dated 11 February 1991. He concluded that the Gains Tax (10% of gain) and the NYS Transfer Tax (0.4% of consideration) would apply to the acquisition of the controlling interest in the apartments, but would not apply to the liquidation of the BVI Company; and that the additional 1% state transfer tax (i.e. the "Mansion Tax") and the NYC Transfer Tax (2.625% of consideration) should not apply to either the acquisition of the controlling interest in the apartments or the liquidation of the BVI Company.

15.118 By facsimile dated 12 February 1991, Mr John Atkinson of Baker & McKenzie gave urgent advice to Mr Sam Cheung of WTCG and set out some serious concerns which he had:

*"I refer to our telephone conversation of today's date where you advised that you were hoping to sign the sale and purchase agreement this afternoon.*

*As discussed with you yesterday, there are a number of concerns in relation to US federal and state taxation issues. As the draft agreement does not include any indemnity, we enclose a draft letter of indemnity for execution by both the purchaser and vendor. I strongly recommend that this document be executed simultaneously with the sale and purchase agreement.*

*Also enclosed for your careful consideration is a memorandum on the tax issues prepared by Richard Weisman of our office together with the response from our New York office.*

*You will note that we have drafted the tax indemnity letter broadly so as to ensure that the vendors indemnify the purchaser for all possible impositions of tax.*

*In relation to the draft sale and purchase agreement, I am concerned that:-*

- 1. The agreement is governed by the law of the British Virgin Islands (this is a very unusual choice of governing law and not a jurisdiction that I would recommend);*
- 2. There is no positive obligation on the vendor to complete the Broadway Contracts (in this regard I would strongly recommend that you negotiate a rewording of this clause so as to ensure that either completion of the Broadway Contracts is a condition precedent to completion of your arrangements with the vendor or, at the very least, the vendors represent and warrant that it will complete the Broadway Contracts and that failure to do so will give rise to a cause of action);*
- 3. Duly executed shares transfers as well as shares certificates registered in the name of purchaser be handed over at completion . . . ;*
- 4. The reps and warranties in the Broadway Contracts should be reflected in the sale and purchase agreement so as to maximize your comfort level.*

*Unfortunately your time constraints do not permit us to give a more detailed advice. However, hopefully you will be able to resolve the issues raised in this fax prior to the execution of any documents. "*

15.119 By separate facsimile dated 12 February 1991, Mr John Atkinson of Baker & McKenzie advised Mr Sam Cheung that the amount of the potential tax liability was US\$950,000.

**ARRANGEMENTS FOR THE EXECUTION OF THE SHARE PURCHASE AGREEMENTS AND COMPLETION OF THE ACQUISITION**

15.120 On 12 February 1991, Mr Patrick Huen of Shun Tak arranged with Mr Lau Chun Wai ("Patrick Lau"), the financial controller of WTCG, that Mr Y K So would bring two copies of the Share Purchase Agreement executed by Mr Li Chi Keung as vendor to the offices of WTCG for signing by Pearl Treasure on 13 February 1991. A cheque for \$50,661,000 being the equivalent of the price of US\$6,500,000 was required to be drawn in favour of Rich Talent Ltd ("Rich Talent").

15.121 Copies of the Share Purchase Agreements were collected by Mr Y K So from BPYA and were signed by Mr Li Chi Keung. Madam Rita Wong told me that she instructed Mr Y K So that Rich Talent, a BVI company, should be the payee. According to Mr Li Chi Keung, he was Rich Talent's beneficial owner and its sole director.

15.122 The minutes of the meeting of the directors of Pearl Treasure dated 13 February 1991 note that Mr Jackson Chang and Mr David Tong were present. A copy of the Share Purchase Agreement was tabled. It was resolved that the Share Purchase Agreement be approved and that Mr Jackson Chang be authorised to execute it on behalf of Pearl Treasure. No reference in the minutes was made to whether the purchase price was reasonable, the manner in which it had been assessed or the potential tax liability.

15.123 According to Mr Mico Chung, the Share Purchase Agreement was signed by Pearl Treasure on 13 February 1991 *"on the basis that Shun Tak, Ambrose So or one of them were going to pursue on the indemnity, being that as to which Baker & McKenzie had advised."* The \$50,661,000 cheque was deposited into Rich Talent's account at Liu Chong Hing Bank Limited by Mr Y K So.

15.124 It is important to note that the evidence reveals that as at 13 February 1991:

- (1) Astbury did not own the three units which were the subject of the sale to Pearl Treasure because Mandarin Plaza had not been issued a Certificate of Occupancy and HKVW No 1, No 2 and No 3 could not complete the acquisition of the properties until such Certificate had been issued;
- (2) WTCCG had been warned by Mr John Atkinson of Baker & McKenzie that there was no positive obligation in the Share Purchase Agreement for the vendor, Mr Li Chi Keung, to complete the Broadway contracts;
- (3) WTCCG had been informed that their potential liability for tax if the vendor defaulted in its payment of tax was US\$950,000;
- (4) WTCCG through its subsidiary Pearl Treasure had signed the Share Purchase Agreement without having obtained the indemnity in respect of that potential tax liability which Baker & McKenzie had "*strongly recommended*" be executed to protect them, and a copy of which had been provided to them by Mr John Atkinson; instead they merely relied upon Shun Tak to "*pursue on the indemnity*"; in fact no such indemnity was ever obtained;
- (5) WTCCG had not obtained prior to the purchase its own independent valuation but instead had merely compared the Raine, Horne & Lau valuation provided by Shun Tak, which was stated to be for "*disposal purposes*", with asking prices quoted by 374 Broadway Associates to Mr Mico Chung when he visited New York pretending to be a potential purchaser the previous December. It is a most unusual procedure to take a price list as a basis for valuation, and most imprudent to use a valuation report prepared for, and on the instructions of, the vendor.

15.125 Mr Mico Chung justified the hurried completion in his evidence by stating:

*" . . . the instruction, I believe was from Shun Tak, chairman's office, for the money to be issued to a certain person . . . that was the instruction I received from the chairman's office and David Tong and Jackson Chang, they also agreed to the transaction, to agree to that course of action . . . whether I agree as a director at that moment in time does not affect the transaction because the instruction is from the top, the chairman, and the agreement was signed either by David Tong or Jackson Chang and the cheque was authorised by them as well . . . ."*

15.126 On 13 February 1991 the following activities also took place:

- (1) Mr Victor Yang resigned as Director, President and Secretary of Astbury;
- (2) Mr David Tong, Mr Mico Chung and Mr Jackson Chang were appointed Directors of Astbury; and
- (3) Mr Li Chi Keung transferred his 100 shares in Astbury to Pearl Treasure for US\$100.

15.127 On 18 February 1991, Rich Talent drew a cheque for \$50,661,000 payable to the Seng Heng Bank in favour of Mr Li Chi Keung. According to Madam Rita Wong, although Mr Li Chi Keung did not have an account with the Seng Heng Bank at that time, it had been advised that Mr Li Chi Keung was to receive that sum of money. Mr Li Chi Keung stated that he instructed Mr Alex Lee, who I understand is the Manager of the Seng Heng Bank, to remit the outstanding 90% balance of US\$3,960,000 owing in relation to the purchase of the three units to the Hongkong Bank, New York Branch, in favour of 374 Broadway Associates.

15.128 According to the evidence given to me by Mr Li Chi Keung, the \$19,772,700 (US\$2,100,000) profit was *"returned to STDM"*. Mr Li Chi Keung's involvement with the Golden Room at the Lisboa Casino operated by STDM, are discussed in more detail in Chapter 6. Mr Li Chi Keung explained that he used the profit to pay STDM:

*" . . . because I issued many cheques to the STDM so, with the money made from this deal, I was able to sort [of] get back some of the post-dated cheques I had issued to STDM so that I could take money from STDM again. So, after I've paid for those post-dated cheques, I would be able to draw more cash from STDM. "*

15.129 On 12 March 1991 a month after the signing of the Share Purchase Agreement, Mr Patrick Huen of Shun Tak forwarded to Mr Mico Chung, Astbury's statutory records. The attached letter referred inferentially to the fact that Astbury did not yet legally own the properties and stated:

*" . . . we will however continue to see to it that closings of the New York properties will be done quickly and all relevant documents evidencing Astbury's ownership in the Delaware companies and the properties in turn, as well as the Delaware company documents etc, will be submitted to you as soon as they are available. "*

#### **WTCG'S BOARD MEETING - 26 MARCH 1991**

15.130 A meeting of WTCG's Board of Directors was held in the Penthouse of the Shun Tak Centre on 26 March 1991; the following directors were named in the minutes as being present:

Dr Stanley Ho, Chairman

Mr Peter Oei Hong Leong ("Mr Peter Oei"), the President and Chief Executive of WTCG

Mr Jackson Chang, director

Mr Mico Chung, director

15.131 The acquisition of the three units in Mandarin Plaza was noted in the Minutes as follows:

*"A report on the progress in completing the acquisition formalities relating to the New York properties was tabled and noted by the Board.*

*The Board noted that certain documents were being awaited from the Vendor to complete the transaction.*

*It was also noted that certain US tax liabilities would arise on the sale of the interest in the New York properties to the Company. The Company had been advised that since there was no positive obligation on the Vendor to pay the taxes should these arise, the purchaser would be secondarily liable if the Vendor did not pay such taxes.*

*The Board noted the position and resolved that the acquisition of the New York properties be ratified and confirmed."*

15.132 Dr Stanley Ho has told me that he has no recollection of discussing the potential tax liability at the meeting, although he agreed he did act as Chairman of the meeting and subsequently signed the minutes of the meeting.

15.133 Mr Mico Chung told me that:

*". . . in the board meeting they are very polite to each other and they are talking about other things, so they didn't discuss the tax indemnity at the end of the day, and then I think Mr Oei said leave it to him, he will discuss with the boss and my understanding that Mr Oei had been asking . . . for the indemnity a number of times, but whether it was part of the commercial deal, whether they agreed before, I don't know, nobody told me."*



15.134 Solicitors for Mr Mico Chung have subsequently submitted that:

*"Mr Chung believes that the Minutes do not accurately reflect what was discussed at that meeting. So far as Mr Chung can recall the meeting concerned the discussion on the feasibility of the Macau Airport Project. The New York Property was not discussed."*

15.135 Mr Peter Oei recalled that, as the recently appointed Chief Executive Officer, he sought an explanation as to why the legal advice had not been followed and an indemnity obtained from Mr Li Chi Keung:

*"I was told the deal was introduced by Shun Tak, so they feel since Shun Tak Chairman is the same Chairman of ours, they feel very comfortable that the deal is okay . . ."*

15.136 Mr David Tong has confirmed to me that an indemnity has never been obtained.

15.137 Settlement of HKVW No 1, No 2 and No 3's Purchase Agreements from 374 Broadway Associates took place on 3 April 1991, so that this effectively was the date upon which WTCG through its subsidiary Pearl Treasure acquired the three units.

15.138 Shun Tak continued to liaise with BPYA, asking that funds held by BPYA on account of Shun Tak be used to cover legal costs of \$176,039 and payment of Price Waterhouse's fees of \$20,500 (Appendix 102). I have seen no evidence that Mr Li Chi Keung reimbursed either Shun Tak or STDM for the payment of any of the costs incurred by them throughout this transaction. BPYA's files show sporadic correspondence in relation to these three units continued with Shun Tak until June 1992.

15.139 From 13 February 1991 to the date of this report the three units have remained empty and have never been either leased or sold.

Treatment of this acquisition in the audited accounts

15.140 Pearl Treasure completed the Share Purchase Agreement, which provided for the purchase of all the issued shares in Astbury, on 13 February 1991. By minute also dated 13 February 1991, the sole director of Astbury approved the transfer of all the issued shares in Astbury from Mr Li Chi Keung and the issue of a new share certificate to Pearl Treasure.

15.141 However, as mentioned above, the following statement appeared in the *"Operations Review"* section of the WTCG 1990-1991 Annual Report:

*"In April 1991, the Company also acquired the entire issued share capital of a company, which owns three investment properties in New York, United States of America, from an unrelated third party for a consideration of approximately HK\$51 million to strengthen the property portfolio of the Company."*

15.142 Note (21)(e) to the audited accounts made up to 31 March 1991 (under the heading *"Post-Balance Sheet Events"*) states:

*"By an agreement dated 13th February, 1991, the Group agreed to acquire from an unrelated third party the entire interests in Astbury International Limited ("Astbury") at a cash consideration of approximately HK\$51 million. Astbury ultimately owns three investment properties in New York, United States of America. The acquisition has been completed on 3rd April, 1991."*

15.143 The sentence *"The acquisition has been completed on 3rd April 1991"* is misleading. The acquisition of Astbury was completed on 13 February 1991 according to the provisions of the Share Purchase Agreement, and Astbury is shown as a wholly owned subsidiary of WTCG in the accounts as at 31 March 1991. It was the purchase of the three units in Mandarin Plaza by subsidiaries of Astbury that was completed on 3 April 1991.

15.144 Solicitors acting for Messrs Patrick Cheng and Paul Siu have advised me:

*"In the consolidated accounts the sum of HK\$50,661,000 was split as follows:*

	<i>HK\$</i>
<i>Debtors and prepayments</i>	<i>49,530,870</i>
<i>Goodwill on consolidation</i>	<i>1,129,350</i>
<i>Share capital</i>	<u><i>780</i></u>
	<u><i>HK\$50,661,000</i></u>

*The amount recorded in respect of debtors and prepayments represented the value of the 3 properties per the valuation report. On completion of the purchase of the 3 properties on 3rd April 1991 the sum of HK\$49,530,870 was transferred from debtors and prepayments to fixed assets.*

*The fact that the property acquisition had not been completed as at 31st March 1991 was disclosed in note 21(e) to the audited accounts."*

15.145 At the time that the consideration was paid and, indeed, at 31 March 1991, the acquisition of the properties had not been completed. I believe that the fact that the property acquisitions had not been completed at 31 March 1991 should have been more fully disclosed in the accounts.

15.146 I understand from Mr Paul Siu that Deloitte wanted to classify the asset as *"an interest in property"* rather than *"debtors and prepayments"*.

15.147 A reason for this treatment may be apparent from the following extract from Note 1 to the audited accounts under the heading, "*Principal Accounting Policies*":

**"(e) Fixed Assets**

*(i) Investment Properties*

*The Group has adopted the provisions of the Statement of Standard Accounting Practice No. 13, 'Accounting for Investment Properties', issued by the Hong Kong Society of Accountants. Investment properties, which are held on long leases, are included in the balance sheet at their open market value. An investment property is defined as a property which is income producing and is intended to be held for the long-term.*

*It is the Group's policy to undertake valuations at intervals of not more than three years by independent professional valuers. In the intervening years investment properties will be valued by appropriately qualified directors or executives within the Group on an annual basis. "*

15.148 Under this accounting policy, it would have been necessary to obtain a valuation of the three units by an independent professional valuer to establish the open market value. I believe that the management of WTCG were determined to avoid the need to obtain an independent professional valuation as they were aware that the true value of the three units in Mandarin Plaza was substantially less than the purchase price. An independent professional valuation was obtained from Jones Lang Wootton in New York, when the consideration was reallocated to "*Investment Property*" at the end of the next financial year.

### Audit considerations

- 15.149 The acquisition of Astbury was a material transaction from an audit view point.
- 15.150 This would require Deloittes to consider authorisation of the transaction, verification of the payment and title.
- 15.151 Authorisation should have been confirmed by sighting a copy of the directors' minutes dated 26 March 1991 ratifying the purchase (Appendix 103).
- 15.152 Mr Paul Siu has told me that the audit files did not contain a copy of these directors' minutes, although *"our instructions to our staff is to take copies of every minute"*.
- 15.153 That directors' minute, dated 26 March 1991, discussed a potential tax liability being acquired by WTCG as discussed earlier in this chapter. Deloittes have advised that their audit files do not refer to the possibility of a U.S. tax liability.
- 15.154 As Deloittes have claimed that they were not aware of the potential U.S. tax liability it follows that they were also unaware of Baker and McKenzie's advice that an indemnity should be obtained. Accordingly, it appears that no enquiries were made of management in this respect.
- 15.155 Deloittes advised that they then examined the payment voucher and supporting documentation (Appendix 104). The voucher is dated 12 February 1991 and attached to it is a copy of a facsimile from Mr Patrick Huen of Shun Tak to Mr Patrick Lau of WTCG. The facsimile gives payment instructions to Mr Patrick Lau. A stamp shows that Mr Jackson Chang authorised the payment.

- 15.156 It is clear from this facsimile that Shun Tak had some relationship to the vendor. I believe that the audit staff should have known that Dr Stanley Ho was Chairman of both Shun Tak and WTCG. Accordingly, I believe that the audit staff should have been alerted to the possibility of Dr Stanley Ho's interest in the transaction and should, therefore, have made suitable enquiry of the role of Shun Tak in the transaction. I understand that no such enquiry was undertaken.
- 15.157 Had the auditors not sighted the directors' minutes dated 26 March 1991, they would not have been able to confirm that the acquisition was approved by the directors.
- 15.158 Another issue the auditors considered was that of title to the properties. Title was not held directly by Astbury, but by wholly owned subsidiaries of Astbury. As at 31 March 1991, title had not passed to those subsidiaries. Therefore in order to verify entitlement of the subsidiaries to the properties the auditors should have inspected the sale and purchase agreements under which 374 Broadway Associates sold the property to those subsidiaries. An extract of one of these agreements can be seen at Appendix 96.
- 15.159 This appendix shows that Dr Stanley Ho and Madam Winnie Ho executed the sale agreement on behalf of the vendors.
- 15.160 However when asked why the signature of Dr Stanley Ho did not provoke enquiry as to why the Chairman of WTCG was purportedly acting as vendor of three properties, Mr Paul Siu said that from the audit working papers it appeared that his staff had only sighted a "*purchase agreement draft*". It is not clear whether this draft document covered the purchase of the shares in Astbury or the three units in Mandarin Plaza.
- 15.161 I understand that the audit was signed off in June 1991, 2 months after the three units in Mandarin Plaza were transferred to subsidiaries of Astbury, and 4 months after the purchase of Astbury.
- 15.162 Mr Paul Siu was unable to offer any explanation why the audit staff had not reviewed the completed sale and purchase agreements for the three properties.

- 15.163 A final issue was the valuation report prepared for Astbury. As discussed earlier, this valuation report stated in the opening paragraph that in accordance with Astbury's instructions the valuation was prepared for disposal purposes. The valuation report was dated 22 January 1991 (extract shown as Appendix 105).
- 15.164 Mr Paul Siu has told me that this valuation report was relied upon by the Audit Senior who inspected it as supporting the price paid for the acquisition of the three New York properties. Clearly the report is addressed to the vendor and is not an independent valuation. I understand that there is no mention of this point in the audit workpapers.
- 15.165 In view of the potential problems arising from the treatment of this transaction in the accounts I believe that it would be usual for a Letter of Representation to be obtained. Mr Paul Siu has advised me that there was evidence on the audit files to suggest that such a letter was obtained, but that they were unable to locate one.

## **CONCLUSIONS**

- 15.166 I must first decide what in truth were really the respective parts played by Mr Li Chi Keung and Dr Stanley Ho in the transactions I have described above. In this connection I find the part played by Shun Tak to be very significant. The evidence has satisfied me that Shun Tak, through the agency at various times of Mr Patrick Huen, Mr Y K So and Mr Anthony Chan:
- (a) obtained the over-valuation from Raine, Horne & Lau;
  - (b) handled the administration both of the sale and the purchase, instructing and obtaining legal and tax advice from BPYA and Price Waterhouse, who were Shun Tak's normal advisers;
  - (c) paid the quite large sums owed for the above advice from the funds of Shun Tak and STDM without reimbursement from Mr Li Chi Keung.

- 15.167 Significant too is the fact that neither Mr Li Chi Keung nor his wife Madam Rita Wong, as I accept, had any contact whatsoever with either BPYA or Price Waterhouse, and that BPYA considered their client to be Shun Tak. Price Waterhouse too appear to have held the same view for they held their tax advice in one of their Shun Tak files. It would be surprising if Shun Tak should go to such lengths for someone not involved or closely connected with them.
- 15.168 Dr Stanley Ho, on the other hand, is the Chairman of and a large beneficial shareholder in both Shun Tak and STD M. Part of Mr Y K So's duties included involvement in private projects on behalf of Dr Stanley Ho and the other directors of Shun Tak. Furthermore, Dr Stanley Ho and Madam Winnie Ho unusually, and contrary to the practice I noted in all the other Purchase Agreements I saw, executed on behalf of 374 Broadway the three Purchase Agreements entered into by HKVW No 1, No 2 and No 3 at the time the deposit of US\$440,000 was paid.
- 15.169 The 10% deposit of US\$440,000 paid by Mr Li Chi Keung was funded, he said, by cashing gambling chips from the Golden Room. Mr Li Chi Keung's operations in the Golden Room are effectively funded by STD M, of which Dr Stanley Ho is Chairman and a large beneficial shareholder. The deposit was, therefore, obtained by Mr Li Chi Keung borrowing the money from funds in effect provided by STD M. The money was paid to the Seng Heng Bank on his behalf *"by the accountant at the casino"*; I would be surprised if a sum as large as US\$440,000 could be taken and used in this way without the knowledge and approval of STD M and of Dr Stanley Ho.
- 15.170 Mr Kenneth Fang, whose evidence I believe, told me that he was aware of the sale of the three units for US\$4,400,000, because accounting and sales reports were sent to all the partners. Such reports must have been sent also to Dr Stanley Ho and Madam Winnie Ho, and I infer that they were aware of the sales from this as well as by signing the HKVW Purchase Agreements. I was able whilst he gave evidence to make some judgements about Dr Stanley Ho and he struck me forcibly as a man who would not have signed an agreement without informing himself of what it was about. Moreover, I did



not believe him when, as I believe was the case, he pretended that the Mandarin Plaza project was too small for him or his sister to concern themselves about, and pretended that he had no real involvement in the project which was, effectively, a toy for his brother-in-law to play with. I note that US\$27,000,000 had been borrowed to fund it. I consider it unlikely in any event that Dr William To would have, or would have been authorised, to agree to the sale at US\$4,400,000 which was well below the asking price, without consulting his wife and his brother-in-law. Indeed it is possible that by October 1990, Dr William To had no further part to play in the management of the Mandarin Plaza project.

- 15.171 It is also striking that the profit made between the purchase at US\$4,400,000 and the sale to WTCG at US\$6,500,000 was in fact paid to STDM in Macau by Mr Li Chi Keung. I did not believe him when he told me that this was done in order for him to re-pay borrowings he had made from STDM which were secured by post-dated cheques.
- 15.172 I found three other pieces of evidence enlightening when deciding this aspect of the matter. I was unable to obtain evidence, for the reasons I set out in Chapter 4, from Mr Jackson Chang who according to Mr David Tong, was at the material time the most involved with the affairs of WTCG due to the illness and frequent absence from Hong Kong of Mr David Tong. I believed and accepted to be accurate the evidence of Mr David Tong when he told me that at the material time Mr Jackson Chang told him that *"the deal was introduced by Dr Ho"*.
- 15.173 To similar effect was the evidence of Mr Mico Chung, which I believed on this point, and accepted as accurate, that in February 1991, Mr David Tong told him that Dr Stanley Ho would like to complete the sale as soon as possible. I believe these to be two significant pointers to where the truth lies, for unless Dr Stanley Ho's involvement was far greater than he would have me believe, I cannot see why he would have introduced the sale to WTCG, nor been concerned to complete as soon as possible. Mr Mico Chung also told me that *"the deal was agreed I think between Mr David Tong, Jackson Chang and Dr Stanley Ho"*.

- 15.174 I have carefully and anxiously considered whilst he was giving evidence, whether I could accept Dr Stanley Ho's refutation of the evidence given by Messrs David Tong and Mico Chung, and his denial of having any substantial involvement. I regret that I did not and do not believe him on that matter either.
- 15.175 My conclusion is that it was Dr Stanley Ho who was the prime mover in the transactions leading to the sale of the three units to WTCG; that this was raised by him with WTCG in early December 1990 prior to Mr Mico Chung's wedding and his visit to New York, and that Mr Li Chi Keung had minimal personal interest in the acquisition and subsequent sale of the three units. He was, I consider, a nominee for Dr Stanley Ho and others, and played the role of an intermediary to create the illusion on paper of being seemingly an independent and bona fide purchaser and vendor.
- 15.176 Dr Stanley Ho had a considerable interest throughout the material time in 374 Broadway Associates, the vendor of the three units, and was Chairman and a director of WTCG, the ultimate purchaser of the three units. It follows from the conclusion I have reached in the preceding paragraph that the acquisition by WTCG was not from an unrelated third party.
- 15.177 In relation to the valuation submitted by Mr Francis Lau of Raine, Horne & Lau to Shun Tak, I do not believe his denials that he was not instructed to increase the valuation of the units in order to justify the sale price to WTCG. Mr Francis Lau was not an expert in New York property prices, hence the need to instruct Mr Edmund Lau in the first place. He knew of the sale price to WTCG, and I consider he foresaw potential trouble when the valuation of only US\$4,725,000 was received; hence his request to Mr Edmund Lau to be more *"aggressive"* in his valuation. He then received the second valuation of US\$5,740,000 which still was too low. Having employed a New York expert as valuer, I can see no other reason for Mr Francis Lau then putting forward his own increased figures (US\$6,355,000), and changing the basis of valuation to *"disposal"*, other than a desire to achieve a valuation much closer to the price of US\$6,500,000 which WTCG intended to pay. Mr Francis Lau had no reason of his own to do this; common sense tells me he would only have involved himself so actively at the request of his principals.

I am satisfied that he was asked by Shun Tak to produce a figure close to the sale price to WTCG. I regard the change in his instructions to Mr Edmund Lau to a "*disposal purposes*" valuation as being designed to gain the latter's support for the proposed new figures, for it must be rare for a valuer in a "*done deal*" to advise the seller that the price is too high, and of course Mr Edmund Lau had been told it was a "*done deal*".

- 15.178 The last valuation by Raine, Horne & Lau was forwarded to WTCG, as Mr Y K So told me in evidence. He said he did so "*because they had requested it.*" I believe that WTCG had in fact asked for a valuation, and that that is why Shun Tak needed to get Raine, Horne & Lau to upgrade Mr Edmund Lau's valuations. I am satisfied the valuation was provided to WTCG and was relied upon, because Mr Sam Cheung of WTCG, who assisted Mr Mico Chung with financial matters, recalled reviewing it and comparing the figures with the price lists obtained by Mr Mico Chung in New York the previous December.
- 15.179 I have set out in this chapter the reasons why I reached the conclusion that the valuation by Raine, Horne & Lau of the three properties at US\$6,355,000 was an overvalue; and that this valuation was made at the instigation of Shun Tak. I have no doubt that this was done to set at ease the mind of whoever in WTCG was requiring a valuation. It follows that the sale to WTCG at US\$6,500,000 was at least US\$1,500,000 above the true market value of the three units, as both the valuation I obtained from the Appraisal Group and the initial valuation of Mr Edmund Lau show.
- 15.180 Dr Stanley Ho was Chairman of the Board Meeting of WTCG on 26 March 1991. The minutes of these meetings, signed by Dr Stanley Ho, show that the acquisition of the three units was ratified and confirmed. He did not then or at any time disclose his interest in the transaction by virtue of his (then) 42% interest in Broadway Associates, nor the other matters to which I refer above, including the sale of the units as recently as January 1991 at only \$4,400,000 whilst WTCG had bought upon a falling market. I consider his personal financial interest conflicted with his duties and responsibilities as Chairman of WTCG to the detriment of the company and its shareholders.

- 15.181 Despite the part played by Dr Stanley Ho as I describe above, the loss to WTCG could have been avoided had the other directors been alive to their duties and insisted that there be an independent valuation by a valuer experienced in the New York market, rather than relying upon a valuation provided by the vendor and expressly phrased to be on a "*disposal*" basis and a cross-check provided by the asking price of the vendor some months before.
- 15.182 The directors have shown further lack of competence by their imprudence in proceeding with the purchase of the issued share capital of Astbury without first having, in accordance with the advice of Baker & McKenzie, obtained from Mr Li Chi Keung an indemnity against the potential tax liability of \$950,000; and without heeding the warning of their situation that there was no positive obligation in the Agreement for Mr Li Chi Keung to complete the purchase from 374 Broadway by HKVW No 1, No 2 and No 3.
- 15.183 I believe that the auditors' review of this transaction may be flawed. They apparently neglected to obtain a copy of the directors' minutes approving the transaction which also disclosed a potential tax liability. They did not investigate the possible connection between Shun Tak and the vendor which should have been obvious from the vouchers examined. They accepted the vendors qualified valuation report to support the price paid. They failed to establish whether, as at 31 March 1991, title in the properties was held by Astbury by examining the sale and purchase agreements. If a Letter of Representation was obtained from management which gave them assurance, a copy cannot be located on the audit file. These oversights suggest that the staff employed on the audit may have lacked adequate experience, and perhaps a failure to properly plan, supervise and review the audit.

#### **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 16

### THE SPECIAL AUDIT

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#### 16 INTRODUCTION

16.1 Mr Peter Oei purchased approximately 20% of Tomson Pacific's shares in March 1991. He was appointed a director, President and Chief Executive Officer of Tomson Pacific on 4 March 1991.

16.2 Five months after his appointment, Mr Peter Oei requested that a special audit of WTCG be conducted by WTCG's auditors, Deloitte Ross Tohmatsu ("Deloittes"). The special audit was to cover transactions which had occurred in the previous eighteen months. Deloittes was requested to ascertain whether these transactions were legal, properly authorised and documented, conducted at arms length and in the best interests of the company.

16.3 Mr David Tong did not want a special audit undertaken. Dr Stanley Ho has stated that he was in favour of one, although Mr David Tong denies this was the case.

16.4 The special audit, in fact, was not undertaken. STDM purchased Mr Peter Oei's shareholding in Tomson Pacific in early September 1991, and Mr Peter Oei resigned from the Board of Tomson Pacific at the same time. In December 1991, STDM sold the same parcel of shares to Pacific Cable, a major shareholder of WTCG, realising a profit.

Mr Peter Oei's appointment as a director

16.5 According to Mr Peter Oei, during a dinner with Mr David Tong and Mr Jackson Chang, the need for an injection of funds into Tomson Pacific was discussed. Mr Peter Oei agreed to assist in this regard.

16.6 Tomson Pacific's 1991 audited accounts noted that Mr Peter Oei was issued 560,452,000 Tomson Pacific shares by the way of a placement which was announced on 9 February 1991 and completed on 4 March 1991. The shares were issued to Mr Peter Oei at a price of 40 cents each, representing a discount of 4.8% on the closing price of Tomson Pacific shares the previous day.

16.7 In addition, the audited accounts noted that out of the net proceeds of approximately \$223,000,000 invested by Mr Peter Oei, \$208,400,000 was used to repay Tomson Pacific's bank borrowings and the balance of \$14,600,000 was used for general working capital.

16.8 On 4 March 1991, Mr Peter Oei was appointed a director, President and Chief Executive Officer of Tomson Pacific. Mr Peter Oei claimed that during his time as a director, he was working on a daily basis at Tomson Pacific and WTCG.

Transactions conducted by WTCG in 1990

16.9 I asked Mr Peter Oei about a number of transactions conducted by WTCG in 1990. When I asked him about the Tian Teck share transaction (discussed in Chapter 9 of this report, he replied:



*"I received a letter from Stock Exchange enquiry about this deal.*

*I was not happy with the answers, we had a board meeting.*

*I called for the board meeting because the [Stock Exchange] letter is more or less addressed to the whole board and I am, as CEO [Chief Executive Officer] . . . feel I am responsible to answer the letter. Yet I don't know the deal, I am not involved so I have to know more. We had a board meeting and then in the end we asked a lawyer to answer all the questions."*

16.10 Mr Peter Oei told me that Mr David Tong, Mr Jackson Chang, Mr Mico Chung, and possibly, Madam Hsu Feng attended the board meeting.

16.11 I asked Mr Peter Oei whether he was concerned about the Stock Exchange inquiry and he stated:

*"I am not worried about this deal [Tian Teck transaction] because it has got nothing to do with me. But my concern is all my own investment . . . whether I am sleeping with a crook or sleeping with some honest people; this is my concern. It is more to my own investment because I have been quite . . . [trusting] . . . in the beginning, you know, just one handshake and I pay immediately \$230,000,000 . . . [The Stock Exchange] wanted to know the Tian Teck dealing, why you lost the money, is the company still in the securities core business, is it normal transaction and who is the buyer/seller, and also related to the Guangzhou Land. It's quite a complicated question which I smell is not normal, otherwise the Stock Exchange wouldn't ask me the question. I feel its abnormal, put it this way. That's why I called for the board meeting to discuss the matter, take it very seriously"*

16.12 Mr Peter Oei said that the board allayed his concerns and solicitors for the company responded to The Stock Exchange.

16.13 I also asked Mr Peter Oei about the 3 percent commission WTCG paid on the acquisition of the World Trade Centre Building. Peter Oei replied:

*"I had the same question as yours . . . I questioned everybody, why we should pay so much commission, I smell [it was] abnormal . . . in Hong Kong in the normal situation this kind of deal we pay only 1 percent maximum, so 3 percent, I really, I couldn't get [an] answer from them. [They] give [me] some explanation which I'm not happy to accept."*

16.14 Mr Peter Oei was dissatisfied with the explanation given by the board of directors in relation to the commissions paid. He stated:

*"Normally in Singapore or other countries only the seller pay the commission. The first question I ask: why the buyer pay commission, because buyer - - ? No, no. We are the buyer, the company is a buyer. In my experience we only because in Singapore only the seller pay the commission. So my first question, why should the buyer pay commission? And they said it is a practice in Hong Kong, the buyer also pay commission because the agent was appointed by the buyer. So and in fact I checked sometimes in Hong Kong the buyer do pay the commission, but I checked with some people. The opinion from the professional, 3 percent is on the high side. That is what I understand."*

16.15 In relation to the acquisition of three properties in New York (discussed at Chapter 15), Mr Peter Oei said that he was concerned that WTCG should obtain an indemnity for the tax liability it was acquiring with the properties. But in relation to his opinion of the transaction he said:

*"I was told the deal was introduced by Shun Tak, so they feel since Shun Tak chairman [Dr Stanley Ho] is the same chairman of ours [WTCG], they feel very comfortable. They feel comfortable that the deal is okay, that's why. I did ask why they didn't follow the legal advice, I told them if you pay this stupid money for the lawyer and then you don't listen to the lawyer, what for? It's like going to the doctor, if you don't listen to the doctor's advice. I confirm in the meeting, they said no problem they will provide everything. It looks like the executives in Bond Corporation [WTCG] at that time is quite comfortable with this because of the same chairman, so they said if anything goes wrong you can put blame into someone who is, you know - - . . . the chairman of Shun Tak and Shun Tak is the one introduced the deal to World Trade . . ."*

#### The Special Audit request

- 16.16 Dr Stanley Ho alleged that Mr Peter Oei came to him complaining about WTCG's affairs. Mr Peter Oei requested that there be an independent examination into the affairs of the company by external accountants.
- 16.17 Mr Peter Oei resigned as Chief Executive Officer of WTCG shortly after his request for the special audit. Mr Peter Oei explained that he left because of:

*"A lot of things very personal . . . I request for special audit."*

*"After I told you about Stock Exchange letter and these few letters come and bother me. Also a lot of questions you asked today, I have a lot of questions in my mind but I can't get anywhere. I just feel not happy."*

16.18 By letters dated 15, 19 and 21 August 1991 to Deloittes, Mr Peter Oei requested a special audit of WTCG be conducted to cover transactions which had occurred between February 1990 and August 1991 (Appendix 106). In his letter dated 21 August 1991, Deloittes were asked to *"examine whether they were conducted in the manner to the best interest of the company, such as:*

- . *any feasibility study had been prepared prior to the acquisition;*
- . *proper authorisation from the company;*
- . *proper documentation*
- . *legality of the transaction*
- . *any conflict of interest to those decision makers"*

16.19 The following major transactions occurred during the period between February 1990 and August 1991:

- (1) The sale of WTCG's interest in Compania de Telefonos de Chile S A (April 1990).
- (2) The acquisition of approximately 18% of the issued share capital of Chung Wah Shipbuilding & Engineering (Holdings) Co. Ltd. ("Chung Wah") (July 1990).
- (3) The acquisition of a company whose wholly owned subsidiary incorporated in the People's Republic of China held exclusive rights to occupy land situated in Dongji Industrial District in Huangpu Guangzhou ("Guangzhou Land") People's Republic of China (August 1990). This transaction is discussed in Chapter 11 of this report.

- (4) The purchase of the World Trade Centre property in Causeway Bay Hong Kong from the Hongkong Land Group (October 1990). This transaction is discussed in Chapter 8 of this report.
- (5) The acquisition of the First City Building in Central District Hong Kong from a subsidiary of Megaway Investment Holdings Ltd (November 1990).
- (6) The acquisition of the entire issued share capital of a wholly owned subsidiary of Tse Sui Luen Jewellery (Holdings) Limited which owned the property at No. 335 Nathan Road Kowloon (November 1990). This transaction is discussed in Chapter 14 of this report.
- (7) The acquisition of the remaining 50% interest in Porta di Roma ("Rome Land"), not already owned by WTCG, from Bond Corporation Holdings Ltd (December 1990).
- (8) The purchase of the Amtel Building in Central from Rivera (Holdings) Limited (March 1991).
- (9) The acquisition of Astbury Limited, which owned three investment properties in Mandarin Plaza, New York U.S.A. (April 1991). This transaction is discussed in Chapter 15 of this report
- (10) The disposal of 40% interest in Guangzhou Land (April 1991). This transaction is discussed in Chapter 11 of this report.
- (11) The disposal of WTCG's entire interest in land held in Rome, Italy (June 1991).
- (12) The sale of approximately 114 million shares and 17.8 million warrants in Chung Wah (July 1991).

- (13) The acquisition of 76.8% of the share capital of Ruby Holdings Limited, a Hong Kong listed company engaged in the operation of restaurants, manufacturing of uniforms, and property investments and development (July 1991).
- 16.20 My terms of reference for my investigation specifically referred to three of these thirteen transactions, and I looked at another of these.
- 16.21 In his letter dated 15 August 1991, Mr Peter Oei requested on behalf of Dr Stanley Ho, that Deloitte's work *"day and night to complete the special audit as soon as possible . . . to protect our minority shareholders' interest and make the Board look more prudent"*. WTCG was prepared to pay a special fee for this service.
- 16.22 Deloitte's replied to Mr Peter Oei's letter dated 15 August 1991, by letter dated 16 August 1991, and expressed concern that the required special audit may delay the statutory audit for the year ended 31 March 1991 that was almost complete and that this may preclude the convening of WTCG's Annual General Meeting of Shareholders by 30 September, 1991 as required by The Stock Exchange (Appendix 107).
- 16.23 The special audit was suspended until further notice by Mr Peter Oei's letter dated 19 August 1991 *"in order not to delay our statutory audit"*.
- 16.24 Deloitte's then wrote to the directors of WTCG on 21 August 1991 stating:
- "We understand that the special audit as referred to in the above letter [19 August, 1990] has no connection with the statutory audit, and that the Directors of the Company do not anticipate any matters which may arise from the special audit would affect the accounts and the statutory audit for the nine month period ended March 31, 1991."* (see Appendix 108)
- 16.25 Mr Peter Oei replied to Deloitte's with a letter dated 21 August 1991. He confirmed that:

*"we believe that the aforementioned [Special Audit] would have no effect or impact to the final result of the statutory audit...we hereby confirm that the special audit would not affect the accounts and the statutory audit for the year ended 31 March, 1991. "*

16.26 Mr Peter Oei and Dr Stanley Ho have both told me that they supported the audit and were prepared to pay a special fee to get it done.

16.27 According to Dr Stanley Ho, Mr David Tong did not want the special audit as he did not consider it necessary to spend the extra money. Dr Stanley Ho also told me:

*"when it was objected to by [Mr David] Tong, the two of us [Dr Stanley Ho and Mr Peter Oei] overruled him and I said 'Yes, we pay the special fee'."*

16.28 Mr David Tong, on the other hand has stated that only Mr Peter Oei was in favour of the audit and that Dr Stanley Ho was against it.

16.29 Mr Peter Oei has told me that, after a further board meeting, the instructions for the special audit were withdrawn. Mr David Tong denies that there was a "further board meeting". Mr Peter Oei then left the company resigning from his directorship on 2 September 1991.

16.30 Mr David Tong has told me:

*"I think he [Mr Peter Oei] gave up his demand for such a special audit after Dr Ho had purchased his shares. Of course that is only a personal opinion on my part. "*

16.31 Mr David Tong has told me that he thought that the request for a special audit by Mr Peter Oei was a strategic move made after Mr Oei had decided to sell his stake in Tomson Pacific and with the threat of such an investigation delaying the Annual General Meeting, Mr Oei may have been able to negotiate a better price for his shares.

The evidence of Dr Stanley Ho

16.32 Dr Stanley Ho has claimed that Mr Peter Oei had told him:

*"I'm sorry for you Stanley Ho, but there are many monkey-businesses conducted by Mr [David] Tong, through David Chiu, [and] Jackson Chang . . . everything is in a big mess."*

*"I am getting out because many things are not in order . . . and I can't get along with Mr [David] Tong any more."*

16.33 Dr Stanley Ho was the Chairman of the WTCG Group at the time. I asked Dr Stanley Ho what Mr Peter Oei told him about the "*monkey business*". Dr Stanley Ho felt that he was unable to do anything about Mr Peter Oei's concerns:

*"[Peter Oei] said this deal in the land [in Guangzhou] was a lousy one and then some other exchange transaction of shares [transaction] or something like that, I don't know."*

16.34 I asked Dr Stanley Ho what he did as a director and Chairman of WTCG, a public company, when the former Chief Executive Officer came to him complaining there had been "*monkey business*". To which he stated:

*"But what can I do?"*

*"I am a non executive . . . [director] . . . so I am not really responsible."*

*"I couldn't do anything because the power is with him [Mr David Tong]. I haven't got the power."*



*"I talked to David Tong and he assured me everything is in order don't believe a word. [David Tong said] Now he [Peter Oei] is not my friend any more, naturally he says this to you. But I did investigate into one, and that is the land in Guangzhou. "*

*"I really couldn't take any steps other than to ask David Tong, and I said 'Well Peter said you have done many things wrong, this is very serious, this is a public company' and he [Mr David Tong] assured me 'Oh, everything is all right'."*

- 16.35 I mentioned to Dr Stanley Ho that "*monkey business*" imports dishonesty, and Dr Stanley Ho replied:

*"I suppose so because I think we said 'David Chiu made a big killing out of that [Guangzhou] land deal'".*

- 16.36 Dr Stanley Ho was asked what steps he took in relation to the complaint of Mr Peter Oei. He said:

*"Really, I was really much too busy. I was planning to get out of the company, I tell you honestly, but for one reason and another I was so involved in other projects, I just hang on, until you started to investigate, then I thought it won't be decent at this stage to get out. But as I told you earlier, I am going to. I give them a few-two more- weeks after the deal of Sun Hung Kai and I will say, 'Thank you very much' and get out. "*

*". . . on many occasions I wanted to leave [as Chairman of WTCG], but as I said, for one reason or another I was too busy, I was travelling or something, and Mr Tong kept on saying, 'Oh, please stay on, I will turn the tables very soon, I can get everything done properly again'."*

- 16.37 I was advised by Dr Stanley Ho's solicitor that STDM purchased 675,000,000 Tomson Pacific shares from Mr Peter Oei on 2 September 1991 for 48 cents per share. Tomson Pacific's shares were trading at 57 cents each on the working day prior to their acquisition by STDM.
- 16.38 It is interesting to note that 4 days earlier, on 29 August 1991, STDM had sold 100,000,000 Tomson Pacific shares to Onshine Holdings Limited ("Onshine") for 36 cents each. Onshine was involved in the WTCG share placement discussed at Chapter 6 and its proprietor, Mr Li Chi Keung, acquired and sold three units in the Mandarin Plaza, New York to WTCG, which is discussed in Chapter 15.
- 16.39 When asked the reason STDM paid 12 cents more for each of Mr Peter Oei's shares, than realised on the sale to Onshine Holdings, Dr Stanley Ho replied:

*". . . I think he [Mr Peter Oei] did a very good job. He cleaned up a lot of the mess created, or rather, left behind by [Mr David] Tong and Jackson [Chang], but somehow suddenly they couldn't get together and Peter said, well I am quitting the company. But Tong promised that he will buy back his shares, something like that. Again Peter said, 'No, I don't even want to have any dealing with him. I can only deal with Stanley Ho.' So for that reason we [STDM] bought it from Peter Oei and then right away we sell it to Pacific Electric Wire & Cable."*

*". . . [the sale] is arranged by Tong really. Actually, Tong should buy directly from him [Mr Peter Oei] but because they were so unfriendly then, I was in the middle and I made a little something, I think one or two cents . . ."*

16.40 Had STDM not sold 100,000,000 Tomson Pacific shares to Onshine Holdings prior to acquiring Mr Peter Oei's parcel, STDM would have held 34.97% of the issued share capital of Tomson Pacific. An amount which is precariously close to the 35% limit which triggers the requirement for a mandatory offer to be made for all the shares of a company as set out by Rule 33 of the Code. When asked the reason for selling those shares to Onshine Holdings, I was advised through Dr Stanley Ho's solicitor that:

*". . . my clients cannot provide this information in view of the prohibition [Board Resolution] in respect thereto laid down by the directors of STDM. "*

16.41 Subsequently Dr Stanley Ho agreed to answer this question. Following this, however, I was advised by his solicitors that this information would not be forthcoming.

16.42 Mr Peter Oei resigned as a director of Tomson Pacific at the time his shares were purchased. I understand he realised a profit from the sale of his shares to STDM.

16.43 Mr Peter Oei told me that Mr Jackson Chang and Mr Mico Chung resigned from WTCG and went to work with him at China Strategic Investment Ltd. He added that Mr Mico Chung still works with him but that Mr Jackson Chang left him in the summer of 1992. Mr Jackson Chang and Mr Mico Chung resigned as directors of WTCG on 30 September 1991 and 31 December 1991 respectively.

16.44 On 28 December 1991, STDM sold the 675,000,000 Tomson Pacific shares to Pacific Cable for 50 cents per share.

16.45 Although alerted by Mr Peter Oei's letters that Dr Stanley Ho and he were concerned at some of the transactions entered into by WTCG in the prior eighteen months, no doubt Deloitte were comforted by the statements of Mr Peter Oei that the special audit *"would have no effect or impact to the final result of the statutory audit"* and *"would not affect the accounts and the statutory audit for the year ended 31 March, 1991"*.

- 16.46 When I asked Mr Patrick Cheng whether Mr Peter Oei had disclosed what his concerns were, Mr Patrick Cheng replied "*Never*".
- 16.47 Mr Patrick Cheng also told me that the "*impression I got was that there was a dispute between certain directors*".
- 16.48 I have not found any evidence that any specific areas of concern were brought to the attention of Deloitte and the instructions were later withdrawn.
- 16.49 Nevertheless, in the course of my investigation I have examined each transaction covered in my report, to see if Deloitte should have been expected to discover in the course of their audit, any irregularities which should have been drawn attention of the directors and shareholders of the companies.

## **CONCLUSIONS**

- 16.50 Mr Peter Oei's request for a special audit of WTCG's transactions between February 1990 and August 1991 may have focused on the same transactions which I was appointed to investigate. Mr Peter Oei's reasons for leaving appear to be a result of personal differences with Mr David Tong and because of concerns with some transactions conducted by Tomson Pacific and WTCG.
- 16.51 Mr David Tong told me that he was against the special audit, although there is conflicting evidence as to whether Dr Stanley Ho was in favour of it. Mr Peter Oei appears, however, to have been the only person truly interested in the special audit being completed, although his motives may not have been altruistic. This is evident by the failure of Dr Stanley Ho and Mr David Tong to proceed with the special audit once Mr Peter Oei had sold his shares and resigned.

- 16.52 Both Mr David Tong and Dr Stanley Ho have told me that during their tenure as directors of WTCG they had misgivings about the probity of some of the transactions entered into by that company. Mr David Tong has sought to blame Mr Jackson Chang and Dr Stanley Ho has sought to blame both Mr Jackson Chang and Mr David Tong. Yet when presented with the complaints of Mr Peter Oei they did nothing to resolve these concerns.
- 16.53 Accordingly I infer that neither Dr Stanley Ho nor Mr David Tong were in favour of a special audit by Deloitte as it may have uncovered some of the matters which have come to light in my investigation and which are unfavourable to them.
- 16.54 I have not found Dr Stanley Ho's and Mr David Tong's explanations of the reasons why the special audit was cancelled convincing.

## CHAPTER 17

### THE ACQUISITION OF A 9.9% INTEREST IN CHAROONG THAI WIRE & CABLE COMPANY LIMITED

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#### 17 INTRODUCTION

17.1 On 14 March 1992, WTCG acquired a 9.9% interest in the issued share capital of Charoong Thai Wire & Cable Company Limited ("Charoong Thai") for \$112,330,000. Although stated to have been acquired from independent third parties, I have found there were common shareholdings and directorships between the purchaser and vendors. The motive for acquiring this interest also appears to have been for the benefit of Pacific Cable, a major shareholder of Tomson Pacific rather than in the best interests of WTCG's shareholders. As this transaction does not fall within my terms of reference I have not investigated the circumstances of it in any great detail. My analysis of the acquisition therefore should be viewed as preliminary only.

## THE TRANSACTION

### The Purchase

- 17.2 On 6 March 1992, the Executive Committee of Directors of WTCG, being Dr Stanley Ho, Mr David Tong and Mr Sun Tao Tsun, resolved to purchase three parcels of shares totalling 9.9% of the capital of Charoong Thai for \$112,330,000. Due to exchange rate differences the ultimate purchase price in Hong Kong dollars was \$111,719,816.14.

<u>Vendor</u>	<u>No of Shares</u>	<u>Total (Incl. Brokerage) \$</u>
Walsin Lihwa Electric Wire & Cable Corp. ("Walsin Lihwa")	1,232,496	93,650,000
Mr Hung Tung-Hui	154,736	11,760,000
Mr Chiao Ting-Piao	91,090	6,920,000
	<u>1,478,322</u>	<u>\$112,330,000</u>

- 17.3 The equivalent price per share in Thai Baht was 250 at the exchange rate of 1 Baht : \$3.35 which represented \$74.62.
- 17.4 The Executive Committee's resolution (Appendix 109) of the same date noted:

*"that the shares will be purchased from vendors who are independent third parties not associated with the company and the company's subsidiaries, Directors, Chief Executive, substantial shareholders or their respective associates."*

- 17.5 On 14 March 1992, WTCG entered into Agreements confirming the acquisition of 3 parcels of shares from Walsin Lihwa, Mr Hung Tung-Hui and Mr Chiao Ting-Piao. Mr David Tong signed the Agreements for WTCG.

## Pricing

- 17.6 The law in Thailand prohibits greater than 49% foreign ownership of any Thai company. To control this the Bangkok Stock Exchange has separate foreign and local registers.
- 17.7 The foreign register on the Bangkok Stock Exchange showed Charoong Thai shares were trading at 226 baht as at close of trading on Friday 13 March 1992. Therefore, WTCG paid a premium of \$10,590,963.58 or 10% for the shares.
- 17.8 The premium is calculated by multiplying the difference in the price paid for the shares and the market price of the shares (24 baht) by the number of shares purchased (1,478,322) at the then current exchange rate (1 baht:\$3.35).
- 17.9 A report prepared by Jardine Fleming Taiwan Securities Ltd dated 28 February 1992 (Appendix 110) and provided to me by Mr Chiao Ting-Piao concluded that the sale of each share at 250 Baht was "*reasonable*" and:

*"in considering the company's [Charoong Thai] future, the present market price cannot fully reflect the full potential of the company."*

- 17.10 The date given on Appendix 110 is that of the Taiwanese calendar.

## Relationship between purchaser and vendors

- 17.11 Walsin Lihwa is closely related to Pacific Cable through common directors and shareholders despite the fact that they are competitors in the business of manufacturing electric wire and cable. The relationship between Pacific Cable and Tomson Pacific, and therefore WTCG, has been explained earlier in Chapter 4.



17.12 Mr Tung Yu Jeh and Mr Sun Tao Tsun were not only directors of WTCG and Tomson Pacific, but were also directors and shareholders of Pacific Cable and Walsin Lihwa. Mr Lee Yu Tien was also a director of Tomson Pacific, Pacific Cable and Walsin Lihwa and a shareholder of the latter two companies.

17.13 Mr Chiao Ting-Piao was a director and shareholder of Pacific Cable as well as a shareholder and the Chairman of Walsin Lihwa. When I asked Mr Chiao Ting-Piao why Walsin Lihwa sold its shares to WTCG he stated:

*"Pacific [Cable] had already set up a plant in Thailand so our share in that company, Charoong Thai, no longer made any sense, it wasn't big enough for two parties to compete in that market. . . When the decision was made to sell the shares to the [Tomson] Pacific Group, we refer to Tomson [Pacific] and Pacific [Cable] as one group. . ."*

17.14 Mr David Tong explained why WTCG had acquired the shareholding:

*"One of our major shareholders in Taiwan, Pacific Cables, the director Mr Sun [Tao Tsun], already owned a large proportion of the shares of that company. I believe it was 20%, and it just so happened that somebody was selling a large lot of those shares amounting to 9.9%. It was very difficult for Pacific Cables in Taiwan to purchase overseas shares. It would take a very long time. According to our calculation if we add the 9.9% to the 20% already possessed by our major shareholder we would be able to control the board of that company. The asset of the company in question was very large. It was a listed company. Due to the fact that the World Trade Centre Group is recently being made an acquisition offer by another company, we have already agreed that Pacific Cables would buy back these 9.9% of the shares and the company should be able to realise a profit".*

17.15 Mr David Tong concluded that although there was no agreement as to price per share, Pacific Cable had "*promised*" that WTCG would make a profit.

17.16 In a submission to me Pacific Cable states:

*"It is stated in evidence by Mr David Tong that PWC owned "20%" of the issued share capital of Charoong Thai. In fact, PWC owned 6%. The acquisition by WTCG of shares in Charoong Thai amounting to 9% did not give WTCG, PWC, or any other party in which PWC has any interest, control of Charoong Thai. Any evidence you may have received to the contrary is false."*

17.17 It was reported on 31 March 1994 in the South China Morning Post that:

*"Tomson Pacific has agreed to sell its shares in Charoong Thai Wire and Cable Co for 382.88 million baht (about HK\$118.69 million) to a subsidiary of Pacific Electric Wire and Cable.*

*Tomson expects to make a profit before expenses of \$7 million."*

## **CONCLUSION**

17.18 I conclude that the acquisition of a 9.9% interest in Charoong Thai was not from unrelated third parties and that the resolution of the Executive Committee dated 6 March 1992 was inaccurate and misleading.

17.19 I am unaware of any evidence, either documentary or oral which would suggest that Mr Sun Tao Tsun declared his interest in Walsin Lihwa to the Executive Committee of WTCG.

17.20 I am concerned that Mr David Tong, Mr Sun Tao Tsun and Dr Stanley Ho may have agreed to WTCG entering into the Agreements on the basis that it would benefit the interests of Pacific Cable rather than being in the best interests of WTCG.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 18

### THE RIVERA PLACEMENT AND THE TOMSON PACIFIC RIGHTS ISSUE

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## 18 INTRODUCTION

- 18.1 My terms of reference directed me to consider the circumstances leading to the acquisition of 34.5% of WTCG by Tomson Pacific. The majority of that analysis was contained within Chapters 5 and 6. However, as is pointed out in Chapter 5 the primary source of funds for the acquisition was a 1 for 1 rights issue where Tomson Pacific would raise approximately \$1,000,000,000 by the issue of 1,250,000,000 new shares at 80 cents each.
- 18.2 Tomson Pacific's three major shareholders, Rivera (35%), STDM (20%) and Pacific Cable (8.8%), would take up rights in accordance with the percentages of shares they held, thus maintaining the degree of control each exerted over Tomson Pacific.
- 18.3 Whilst STDM and Pacific Cable seem to have met their obligations from internal resources, Rivera obtained its money from Mr David Tong and a placement of its own shares.
- 18.4 The funding from Mr David Tong is discussed in Chapter 19 and the placement is discussed below.
- 18.5 It is also apparent that some of the parties who took up new shares in the Tomson Pacific Rights Issue were closely associated with the management of Tomson Pacific and may not have been independent from it. This is also discussed in this chapter.
- 18.6 As this has not been an issue central to my investigation I have not devoted substantial resources to this aspect.

## THE RIVERA PLACEMENT

- 18.7 An announcement in the press by Rivera dated 31 May 1990 stated that 115,000,000 new Rivera shares had been placed to *"a number of overseas institutional and other independent investors not associated with the Company [Rivera], the substantial shareholders or the directors of the company or their respective associates"*.
- 18.8 I am concerned that in fact the parties were not independent and that the placement was carried out in a manner inconsistent with it being at arm's length from the management of Rivera and Tomson Pacific.
- 18.9 I set out below an analysis of the circumstances that led to the Rivera placement, my knowledge of the identity of the placees, the source of funds used to pay for the Rivera shares, the way in which settlement of the shares took place and the refund of a part of the commission earned by Cresvale Hong Kong.

### Events leading to the Rivera placement

- 18.10 An essential part of the Tomson Pacific Rights Issue was an underwriting agreement dated 4 May 1990 whereby Pacific Cable and STDM agreed to underwrite the rights issue and contribute at least the funds necessary to take up rights in accordance with the percentages they held in Tomson Pacific. Rivera undertook to take up an allotment equal to its shareholding in Tomson Pacific. Its obligations were in turn guaranteed by Pacific Cable and STDM.
- 18.11 Dr Stanley Ho, however, has told me that his understanding of the commitment made by STDM was simply that they would contribute 20% of the funds required for the rights issue. He says he was assured by the management of Rivera that this commitment would not increase and he could not remember underwriting Rivera's commitment.

18.12 It is of note that STDM and Pacific Cable were to receive a 1% underwriting commission for taking on this obligation, although there is no record of such a commission being paid.

18.13 Rivera was keen to take up its full entitlement to preserve its dominant position in the control of Tomson Pacific.

18.14 By way of a memorandum dated 8 May 1990 from Mr Daniel Lui to Mr Jackson Chang, it can be seen that Rivera was critically short of funds during this time. The text read:

*"For the acquisition of 34.35% of Bond Corp. [WTCG] and Tomson's [Tomson Pacific's] rights issue for the said funding, Rivera has to take up approximately 35.3% of the new shares, representing approximately HK\$352.9 million.*

*The said payment will be required on or before 22th June, 1990. Based on Rivera's current cash position, the cash deficit will be approximately HK\$180 million. Due to the substantial cash requirement, I suggest we should start to negotiate with Hongkong Bank and Bank of China to apply for a loan up to HK\$180 million, please advise me [of] any information we should provide to the banks and whether it is necessary for me to contact those banks."*

18.15 Enclosed with the memorandum was an estimate of cash flow requirements for Rivera. A copy of the memorandum and its enclosure are shown as Appendix 111. I am not aware of any written response from Mr Jackson Chang.

18.16 Mr Daniel Lui has told me that he was assured by Mr Jackson Chang that Mr David Tong would advance all the necessary funds to meet this projected shortfall.

- 18.17 At a meeting of the board of directors of Rivera held on 17 May 1990, Rivera agreed to a proposal from Mr David Tong that he would lend them up to \$150,000,000 in order to provide part of Rivera's funding requirements for the Tomson Pacific Rights Issue.
- 18.18 Mr David Tong and Madam Hsu Feng declared an interest in the matters to be discussed. Thereafter Mr Jackson Chang and Mr Zhou Huaming resolved the following:

*"It was noted that the meeting had been convened in connection with the rights issue which it was proposed should be made by Tomson Pacific Limited ("Tomson") of not less than 1,250,000,000 shares of HK\$0.10 each (the "Tomson Rights Issue")."*

*It was noted that the Company had agreed to Subscribe or procure subscribers for its full entitlement under the Tomson Rights Issue representing approximately 35% of the rights shares with aggregate subscription price of such shares being approximately HK\$353,000,000. The Company required funds to enable it to fulfil this obligation and had requested Mr. Tong to lend it \$150,000,000. Mr. Tong had agreed in principle to do so for a term of three years and at a rate of interest one per cent below the prime rate of Standard Chartered Bank, payable at six monthly intervals. This was significantly below the cost at which the Company could borrow funds in the market and as a quid pro quo it was proposed that the entire loan be convertible at Mr. Tong's option into new shares of the Company at a price of \$0.70 per share, subject to adjustment.*

*The agreement of the Company to borrow from Mr. Tong on the terms of the Agreement would represent a connected transaction within the meaning of the rules governing the listing of securities on The Stock Exchange of Hong Kong Limited (the "Stock Exchange")."*



- 18.19 The loans from Mr David Tong are discussed in Chapter 19 concerning Martra where it can be seen that Mr David Tong provided \$68,000,000 to Rivera pursuant to the above loan agreements but that this money actually came from Tomson Investment, a subsidiary of Tomson Pacific.
- 18.20 A further \$79,350,000 appears to have been received by way of the placement of Rivera shares discussed below.

Cresvale Hong Kong

- 18.21 Cresvale Hong Kong were asked to arrange a placing of 115,000,000 Rivera shares. Mr Daniel Lui, who was then General Manager of Rivera, has told me that Mr Jackson Chang arranged this placement.
- 18.22 In a submission made to me by Mr Chiang Wee Thiong, formerly the Sales General Manager of Cresvale Hong Kong, he stated:

*"My involvement only arose when I was approached by Mr Jackson Chang of Rivera who had asked whether Cresvale were interested in carrying out a placement of 100,000,000 new shares in Rivera (the "First Placement").*

*The First Placement was made pursuant to a letter from Cresvale dated 21st March, 1990 to various institutions and companies, alongside another placing carried out by ChinTung Limited of further shares in Rivera.*

*I confirm that I was approached again by Mr Jackson to see whether Cresvale would be willing to carry out a further placement of 150,000,000 new shares in Rivera (the "Second Placement"). The terms of this Second Placement were confirmed by a letter from Cresvale to the directors of Rivera dated 31st May, 1990.*

*As I explained in the interview held on 26th January, 1993, the Second Placement was to be carried out through a Taiwanese brokerage firm, Tai Yuan Securities ("Tai Yuan") [Ta Yuan], one of the larger broker houses in Taiwan. Mr Jackson Chang had provided some basic information to me about Tai Yuan. In addition, I believe that Cresvale carried out company registry searches to obtain information about Tai Yuan. However, I confirm that I was unaware of any connection between Tai Yuan and Mr Ma De-Ling or his wife as I do not know, nor have I met either of them."*

- 18.23 By way of a letter dated 31 May 1990, Cresvale Hong Kong wrote to the directors of Rivera saying that they confirmed the terms upon which Cresvale Hong Kong agreed to place an aggregate of 115,000,000 new shares of 50 cents each in the capital of Rivera. The letter stated that the subscription shares were to be issued at 69 cents per share, the full amount of which would be payable upon application and satisfied by delivery of a banker's draft in the sum of \$79,350,000. It also set out the standard terms concerning the rights and obligations of each of the parties and was signed by Mr John Gracey who was an associate director of Cresvale Hong Kong at the time. Mr Jackson Chang on behalf of Rivera confirmed acceptance of the terms and conditions of the placement letter. This acceptance was undated. A copy can be seen at Appendix 112.
- 18.24 I examined Cresvale Hong Kong's files in relation to this placement and found a confidential file note prepared by Mr John Gracey and dated 19 June 1990 concerning the second placement. The text of that file note is reproduced below:

*"We received a request from Rivera (Mr Daniel Lui) that payment be made direct by the subscribers of this second placement to Rivera itself.*

*The legal agreements between Rivera and CHK [Cresvale Hong Kong] and CHK and the subscribers say that the subscribers should pay CHK and that CHK should pay Rivera.*

*I discussed the matter with James Chapman (JSM) [Johnson Stokes & Master - solicitors to Cresvale Hong Kong] who said that there was no legal obstacle to direct settlement with Rivera, although settlement in accordance with the agreement would be preferable to ensure we received our commission and because it was on the basis of the agreement that the transaction had been approved by the SE of HK [Stock Exchange] and the SFC.*

*A compromise was reached, after discussions internally and based on Rivera's need to receive the payment on the 19th June (the date of the Tomson Rights Issue). Rivera was reluctant to accept delay of one day, and it was agreed that:*

- 1. Separate cheques be paid for CHK's commission.*
- 2. The cheques from clients would be passed to Rivera via CHK's office, where a copy would be kept for their records.*

*On the 19th June the cheques were duly received. All had been drawn on the same account at Security Pacific Asian Bank Ltd., Kwun Tong Branch, Kowloon. All had been signed by one of the authorised signatories for Martra Inc., who Wee Thiong [Mr Chiang Wee Thiong] identified as Shih Hsiao-Kue.*

*According to Wee Thiong the individual subscribers for the placement are all Martra Inc.'s clients. Martra Inc., he claims, is controlled by Shih Hsiao-Kue - who is independent of Rivera, and Shih Hsiao-Kue has the power of the attorney for the individual clients (NB this latter point is a matter between Martra Inc. and its clients). All clients had signed their own subscription letters independently, which included the declaration of independence from Rivera."*

18.25 The file note was initialled by Mr John Gracey of Cresvale Hong Kong and a copy can be seen at Appendix 113.

18.26 Mr John Gracey has told me that a large part of the information in this file note was obtained from Mr Chiang Wee Thiong, stating:

*"All I can say is that [Chiang] Wee Thiong actually introduced this business to us. He was the man who was our link with these clients and we relied on him for information with regard to these clients, what their intentions were."*

18.27 Mr Chiang Wee Thiong has denied providing these details.

18.28 Dealing with each point in turn I discuss the file note below.

18.29 I have spoken to Mr John Gracey about the reason for his approach to Messrs Johnson Stokes & Master and he said that this was instigated by him as he was concerned that the payment arrangements proposed by Rivera were different to those set out in the letter of agreement between Rivera and Cresvale Hong Kong.

18.30 In relation to the alleged discussion with Mr Daniel Lui, Mr John Gracey has told me that he was told by Mr Chiang Wee Thiong that Mr Daniel Lui of Rivera had asked for the arrangement whereby Rivera would directly receive the funds.

18.31 Mr Chiang Wee Thiong has said, in direct contradiction, that he had not told Mr John Gracey this and certainly had not spoken to Mr Daniel Lui concerning the placement. Mr Chiang Wee Thiong thought that the settlement department may have liaised directly with Mr Daniel Lui.

18.32 Mr Daniel Lui has denied that he gave such an instruction to Cresvale and has stated that Mr Jackson Chang handled all aspects of this transaction.

18.33 Mr Chiang Wee Thiong denied that he had:

- (1) identified the signature on the cheques from placees as being that of Madam Shih Hsiao Kuei;

- (2) said that Madam Shih Hsiao Kuei controlled Martra; and
- (3) said that all of the placees were Martra's clients. Further, he denied having ever seen the cheques, saying:

*" . . . I have not seen those cheques and this is a memo of which I have no part to play, to write and I do not even know whether it was from the same account. And what is mentioned in this memo is factually wrong, that I have identified something. How can one identify something when one doesn't see that?"*

- 18.34 Mr Chiang Wee Thiong subsequently stated in evidence that he had been told by Rivera that all the placees were Martra's clients. However, he insisted that he did not know, nor had ever met Madam Shih Hsiao Kuei. He said:

*"It was Jackson Chang, representing the company, mentioned to us whether are we interested to be the Hong Kong leg of the placement and that the list of placees were all clients of Martra. And the list [of placees] was given to us and the so-called counter party that would be responsible for the list of Taiwanese clients were the responsibility of Ta Yuan. "*

- 18.35 Mr Chiang Wee Thiong also said that Mr Jackson Chang had told him that Madam Shih Hsiao Kuei was independent of Rivera.

- 18.36 In relation to the identity of the placees Mr Chiang Wee Thiong said that the Taiwanese brokerage house, Ta Yuan (which I understand is controlled by Mr Ma De-Ling and/or his wife) referred the placees to Cresvale Hong Kong:

*"With regard to that particular placement, we were approached by the company, which is the Rivera public company, that they would like to raise some funds and they have found Taiwanese investors through a broking firm called Ta Yuan and they would like to do the placement and see whether we could be the Hong Kong agent for that one. "*

18.37 Mr Chiang Wee Thiong said that Mr Jackson Chang from Rivera was the person that he was dealing with. Mr Chiang Wee Thiong did not think it was unusual that the company requesting the placement had located the placees as he said that this was normal in many placements that he had done.

18.38 In a submission made to me on behalf of Mr John Gracey, his solicitor stated:

*"Mr Gracey has confirmed that he never personally discussed matters relating to the settlement of the money due on the placement with Mr Daniel Lui or other Tomson/Rivera staff.*

*Mr Chiang had said that he has no recollection of ever speaking to Mr Lui concerning payment arrangements and that he believed that the Settlement Department of Cresvale may have liaised directly with Mr Lui in this case. My clients dispute this belief and find it inconceivable that a matter of such significance, which resulted in the settlement of the placement taking place in a way which differed from that originally agreed, was not initially discussed with Mr Chiang as he was the relevant person in Cresvale's organisation responsible for managing the relationship with the clients. Mr Chiang has said that this was a mere settlement query but my clients disagree. This was a fundamental change in terms and accordingly would have been dealt with by the relevant relationship officer, namely Mr Chiang, and not merely the Settlement Department of Cresvale."*

18.39 Obviously the evidence of Mr Chiang Wee Thiong contradicts that given by Mr John Gracey. I am largely persuaded by Mr John Gracey's contemporaneous file note that his version of events is the more accurate of the two. Although I also accept Mr Chiang Wee Thiong's evidence that Mr Jackson Chang provided the list of placees discussed below. I have reached this conclusion as I believe Mr John Gracey must have obtained the information for his file note from someone and as Mr Chiang Wee Thiong was the client adviser liaising with both Rivera and Martra the information must have come from him.

## The Placing Letters

18.40 By way of letters dated 31 May 1990 Cresvale Hong Kong wrote to nine individuals and one company concerning an agreement to subscribe for 11,500,000 shares each pursuant to the second placement. This letter is not unlike the placing letter discussed in Chapter 5 and for convenience I will refer to it as "*the Cresvale placing letter*" (see Appendix 114).

18.41 The Cresvale placing letter stated that the shares were to be purchased at 69 cents each for a gross value of \$8,014,350 (inclusive of a 1% commission to Cresvale Hong Kong). Each placee was to complete a confirmation in the following terms:

*"You confirm that you are subscribing the Subscription Shares as beneficial owner and that you do not and will not own in aggregate 10 per cent or more of the shares in Rivera or (with any party with whom you act in concert) 35 per cent or more of the issued share capital of Rivera; and further you agree that if you alone or together with parties with whom you act in concert acquire control over 35 per cent or more of the issued share capital of Rivera, you will procure that all relevant laws, regulations and the Hong Kong Code on Takeovers & Mergers are complied with."*

18.42 Printed on this letter was an acknowledgment which read:

*"Receipt of this letter is hereby acknowledged and we confirm all the terms and conditions set out therein in respect of our agreement to subscribe the subscription shares therein."*

18.43 The parties sent this letter were as follows:

Madam Louise Yen-Hwa Koo	Mr Iang-Chi Huang
Madam Sun Yu Chi	Mr Te-Feng Chen
Mr Chen Wen Hsiu	Mr Ching-Pen Hung
Mr Chiu-Fen Chang	Mr Ta-Jeh Lin
Mr Shih-Chang Lai	Mr Ma De-Ling/Ta Yuan Securities Company

18.44 Mr Ma De-Ling was a director of Tomson Pacific up until 8 May 1990 and I understand his wife was the owner of Ta Yuan Securities in Taiwan. He was also a member of the syndicate described as the Chiu Ming Hung Syndicate in Chapter 6. According to Mr David Tong it was with Mr Ma De-Ling that the buyback of the Chiu Ming Hung syndicate shares was negotiated.

18.45 Mr Chen Wen Hsiu was shown as a director of Chung Lam Assets Limited ("Chung Lam Assets"). That company contributed 70,000,000 WTCG shares to a total of 80,000,000 WTCG shares sold by Sun Hung Kai Investment Limited on 23 June 1993. I understand he was an associate of Mr David Tong and Madam Hsu Jye. Chung Lam Assets is discussed in Chapter 6.

18.46 It is notable that two of these placees are closely associated with the management of Tomson Pacific and Rivera during 1990.

18.47 I have not been able to locate the remaining placees.

#### Public Announcements

18.48 The placement appears to have been completed on 19 June 1990 although well before this time draft notices of its successful completion were being finalised.



18.49 Standard Chartered Asia were advisers to Rivera in relation to the placement (although they claim not to have had any role in the actual placing) and I understand that both Mr Mico Chung and Mr Arnold Ip of that company at the time handled the file on their behalf. Mr Arnold Ip sent Mr John Gracey a draft Notice concerning the placement on 31 May 1990, the text of which is reproduced below:

*"RIVERA (HOLDINGS) LIMITED  
ANNOUNCEMENT*

*The directors of Rivera (Holdings) Limited (the "Company") are pleased to announce that arrangements have been made for a placement with a number of Independent investors not associated with the Company, the controlling shareholders or the directors of the Company or their respective associates, of 115,000,000 new shares of HK\$0.50 each in the capital of the Company ("New Shares") at a price of HK\$0.69 per share. The price of HK\$0.69 per share represents a discount of approximately 1.4 percent to the closing price of HK\$0.70 per share on The Stock Exchange of Hong Kong Limited (the "Stock Exchange") on 31st May, 1990 and is equal to the issue price of HK\$0.69 per share in the capital of the Company ("Shares") issued pursuant to a placing of Shares announced by the Company on 21st March, 1990.*

*The New Shares represent approximately ten percent of the existing issued share capital of the Company. The aggregate net proceeds of the issue of the New Shares, totalling approximately HK\$77.5 million, will be used to provide additional working capital for the Company. The directors of the Company believe that the placement of the New Shares will assist to broaden the Company's shareholder base and further improve the liquidity of the Shares.*

*The New Shares will be issued by the Company pursuant to the general mandate granted to the directors of the Company at an extraordinary general meeting of the Company held on 20th April, 1990. The New Shares will, upon issue, rank pari passu in all respects with the existing issued Shares.*

*The issue of the New Shares is conditional upon the Listing Committee of the Stock Exchange granting listing of and permission to deal in the New Shares, and upon no objection to such listing being made to the Listing Committee of the Stock Exchange for the listing of and permission to deal in the New Shares Application will be made to the Listing Committee of the Stock Exchange grant a listing of and permission to deal in the New Shares to be issued.*

*The placing of New Shares was arranged by Cresvale Hong Kong Limited and Standard Chartered Asia Limited has been retained to advise the Company."*

- 18.50 The final announcement was forwarded to the press for release on 31 May 1990. Mr Mico Chung sent by facsimile a copy of that final announcement to Mr John Gracey and Mr Chiang Wee Thiong at Cresvale Hong Kong. The material changes to the announcement are underlined in the following extract:

*"The directors of Rivera (Holdings) Limited (the "Company") are pleased to announce that arrangements have been made for a placement with a number of overseas institutional and other independent investors not associated with the Company.*

*. . . The aggregate net proceeds of the issue of the New Shares totalling approximately HK\$78.5 million, will be used to provide additional working capital for the Company."*

The cheques drawn to pay for the placement

18.51 All of the cheques used to pay for this placement were drawn on the Security Pacific Asian Bank Limited ("SPAB") account of Madam Hsieh Hui Ching and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei and signed by Madam Hsu Jye (in contradiction of the memo of Mr John Gracey dated 19 June 1990). Each cheque was for \$7,935,000 and was drawn sequentially on that account. The cheques were passed to Cresvale Hong Kong from Rivera, copied by Cresvale Hong Kong and then sent back to Rivera. Mr John Gracey told me that copies were taken as:

*"I think we wanted to make sure that we were being reasonably careful, reasonably diligent in doing our job of brokers in this situation."*

18.52 I questioned Madam Hsu Jye about the source of the funds used in the second Rivera placement and initially she was very reluctant to comply with my request for information claiming that it was not within the scope of my investigation to consider this transaction.

18.53 After some correspondence with her legal advisers she agreed to answer my enquiries with respect to this transaction.

18.54 She acknowledged that she had in fact signed the cheques that were drawn on the account of Madam Shih Hsiao Kuei and others.

18.55 I asked in one of her examinations that she provide me with details of the source of funds for the \$79,350,000. Her solicitor responded to me with the following details:

*"The amount of HK\$79,350,000 paid to Cresvale in June 1990 for the placing in Rivera (Holdings) Limited were deposited in the following manner into the joint bank account of Hsieh Hui-Ching/Chang Yueh-Chun/Shih Hsiao-Kuei, upon which account cheques totalling \$79,350,000 were drawn to pay for the placement:-*

<u>Account</u>	<u>Date</u>	<u>Method of Payment</u>	<u>Amount</u>
(a) Martra Inc	19/06/90	Cheque No. 761069	\$15,000,000
(b) David Tong Co Ltd	19/06/90	Cheque No. 786886	\$ 5,543,000
(c) South View Properties Ltd	19/06/90	Transfer	\$65,000,000"

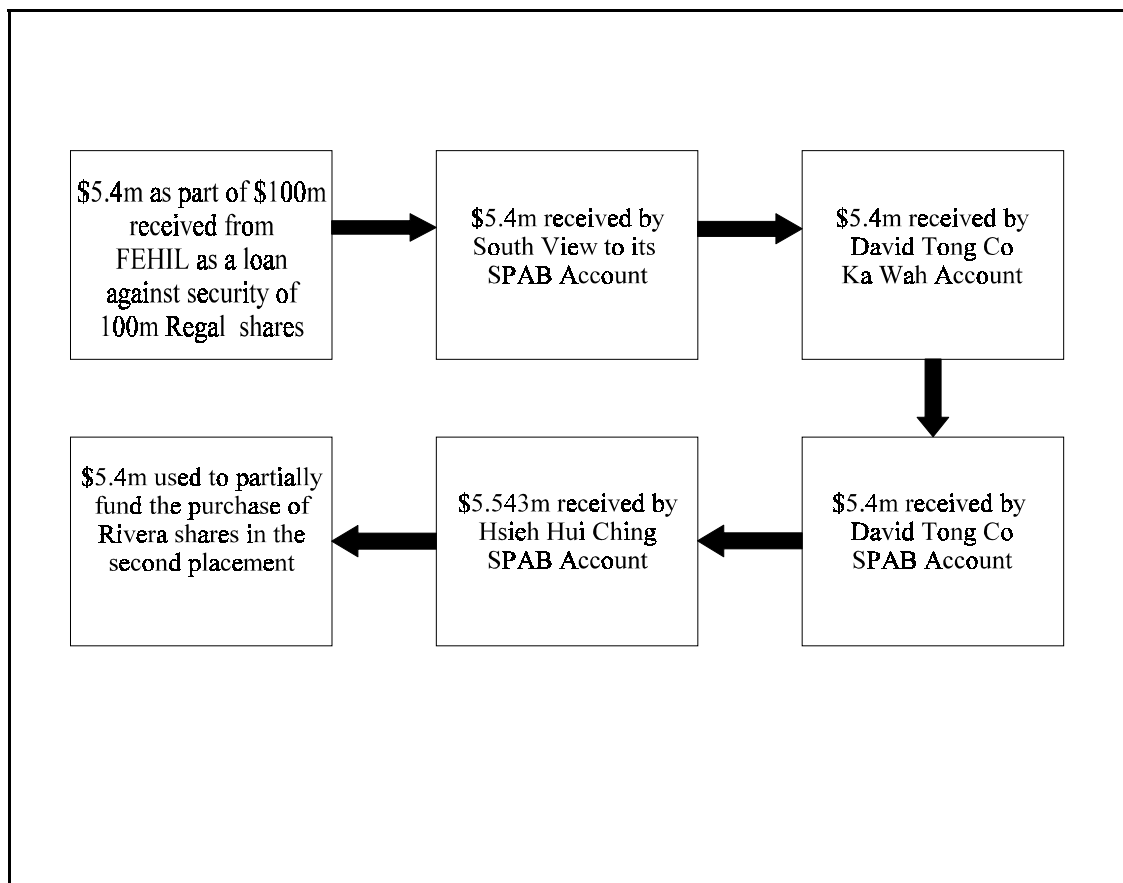
The ultimate source of funds

- 18.56 As I have had access to the bank accounts of Martra, David Tong Company and South View, I have examined the source of the funds as far as those companies were concerned.
- 18.57 Martra received \$15,000,000 by way of a cashier's order dated 19 June 1990 and drawn by Ka Wah Bank on the instructions of Mr Jackson Chang and Mr David Tong on behalf of Tomson Investment. A copy is shown at Appendix 115. Martra then immediately drew a cheque in favour of Madam Hsieh Hui Ching which was signed by Madam Hsu Jye.
- 18.58 This money was the final repayment of the principal of a \$30,000,000 loan made by Martra to Tomson Investment on 25 April 1990. The loan is discussed in detail in Chapter 19 concerning Martra, however it was to be repaid on or before 25 July 1990.
- 18.59 David Tong Company is owned by Mr David Tong and his wife, Madam Hsu Feng. Madam Hsu Jye is authorised to sign cheques on the account.

18.60 The \$5,543,000 cheque from David Tong Company was drawn on the Security Pacific Asian Bank ("SPAB"). \$5,400,000 of this came from the David Tong Company account at the Ka Wah Bank. The additional \$143,000 was taken from general funds within this account.

18.61 This money in turn was received by way of a transfer dated 4 June 1990 from South View who had received it from Far East Holdings International Limited ("FEHIL") being an advance that formed part of the Regal transactions discussed at Chapter 7.

18.62 The diagram below shows the flow of funds:

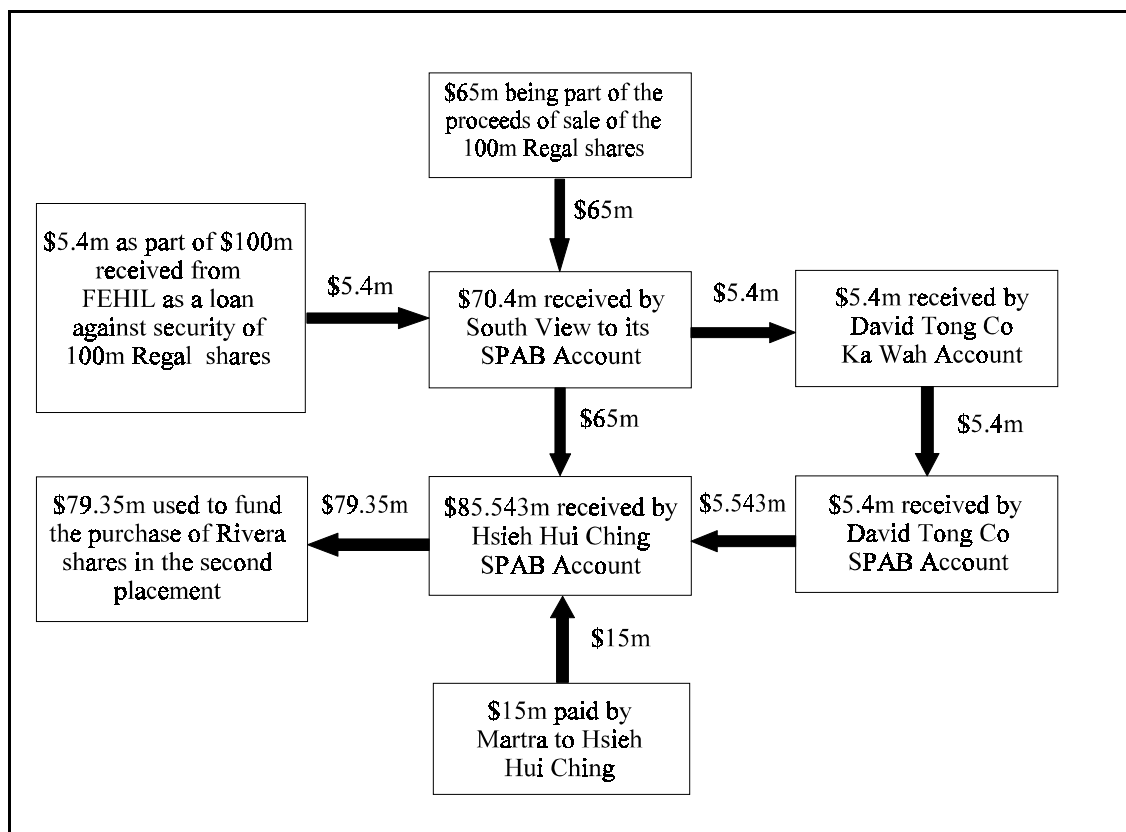


18.63 South View is a Liberian company managed by Mr Hsu Sun, Mr David Tong's brother-in-law, but one I believe Mr David Tong has significant influence over (see Chapter 21).

18.64 The \$65,000,000 received from South View was the proceeds from the sale of the 100,000,000 Regal shares to FEHIL discussed also in Chapter 7 as being another part of the Regal transactions.

18.65 Madam Hsu Jye's solicitors have said that the source of the \$79,350,000 was actually three cheques totalling \$85,543,000. In summary \$70,400,000 of \$85,543,000 used to acquire the Rivera shares at a cost of \$79,350,000 came from the proceeds of the Regal transactions and the \$15,000,000 came from Tomson Investment.

18.66 The diagram below shows the source of the \$85,543,000:



18.67 As can be seen from Chapter 7 it is evident that the Regal transactions were negotiated by Mr Jackson Chang with Mr David Chiu of FEHIL.

18.68 The loan from Martra to Tomson Investment and its repayment appears to have been arranged by Mr Jackson Chang and/or Mr David Tong and looks to have little to do with the alleged beneficial owners of that company.

Delivery of the Rivera shares and the refund of the commission

18.69 A letter dated 29 June 1990 sent to each placee by Cresvale Hong Kong read:

*"We hereby enclose 11,500,000 shares of the above being [Rivera] shares subscribed by you in a placement on 31.5.90.*

*Kindly acknowledge receipt by signing and returning the duplicate of this letter."*

18.70 Each of these letters was individually addressed to the placees in Taiwan.

18.71 Mr John Gracey told me in evidence that following completion of the placement, Cresvale Hong Kong received a commission of 2%. This was considered by Cresvale Hong Kong to be too much as Mr John Gracey stated that the commission had to be commensurate with the level of services provided. Accordingly they decided to return the 1% commission paid by each of the placees. Cresvale Hong Kong drew cheques dated 3 July 1990 for \$79,350 to each of the placees and enclosed them with a covering letter dated 3 July 1990. These letters were again addressed to the individual placees in Taiwan.

18.72 By way of letters dated 6 July 1990, each of the placees care of Room C, 12/F Wah Ying Cheong Building, 288 Des Voeux Road, Central, Hong Kong, wrote back to Cresvale Hong Kong asking them to:

*"Cancel your issued cheque . . . by the Hongkong & Shanghai Banking Corporation Limited dated 3rd July 1990 of HK\$79,350.00 and reissue a new cheque in favour of South View Properties Limited of the same amount."*

- 18.73 Each of these letters appears to have been typed using the same printer and format. Two copies of the letters are enclosed as examples at Appendix 116.
- 18.74 Given that each of the placees was supposedly resident in Taiwan and that the cheques and letters were returned so quickly, I believe it would be highly unlikely that the placees themselves signed the letters that went back to Cresvale Hong Kong. Accordingly I am concerned that the signatures may not have been completed by each placee. The signatures were the same as those that acknowledged receipt of the 11,500,000 shares each placee was to receive.
- 18.75 I have endeavoured to contact all of the individuals who were named as placees in this placement but unfortunately none responded to my request for a meeting in Taiwan.
- 18.76 The address at Room C, 12/F Wah Ying Cheong Building was occupied by Herman HY Ng & Company who also provided correspondence addresses for Hauxton, Cortney and Grand Ocean, all of whom are mentioned elsewhere in this report.
- 18.77 Cresvale Hong Kong subsequently redrew their cheques in favour of South View and they were deposited into South View's account at SPAB.
- 18.78 Following receipt of the \$793,500 by South View a cheque for \$790,000 was drawn in favour of David Tong Company on 13 July 1990. Mr Hsu Sun signed the cheque. It was banked into the David Tong Company 24 hour call deposit account at SPAB and mixed with other funds already in that account. It is unclear how David Tong Company applied this money although the first withdrawal after this deposit was a cheque for \$1,100,000 which was cashed by Madam Hsu Jye on 13 July 1990.



## THE TOMSON PACIFIC RIGHTS ISSUE

- 18.79 As stated above and in Chapter 5 Tomson Pacific set out to raise \$1,000,000,000 from the issue of 1,250,000,000 new shares at 80 cents each in May of 1990 ("the Rights Issue"). Rivera took up its full entitlement and was unable to acquire any further large blocks of shares without breaching Rule 33 (1)(b) of the Takeover Code.
- 18.80 This rule applies to persons or companies that hold, either by themselves or in concert (see Chapter 3) with others, shares in a listed company which carry between 35% and 50% of the voting rights. The rule states that where such a shareholder increases its voting shareholding by more than 5% in any one year, such shareholder is required to make a full takeover bid for the listed company. At the time of the Tomson Pacific Rights Issue, Rivera held, in the name of subsidiaries, 35.29% of the voting shares in Tomson Pacific.
- 18.81 Between 1 May 1990 and 19 June 1990 three parties closely associated with Mr David Tong and Mr Jackson Chang were known to have purchased large quantities of Tomson Pacific shares. These were:

	<u>Number of shares</u> <u>bought</u>	<u>Number of shares</u> <u>sold</u>
Mr Hsu Sun	14,310,000	Nil
Grand Ocean	50,908,000	Nil
Martra	<u>11,276,000</u>	<u>11,000,000</u>
	<u>76,494,000</u>	<u>11,000,000</u>

- 18.82 65,494,000 shares (those remaining after the sale of 11,000,000 shares) represented just over 5% of Tomson Pacific at the time immediately preceding the Tomson Pacific Rights Issue.

### Martra

- 18.83 Martra sold its shares in two tranches; one of 10,000,000 on 2 and 3 May 1990 and the other of 1,000,000 on 15 May 1990.
- 18.84 From the \$10,195,424 realised from the sale of the 11,000,000 shares, it appears that \$6,500,000 was paid to David Tong Company on 5 May 1990.
- 18.85 The payment of \$6,500,000 was used to reduce the overdraft balance in David Tong Company's account which arose following a payment to Rivera of \$66,479,581.80. It is unclear what this payment was for.
- 18.86 As can be seen in Chapter 19 concerning Martra the majority of funds used to purchase shares at Cresvale Hong Kong came from David Tong Company. This also appears to be the case in respect of these particular Tomson Pacific shares purchased at this time.

### Mr Hsu Sun

- 18.87 Mr Hsu Sun has acted as a nominee for Mr David Tong in relation to the purchase of 30,000,000 WTCG shares from the Chiu Ming Hung syndicate discussed at Chapter 6, although he claims in this instance that all the trading in Tomson Pacific shares was for his own benefit.
- 18.88 Between 1 May 1990 and 7 May 1990 Mr Hsu Sun purchased 2,700,000 Tomson Pacific shares using his margin account at Chintung. A resulting margin call of just over \$5,000,000 was almost wholly satisfied by the deposit of 18,000,000 Rivera shares on 11 May 1990.
- 18.89 Mr Hsu Sun refused to disclose to me the source of these 18,000,000 Rivera shares claiming that this matter was *"private and personal"*.

- 18.90 On 19 June 1990 Mr Hsu Sun's margin account at Chintung showed that he took up 16,632,000 shares in Tomson Pacific under the Tomson Pacific Rights Issue at a total cost of \$13,305,600. This resulted in a margin call of \$9,351,293.22.
- 18.91 Due to the decrease in the value of the shares held as security, the margin call increased to \$10,291,099.83 on 7 July 1990 and Chintung wrote to Mr Hsu Sun asking for corrective action to be taken before 3 pm, 12 July 1990.
- 18.92 On 12 and 16 July 1990 a total of 5,000,000 WTCG shares were deposited into the margin account to increase the security. On 25 July 1990 a \$10,000,000 cheque drawn on Mr Hsu Sun's account was paid into Chintung. Mr Hsu Sun has refused to provide details of the source of these funds.
- 18.93 Mr Hsu Sun has denied operating the margin account at Chintung as a nominee except in the acquisition of the 30,000,000 WTCG shares from the Chiu Ming Hung syndicate discussed at Chapter 6.

#### Grand Ocean

- 18.94 Grand Ocean is discussed fully in Chapter 22. In essence however, Madam Hsu Jye has claimed that it was operated for the benefit of herself, her brother (Mr Hsu Bin) and their friends from Taiwan. It is my view however that Grand Ocean frequently acted as a nominee for Mr David Tong and Mr Jackson Chang and my reasons for this are set out in Chapter 22.
- 18.95 On 1 May 1990 Grand Ocean held 32,498,000 Tomson Pacific shares as security in its margin account and had a margin available of \$39,178,912.40.
- 18.96 On 7 May 1990 a further 96,347,220 Rivera shares were deposited as security. After the purchase of 1,400,000 Tomson Pacific shares and 6,128,000 WTCG shares on 8 May 1990 the margin available had increased to \$51,175,958.83.

18.97 Further Tomson Pacific and WTCG shares were bought during the next six days and following a stock deposit of 27,766,000 Tomson Pacific shares on 11 May 1990 the securities held in Grand Ocean's margin account as at 14 May 1990 were:

<u>Share</u>	<u>Number</u>	<u>Market Value</u>
		<u>\$</u>
Regal	33,736,000	85,183,400.00
Cathay City Int.	301,100	418,529.00
Tomson Pacific	72,224,000	62,834,880.00
WTCG	11,214,000	22,428,000.00
Rivera	78,347,220	50,142,220.80
Tomson Pacific Warrants	640,800	297,972.00
		<hr/>
		<u>\$221,305,001.80</u>

18.98 The holdings above represented approximately 5.8% of Tomson Pacific, 0.8% of WTCG and 6.8% of Rivera. These significant holdings allowed Grand Ocean to continue purchasing Tomson Pacific shares.

18.99 On 19 June 1990 the Chintung margin account of Grand Ocean held 30,462,000 Tomson Pacific shares.

## **CONCLUSIONS**

### The Rivera placement

18.100 It is quite evident, in my view, when one looks at the source of funds for the acquisition of these shares, that the clients of Ta Yuan Securities appear to have very little, if anything, to do with the funds used to acquire the shares.

- 18.101 It can be seen from the analysis of the source of these funds that the majority of the funds came from the sale of 100,000,000 Regal shares to FEHIL from South View. There is no evidence to suggest that the placees in this placement held any beneficial interest in the Regal shares.
- 18.102 The \$15,000,000 from Martra was ultimately the repayment of a loan from Martra made to Tomson Investment, the repayment being directed by Mr Jackson Chang and Mr David Tong. In my discussion of this loan in Chapter 19, I conclude that I am unable to determine the source of this loan and so I cannot comment whether the placees in the second placement had any interest in these funds.
- 18.103 A possible source of funding may have been a Taiwanese currency swap. However I have received no evidence to support this conclusion.
- 18.104 Further I have not obtained satisfactory evidence to explain the reason for the circuitous route that the money followed in order to reach Rivera. Accordingly, I believe it is reasonable to suggest that these transactions were designed to conceal the true identity of the party providing the funds. In support of this is the \$5,400,000 received from FEHIL that passed through four bank accounts, three of which were controlled by Madam Hsu Jye before being used to fund the placement.
- 18.105 My investigation has been hampered by the inability to discuss this transaction with the Taiwanese placees. However it is noted that two of these had close connections to Mr David Tong and Madam Hsu Jye.
- 18.106 The critical element in the placement was timing. Rivera needed the funds to be available on or before 19 June 1990 to assist in its participation in the Rights Issue.
- 18.107 It is clear from the way in which the proceeds were banked directly to Rivera that no time could be lost by following the agreed procedure of banking the money through Cresvale Hong Kong.

18.108 Mr Chiang Wee Thiong's evidence contradicts that given by Mr John Gracey. I find it difficult to believe that Mr Chiang Wee Thiong did not speak to Mr John Gracey concerning the matters in his file note. However I am unable to conclude whether Mr Chiang Wee Thiong intentionally gave this information concerning Martra and "*its clients*" to allay any concern that Mr John Gracey had about the independence of the placees or whether he innocently passed it on from Mr Jackson Chang.

The dealing in Tomson Pacific shares

18.109 My investigations into the activities of Grand Ocean, Martra and Mr Hsu Sun have concluded that these three frequently acted under the instructions of Mr Jackson Chang and Mr David Tong in 1990.

18.110 Whilst I have not thoroughly examined all the circumstances surrounding the individual purchases of the large quantity of Tomson Pacific shares by these three immediately preceding the Rights Issue, it appears likely that the purchases were not financed from the resources of the alleged participants but rather from a third party or parties.

18.111 In particular the large amount of shares held by Grand Ocean in its margin account cannot be traced to any specific purchases funded by Madam Hsu Jye or Mr Hsu Bin.

18.112 Mr Hsu Sun has refused to provide to me evidence that would substantiate his claim that this trading was all for his benefit. I am critical of his failure to provide this information although I note that it is doubtful that he is under any legal obligation to provide this to me.

18.113 As can be seen from Chapter 19 concerning Martra, I have found several instances where Martra has been used for the sole benefit of Mr Jackson Chang and Mr David Tong and I accordingly believe it is likely that this may be another such instance.

18.114 It is my view after considering the full weight of evidence that Martra, Grand Ocean and Mr Hsu Sun may well have acted in concert with Rivera and its management in buying large parcels of Tomson Pacific shares thus ensuring the success of the Tomson Pacific Rights Issue.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 19

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## 19 INTRODUCTION

- 19.1 Following the initial information gathering phase of my investigation it became apparent that several Liberian companies featured prominently in my enquiries. One of these was Martra Inc ("Martra"). I was appointed to investigate the affairs of Martra by the Financial Secretary on 23 October 1992, in furtherance of my investigation into the affairs of Tomson Pacific and WTCG.
- 19.2 Martra was directly involved in the Guangzhou Land acquisition (Chapter 10), the buyback of the Chiu Ming Hung Syndicate shares (Chapter 6), the purchase of large parcels of Tomson Pacific, WTCG and Rivera shares during 1990, significant loans from Tomson Investment in June of 1990 and as a conduit bank account for large sums of money to be passed to associates and nominees of Mr David Tong. The latter three activities are discussed in this chapter.
- 19.3 Because of Martra's involvement in these transactions it has been necessary to consider who effectively controls Martra's activities and who receives the benefit of its transactions.
- 19.4 Martra was "*managed*" in Hong Kong by Madam Hsu Jye, Mr David Tong's sister-in-law, who claims that no books and records were kept in Hong Kong and that all documents recording transactions were returned to Martra's beneficial owners in Taiwan on completion of each transaction.
- 19.5 I have tried several times to contact the alleged beneficial owners of Martra in Taiwan but they have not answered my requests for information or meetings.
- 19.6 In the absence of any books and records in Hong Kong, I have sought to reconstruct Martra's accounts from source documentation in order to determine the true nature of transactions and the persons for whom they were beneficially carried out. This has been a time consuming and complicated process.

## INCORPORATION, DIRECTORS AND SHAREHOLDERS

19.7 Martra was incorporated on 14 December 1988 in the Republic of Liberia. On 15 December 1988, Madam Hsu Jye was transferred the sole bearer share. On 31 August 1989, Madam Hsu Jye and her two younger brothers, Mr Hsu Bin and Mr Hsu Sun were appointed directors of Martra. The next day, at a directors meeting held at Flat H, 8/F, Granville House, 1-3A Magazine Gap Road, Hong Kong, (a property owned by David Tong Company at the time) Mr Hsu Bin was appointed President and Mr Hsu Sun appointed Secretary and Treasurer. Madam Hsu Jye maintained that she did not seek any legal or accounting advice in respect of Martra. She explained the reason for acquiring a Liberian company, as follows:

*"Perhaps I have to explain this; when I first came to Hong Kong, I was entirely engaged in film making. It was only in early 1989 that I joined Tomson Pacific and then I began to get involved with share tradings and other business. Well, at that time we [Mr Hsu Sun and Mr Hsu Bin] began to think we might engage in share tradings and property trading etc but at that time we had no definite ideas. Later on we thought we had better buy a company to do this kind of business. The idea at that time was, we just bought a Liberian company, well, we thought it was rather simple, and then we would just leave the company there until we can do something about it."*

19.8 She added that a Liberian company was attractive because no audit was required. Madam Hsu Jye could not remember who paid for Martra nor has any evidence been provided to assist me in this regard.

19.9 On 27 October 1989, the directors resolved to open a Hong Kong Dollar current account with Security Pacific Asian Bank ("SPAB"). Madam Hsu Jye and Mr Hsu Sun were authorised to operate the account. When asked the reason for the account to be opened Madam Hsu Jye stated:

*"The thinking at that time was I bought the Liberian company and then we open a bank account and then we just wait to see what business opportunities would arise."*

19.10 In direct contradiction she stated in an examination the previous day, claiming qualified privilege, that she opened the bank account on the instruction of a Mr Koo Tai Ne ("Mr Danny Koo"). Mr Danny Koo is discussed below.

19.11 Madam Hsu Jye stated that she and Mr Spancer Lau of Tomson Pacific arranged the purchase of Martra. She added:

*"Well, when we purchased this company it was purchased in the name of myself and my two younger brothers, the three of us."*

19.12 Although Madam Hsu Jye asserted that she and her brothers held equal interests in Martra, no documentation has been produced to me in support of this claim.

19.13 At a meeting of the board of directors held on 6 November 1989 the transfer of the bearer share from Madam Hsu Jye to Mr Danny Koo was approved. It was subsequently resolved that the initial share be cancelled and a new share be issued in Mr Danny Koo's name.

19.14 Madam Hsu Jye had initially been transferred the subscriber share which was classified as "*capital stock*" and only transferable upon registration of the transfer with Martra. A bearer share, however, could be transferred without any need for registration.

19.15 Mr Danny Koo was transferred this registered share which was then cancelled. He then applied for a bearer share to be issued thus converting the nature of Martra's ownership from a traceable form to an untraceable one.

- 19.16 The three office bearers, Mr Hsu Bin, Mr Hsu Sun and Madam Hsu Jye resigned and Mr Danny Koo and Madam Sun Huei Chuan were appointed directors. Mr Danny Koo was also appointed President and Madam Sun Huei Chuan Secretary and Treasurer.
- 19.17 According to Mr David Tong, Mr Danny Koo is an old friend. I understand that Mr Danny Koo is currently the General Manager and a significant shareholder of the Tomson Development group of companies in Taiwan. I have received evidence that Mr David Tong is the major shareholder in the Tomson Development group of companies. I am not aware of any direct relationship this group has with Tomson Pacific, other than common directorships.
- 19.18 I have received evidence that Madam Sun Huei Chuan is a friend of Mr Danny Koo. Although Madam Hsu Jye stated that she has never met Madam Sun Huei Chuan, I believe Madam Hsu Jye is a signatory on a joint bank account bearing her name in Hong Kong.
- 19.19 In her first series of interviews in February 1993, Madam Hsu Jye stated that Martra was *"engaged in some investment business in Hong Kong."*
- 19.20 When asked why Martra had been transferred to Mr Danny Koo, Madam Hsu Jye said:  
  
*" . . . we had the company already, so when Mr Koo said he would be interested to acquire a company, so we thought it did not matter if we transferred the company to him. "*
- 19.21 According to Madam Hsu Jye, Mr Danny Koo paid her for Martra in late 1989 or early 1990 when he visited Hong Kong. She could not remember whether she was paid in cash or by cheque, however she thought she received what she had paid for it.

## **BOOKS AND RECORDS**

19.22 Madam Hsu Jye has only been able to provide me with very limited records relating to Martra, for example copies of its margin account statements from Chintung. I had already accessed these records directly.

19.23 When asked whether she had previously held any documents or books of account relating to Martra, she answered:

*"We did not have very formal accounts. We only have a sort of a cash book."*

19.24 In relation to the current whereabouts of that cash book however, she stated:

*"Well when I had dealings in shares for Mr Koo I would hand over the documents to him after each transaction was completed."*

19.25 Madam Hsu Jye maintained that she sent all share trading and bank records to Mr Danny Koo in Taiwan, keeping no copies of these in Hong Kong.

19.26 No tax returns have been completed for Martra although it appears to have earned profits from commercial transactions in Hong Kong. When asked the reason for this, Madam Hsu Jye replied claiming qualified privilege that:

*"At that time we did not compile a profit and loss account and I was not quite clear what I should do about these things. Only, of course, we collected some interest on the loan, but I did not know exactly what I was required to do at that time."*

19.27 Neither has Martra been registered as an oversea company carrying on business in Hong Kong under Part XI of the Companies Ordinance.

## **BANK ACCOUNT**

- 19.28 The mandate to open the bank account at SPAB was dated 6 November 1989. It authorised Mr Danny Koo and Madam Hsu Jye to operate the account singly and was allegedly signed by Mr Danny Koo and Madam Sun Huei Chuan.
- 19.29 In a letter dated 20 February 1990, from Mr Lui Chi Keung ("Mr Daniel Lui") the then General Manager of Tomson Pacific, to the Vice President and Manager of SPAB, Kwun Tong Branch, Mr Daniel Lui introduced Martra and two other Liberian companies. The letter from Tomson Pacific stated in part:

*"We have the pleasure to introduce the following three companies to open current accounts and deposit accounts with your esteemed Bank:*

- 1. Grand Ocean Corporation*
- 2. Martra Inc.*
- 3. South View Properties Ltd.*

*The above companies, which are overseas incorporation, act primarily as investment vehicles for Taiwan investors to invest in securities in Hong Kong. It is to our understanding that these companies are of good integrity and they are also holding shares in Tomson Pacific Ltd.*

*We would appreciate that you render your kind assistance in this regard. "*

- 19.30 South View and Grand Ocean are discussed in Chapters 21 and 22.
- 19.31 I have not traced the bank statements of Martra back to the first transaction, however I note that a cheque numbered 761007 was dated 15 January 1990. It remains to be seen why the letter from Mr Daniel Lui was necessary given that transactions were already passing through the account.

19.32 When asked the reason Mr Danny Koo had authorised her to be a sole signatory, Madam Hsu Jye stated:

*". . . firstly, Mr Koo and I were good friends, and secondly, Mr Koo had great trust in me. Thirdly, Mr Koo is usually in Taiwan, he needed somebody in Hong Kong to handle his account for him. "*

19.33 I have reconstructed Martra's cashbook by analysing bank statements and obtaining copies of cheques, and I believe that the majority of transactions were for the purchase of shares or transfers to other accounts operated by Madam Hsu Jye. A reconstructed schedule of receipts and payments is shown at Appendix 117. I have not traced some of the smaller transactions. These are shown as blanks in the column headed *"description"*.

19.34 The major transactions through Martra's account from 31 March 1990 to 31 December 1990 were:

Company/Individual	Payments to \$	Receipts from \$
David Tong Company	39,620,010	159,643,347
Cresvale Hong Kong	84,990,503	22,991,166
Tomson Investments	Nil	98,322,539
Baring Securities	1,542,528	11,365,916
DMT Securities	2,024,730	Nil
Seapower Securities	1,500,000	Nil
Tung Ming Hsun, Chiang Pei Ling & Tsai Yueh Er*	Nil	2,700,000
Hsu Jye & Hsu Sun	10,000,000	6,302,357
Hsieh Hui Ching, Chang Yueh Chun & Shih Hsiao Kuei**	15,000,000	482,000
Chintung	100,264,750	10,000,000
Danny Koo	1,780,000	Nil
Grand Ocean	300,000	Nil
South View	130,000	Nil
Rivera	68,000,000	Nil
TOTAL	\$325,152,521	\$311,807,325

\* Referred to as "the Tung Ming Hsun joint account".

\*\* Referred to as "the Hsieh Hui Ching joint account".

19.35 Payments to share brokers from 31 March 1990 to 31 December 1990 totalled \$190,322,511. I set out below a summary of the share trading by Martra under the heading "Share Trading".

19.36 Of the \$159,643,347 received from David Tong Company, \$147,848,347 (93%) was paid by Martra to share brokers.



19.37 Of the \$39,620,010 paid to David Tong Company by Martra, \$25,570,005 (65%) was received by Martra from share brokers.

19.38 The money received from Tomson Investments was as follows:

Reference	Amount \$	Date
(1)	14,000,000	22/5/90
(2)	1,000,000	31/5/90
(3)	15,000,000	19/6/90
(4)	44,000,000	19/6/90
(5)	24,000,000	25/6/90
(6)	322,012	03/7/90
(7)	527	10/7/90
TOTAL	\$98,322,539	

19.39 Receipts (1) and (2) were partial repayments of a \$30,000,000 loan from Martra to Tomson Investments. I believe (3) was the final repayment of the \$30,000,000 loan. Receipts (4) and (5) were loans made to Martra by Tomson Investments which were in turn lent to Rivera. Receipts (6) and (7) were possibly interest receipts in relation to the \$30,000,000 loan although there is a small discrepancy between these figures and the interest shown in Tomson Investments' books.

19.40 These loans are discussed in detail in the section below headed "Loans".

19.41 The \$10,000,000 paid to Madam Hsu Jye and Mr Hsu Sun came from Chintung and will be discussed below in the subsection dealing with share trading.

19.42 The \$1,780,000 paid to Mr Danny Koo appears to have come from the sale of shares by Baring Securities. This is the only evidence of share trading directly linking Mr Danny Koo. As stated earlier, Madam Hsu Jye controls a bank account in Mr Danny Koo's name in Hong Kong. I have not been empowered to investigate this bank account. Accordingly even though these payments were made out to him, I am unable to say whether he received the benefit of them.

### **SHARE TRADING**

19.43 Martra carried on share trading at Baring Securities, Cresvale Hong Kong and Chintung, although initially Madam Hsu Jye only admitted to dealing with the latter.

#### Martra's Share Trading at Baring Securities

19.44 It can be seen from the above table that Martra paid and received money from Baring Securities.

19.45 Martra's directors resolved to open a share trading facility with Baring Securities on 13 July 1990 and Madam Hsu Jye was authorised to operate the account. A corporate account opening form was completed by Martra and signed by Madam Hsu Jye on 16 July 1990.

19.46 Between 1 July 1990 and 31 December 1990, Martra principally bought and sold the following shares:

Stock	Number bought	Number sold	Value bought \$	Value Sold \$
Rivera	1,100,000	2,450,000	442,662	1,225,379
Tomson Pacific	5,120,000	6,600,000	4,127,224	3,752,558
WTCG	8,208,000	8,546,000	18,325,924	16,724,555
Total			22,895,810	21,702,492

- 19.47 Martra had three accounts at Baring Securities styled "Rivera Ltd A/C Martra Inc.", "Rivera Ltd A/C Martra A/C South View Property Ltd." and "Rivera A/C Martra A/C Tai Fook Nominees Co. Ltd.".

Martra's Share Trading at Cresvale Hong Kong

- 19.48 The account opening forms for Cresvale Hong Kong were dated 13 January 1990 and were apparently signed by Mr Danny Koo. I have not been able to verify this with Mr Danny Koo. They authorised Madam Hsu Jye solely to operate the account. On those forms Madam Hsu Jye's title was shown as "*Manageress*". Mr Spancer Lau witnessed the signature of Madam Hsu Jye.
- 19.49 The address provided for Martra was given as 11th Floor, Siu Ying Commercial Building, 155 Queens Road, Central, Hong Kong. Madam Hsu Jye said that this was a correspondence address of an accountants firm, however she could not remember the name of the firm.
- 19.50 I have visited this address and it is the office of Peter Y H Lam & Co and Sincere Secretaries Limited. The latter provided a correspondence address for Martra. All documents received by it were forwarded to Mr Spancer Lau.

19.51 In his first examination Mr Spencer Lau denied any knowledge of Martra. In his later examinations when presented with evidence showing his involvement, he acknowledged that he had assisted in the administration of Martra under the direction of Madam Hsu Jye.

19.52 Martra bought predominantly Tomson Pacific, Rivera, WTCG and Regal shares through Cresvale Hong Kong.

19.53 I set out below a table to show the important months when the major purchases (shown as numbers of shares) through Cresvale Hong Kong occurred:

Stocks Purchased	March 1990	April 1990	June 1990	July 1990
Regal	1,070,000	5,550,000		
Rivera	5,000,000		15,000,000	35,000,000
Tomson Pacific			10,266,000	2,520,000
WTCG			2,988,000	8,120,000

19.54 The majority of the Tomson Pacific shares were bought in June and July 1990 coinciding with the period leading up to and immediately following the Tomson Pacific Rights Issue. The most active months for trading in Rivera and WTCG shares were June and July 1990. The majority of WTCG shares bought in July 1990 were purchased in the first week. There was however trading throughout the month. Trading in Regal shares was predominant in March and April 1990 and these shares probably made up a portion of those sold by South View in the Regal Transactions (Chapter 7).

19.55 In total during the year 1 January 1990 to 31 December 1990, Martra bought and sold the following shares through Cresvale Hong Kong:

Stock	Number Bought	Number Sold	Value Bought \$	Value Sold \$
Rivera	59,200,000	16,460,000	41,516,630	9,038,610
Tomson Pacific	19,598,000	34,000,000	16,812,493	28,916,200
WTCCG	11,844,000	10,000,000	26,817,293	22,276,752
Total			\$85,146,416	\$60,231,562

- 19.56 Mr Chiang Wee Thiong, the sales manager at Cresvale Hong Kong from January to August 1990, has told me that apart from Martra, he also acted on behalf of Rivera and the Tomson Pacific group of companies. He added that he received instructions from Mr Robin Kwan and Mr Michael Hsu [Mr Hsu Sun].
- 19.57 I understand from Mr Hsu Sun that Mr Robin Kwan was an associate of Mr Jackson Chang, although Mr Hsu Sun could not recall where he worked. I have not been able to locate Mr Robin Kwan.
- 19.58 Mr Chiang Wee Thiong was adamant that he had never dealt with either Madam Hsu Jye or Mr Danny Koo in relation to the account. He thought that Martra was one of Tomson Pacific's investment companies.
- 19.59 According to Mr Hsu Sun, he was requested by his sister Madam Hsu Jye to place share trading orders on behalf of Martra through Cresvale Hong Kong.
- 19.60 A complete summary of the share trading through Cresvale Hong Kong can be found at Appendix 118.
- 19.61 In Chapter 21 I discuss what appears to be a loan from Rabobank in Singapore to South View. Security in relation to this loan was 41,254,000 WTCCG shares. By way of a letter dated 2 July 1990 Martra instructed Cresvale Hong Kong to deliver these shares as security on the loan to HSBC Nominees to be held for the account of Rabobank.

- 19.62 Madam Hsu Jye claims that these shares were lodged at the direction of Mr Danny Koo.
- 19.63 In Chapter 21 I analyse how South View applied the funds from the loan and I conclude that little, if any, benefit was derived by Mr Danny Koo from those transactions.

#### Martra's Share Trading at Chintung

- 19.64 As discussed in Chapter 5, on 16 May 1990 Sawbridge signed the Placing Agreement and the Share Sale Agreement putting in place the mechanism to transfer control of 34.5% of WTCG to Tomson Pacific and commencing the process that led to the share placement.
- 19.65 In the minutes of a meeting of the directors of Martra held on 18 May 1990, at which Mr Danny Koo and Madam Sun Huei Chuan were noted as being present, it was resolved to open a share trading account at Chintung. Madam Hsu Jye was authorised to operate this account. The minutes state that the meeting took place at Siu Ying Commercial Building, Martra's correspondence address, which leads me to believe that it was probably a paper meeting as the two directors of Martra reside in Taiwan and I have no evidence that these two were in Hong Kong at that time.
- 19.66 Madam Hsu Jye is again described as the "*Manageress*" of Martra in Chintung's account opening documentation. She executed these documents with Martra's chop.
- 19.67 Mr Freddie Kwan, a salesman who worked with Mr Peter Mou, was Martra's account executive at Chintung. I have been unable to locate Mr Freddie Kwan.
- 19.68 Martra was given a trading limit of \$10,000,000 "*subject to personal guarantee provided by client*". Mr David Tong (rather than Mr Danny Koo or Madam Sun Huei Chan) personally provided a written guarantee dated 11 May 1990 which was witnessed by Madam Hsu Jye.

19.69 Mr David Tong explained the reason for giving his personal guarantee to Martra:

*"That is because Mr Koo was a very good friend of mine in Taiwan. We have had many other similar guarantees made in Taiwan, so sometimes he would help me and sometimes I would help him - it is all on trust. In Taiwan everything is based on trust. If he needed my help then I would certainly help him and vice versa. "*

19.70 When asked why a guarantee from Mr Danny Koo was not provided when it was claimed that he was the beneficial owner, Mr David Tong stated:

*"Because there were many people from Taiwan who came to Hong Kong to speculate on stocks at the time and as far as Arthur Lai of Chintung was concerned the only Taiwanese he knew was me. And I was the only person he trusted because he knew me. Because Chintung was in the securities business so all they needed was to, you know, get someone they could trust to provide a guarantee . . . there had also been many other Taiwanese friends who asked me to provide them with the guarantees. We did that frequently back in 1990/91, it was a case of Taiwanese helping fellow Taiwanese. It was a very common practice for us to do in Taiwan, even if I have to make compensation or payment of up to 100 million dollars. But, of course, now I do not do such things any more. "*

19.71 It is notable that Martra guaranteed David Tong Company's margin account at Chintung. Mr David Tong explained this as follows:

*"I think, as I have stated already, it is a case of me scratching their back and they scratching my back - helping each other. It is very common for Taiwanese to do such things. In Taiwan, for example, it was very common for me, for example, to provide guarantee for a friend, for friends who would like to open accounts in the bank, because normally in such cases a third party is required to act as the guarantor. In the past when we had any securities transactions in Taiwan, three guarantors would be required."*

19.72 It was necessary for Martra's \$10,000,000 trading limit to be approved by Chintung's Credit Committee. Minutes of the meeting dated 1 June 1990 that dealt with the approval stated:

*"PM [Mr Peter Mou] said Martra was a company owned by Tomson's [Tomson Pacific's] trading partner in Taiwan who want to increase their stake in Tomson. This is a potential good client. Members ratified subject to receipt of a personal guarantee and purchase of shares in Tomson will have to be subject to existing restriction resulting from stock concentration."*

19.73 A summary of the shares purchased by Martra through Chintung is at Appendix 119. The shares purchased were predominantly shares in Regal, Tomson Pacific, WTCG and Rivera.

19.74 The payments and receipts made to Chintung from Martra's bank account are shown below:



Reference	Date	Payments \$	Receipts \$
(1)	22/5/90	14,000,000	
(2)	8/6/90	800,000	
(3)	28/8/90		10,000,000
(4)	3/9/90	10,000,000	
(5)	19/9/90	11,000	
(6)	19/12/90	75,435,750	
		\$100,264,750	\$10,000,000

19.75 The \$14,000,000 payment to Chintung (reference 1) was a partial payment for WTCG shares bought for Martra on its cash, not margin account. The WTCG shares were purchased in the following transactions:

Date	Number of shares	Value \$	Average Cost per share
10/5/90	5,000,000	10,186,256	\$2.04
11/5/90	1,000,000	2,012,100	\$2.01
11/5/90	650,000	1,324,216	\$1.90
14/5/90	500,000	1,006,050	\$2.01
Total	7,150,000	\$14,528,622	

19.76 The balance of \$528,622 was settled by Grand Ocean.

- 19.77 The timing of these purchases is of note as it was on 5 May 1990 that the intention to acquire 34.5% of WTCG was advertised by Tomson Pacific. On 17 May 1990 the approval of the acquisition by the independent members of the board was advertised. The placing and share sale agreements having been signed on 16 May 1990.
- 19.78 The source of the \$14,000,000 was partial repayment of a \$30,000,000 loan previously made to Tomson Investment and is discussed below.
- 19.79 The source of the \$528,622 from Grand Ocean was a payment made from its margin account at Chintung. Grand Ocean was buying WTCG shares itself at this time using Chintung. The funds were available in that account because of the large quantities of stocks held on deposit. The shares on deposit included:

Stock	Number	Market Value (\$)
Regal	34,546,000	82,910,400
Tomson Pacific	25,984,000	27,748,000
WTCG	16,812,000	34,884,900
Rivera	69,824,254	45,385,765
TOTAL		\$190,929,065

- 19.80 Madam Hsu Jye claims Grand Ocean is her company. Grand Ocean is discussed in Chapter 22.
- 19.81 The payment of \$800,000 (reference 2) was paid into Martra's margin account and applied against a margin call following the purchase of 502,000 Regal shares and 20,000 Tomson Pacific shares. The \$800,000 payment appears to have come from David Tong Company. David Tong Company had originally received this money as a small part of the proceeds of the sale of Regal shares discussed at Chapter 7. There is no apparent connection between Mr Danny Koo and the ultimate source of these funds.

- 19.82 The receipt of \$10,000,000 (reference 3) was borrowed from Chintung against the security of shares consisting primarily of 203,053,220 Rivera shares. This number represented approximately 16% of Rivera's issued capital. These shares were deposited on 14 August 1990. They had previously been held in the account of Grand Ocean and are discussed in Chapter 9. Madam Hsu Jye has said they were borrowed from Peace Forest, a company controlled by Mr David Tong that held the controlling interest in Rivera.
- 19.83 The \$10,000,000 was withdrawn from Martra's account on 29 August 1990 following a written instruction on Martra letterhead to transfer this sum to the account of Mr Hsu Sun and Madam Hsu Jye. Madam Hsu Jye signed on behalf of Martra. A copy of the letter can be seen at Appendix 120.
- 19.84 I have not been able to obtain access to Madam Hsu Jye's and Mr Hsu Sun's joint bank account to determine how this money was spent. Again, however there seems no apparent connection between this transaction and Mr Danny Koo.
- 19.85 The deposit on 3 September 1990 of \$10,000,000 (reference 4) into Martra's margin account simply had the effect of increasing the margin available to that company. It does not appear to be related to any specific purchase of shares or withdrawal of stock held as security.
- 19.86 The funds were transferred from David Tong Company. Madam Hsu Jye signed the request on behalf of David Tong Company. David Tong Company obtained these funds from an overdraft facility with American Express Bank Limited ("Amex Bank"). Mr David Tong had personally guaranteed this facility and it is discussed in more detail in Chapter 25 concerning David Tong Company.

- 19.87 On 7 September 1990, the Martra margin account received \$31,000,000. This does not appear to have come from Martra's bank account. I am unable to trace the origin of these funds however when combined with the \$10,000,000 deposited above and the considerable stock holdings held as security, Martra was able to purchase 55,000,000 Tomson Pacific shares on 8 October 1990, and 17,000,000 Tomson Pacific and 12,000,000 Rivera shares on 11 October 1990. At the time, the 72,000,000 Tomson Pacific shares represented approximately 2.9% of the share capital of that company. These transactions are at least partially attributable to David Tong Company and not Mr Danny Koo.
- 19.88 The 55,000,000 Tomson Pacific shares were purchased from accounts at Chintung held in the names of the members of the Chiu Ming Hung Syndicate discussed in Chapter 6. The shares were purchased for 55 cents each when I understand the market price was around 49-51 cents per share.
- 19.89 Madam Hsu Jye signed the cheque for \$11,000 to Chintung (reference 5). It was deposited into Martra's margin account on 19 September 1990 whilst Martra had a facility in excess of \$40,000,000 available. There does not appear to be any reason for a payment of this size at this time.
- 19.90 The payment of \$75,453,750 on 19 December 1990 (reference 6) was for the acquisition of 30,000,000 WTCG shares bought from the Chiu Ming Hung Syndicate at more than double the then market price and this is discussed in detail in Chapter 6. The funds came from David Tong Company. David Tong Company sourced the funds from various parties, the identities of some I have been unable to determine.
- 19.91 In summary this transaction assisted Mr David Tong to fulfil an obligation to repurchase WTCG shares from the Chiu Ming Hung Syndicate thus ensuring they suffered no loss following their investment in the July 1990 WTCG share placement. This repurchase is discussed in Chapter 6.

19.92 I am not aware of whether this buyback of the WTCG shares is connected with Martra's purchase of 55,000,000 Tomson Pacific shares also from the Chiu Ming Hung Syndicate members.

### **LOANS**

19.93 Following an examination of Tomson Pacific's records I considered it necessary to investigate three loan transactions between Martra and Tomson Investment:

- \* \$30,000,000 loan by Martra to Tomson Investment on 25 April 1990
- \* \$44,000,000 loan by Tomson Investment to Martra on 19 June 1990
- \* \$24,000,000 loan by Tomson Investment to Martra on 25 June 1990

#### \$30,000,000 loan from Martra to Tomson Investment

19.94 The terms of this loan transaction were:

Lender:	Martra
Borrower:	Tomson Investment
Amount:	\$30,000,000
Drawdown:	25 April 1990
Maturity:	25 July 1990 (on or before)
Interest:	1% over prime rate paid monthly

There was no reference to security for this loan.

19.95 A copy of the one page loan facility letter dated 25 April 1990 is at Appendix 121. It was signed by Madam Hsu Jye and Mr Jackson Chang on behalf of Martra and Tomson Investment respectively.

19.96 Although the loan facility letter was headed "Loan Facility No 6" Madam Hsu Jye has insisted that this was the only loan from Martra to Tomson Investment. She added however that there were other loans from Martra to Peace Forest. [HJ 3/2/93 p.20] The facility letter was not prepared by Madam Hsu Jye on behalf of Martra as the lender, but by the staff of Tomson Pacific.

19.97 When asked the reason why Martra advanced these monies, Madam Hsu Jye could not recall whether negotiations had been conducted between Mr David Tong and Mr Danny Koo through her or whether they had dealt directly.

19.98 She added that she had signed the loan facility letter because:

*"First, I knew that Mr Koo had agreed it, that Martra would advance this loan. I cannot remember exactly whether Mr Koo told me or I asked him but anyway Mr Koo told me that he had decided to advance such a loan to somebody and then he asked me to sign on his behalf. That means, first, I was aware about this matter and then after this paper had been signed already, and then I signed it."*

19.99 When asked why the loan was unsecured, Madam Hsu Jye commented:

*"To me it was not surprising because Mr Koo and Mr Tong were good friends, so they had enough trust in each other."*

19.100 Of interest is that on 30 April 1990, 5 days after the loan was drawn down, Cresvale Hong Kong advised Martra that it was holding 30,344,000 Tomson Pacific shares on its account. This represented approximately 2.43% of Tomson Pacific's issued capital. 29,644,000 of these shares had been deposited by Martra on 20 April 1990. I have been unable to determine the source of these shares or whether this was in fact partial security for the loan.

19.101 In addition, I have been unable to trace the source of these loan funds as there is no evidence that they were drawn from Martra's bank account. Madam Hsu Jye could not recall how payment was effected stating:

*"I cannot remember exactly what happened at that time and I am not sure whether a cheque of Martra was issued.*

*I cannot remember exactly whether the whole sum came from Taiwan or whether the money was already in Hong Kong at that time but because Taiwan had the very tight exchange control, so there were some cash swaps. Because in Taiwan very often remittances were done through underground banks to Hong Kong, so I cannot remember exactly what happened with this loan, whether it was sent from Taiwan or not and how many times. "*

19.102 Madam Hsu Jye acknowledged that the monies had not been drawn from Martra's bank account. Although requested to produce any documentation which could assist me to ascertain the source she has failed to do so.

19.103 Details of repayment of the loan by Tomson Investment are reproduced below:

Date	Interest Charged \$	Payments \$	Outstanding balance \$
25/4/90			30,000,000
01/05/90	59,178		30,059,178
22/5/90		14,000,000	16,059,178
31/5/90		1,000,000	15,059,178
01/6/90	260,000		15,319,178
01/6/90		15,000,000	319,178
07/07/90		319,178	Nil

19.104 The principal repayments of \$14,000,000 and \$1,000,000 on 22 and 31 May 1990 were paid to Martra's bank account. Mr Daniel Lui approved these payments.

19.105 The amount of \$14,000,000 received by Martra was then paid to Chintung by Martra, in part settlement of 7,115,000 WTCCG shares bought on Martra's behalf between 10 May and 14 May 1990, at a total cost of \$14,528,621.79.

19.106 The total cost of \$14,528,621.79 was paid by the \$14,000,000 repayment by Tomson Investment and the balance of \$528,621.79 by Grand Ocean.

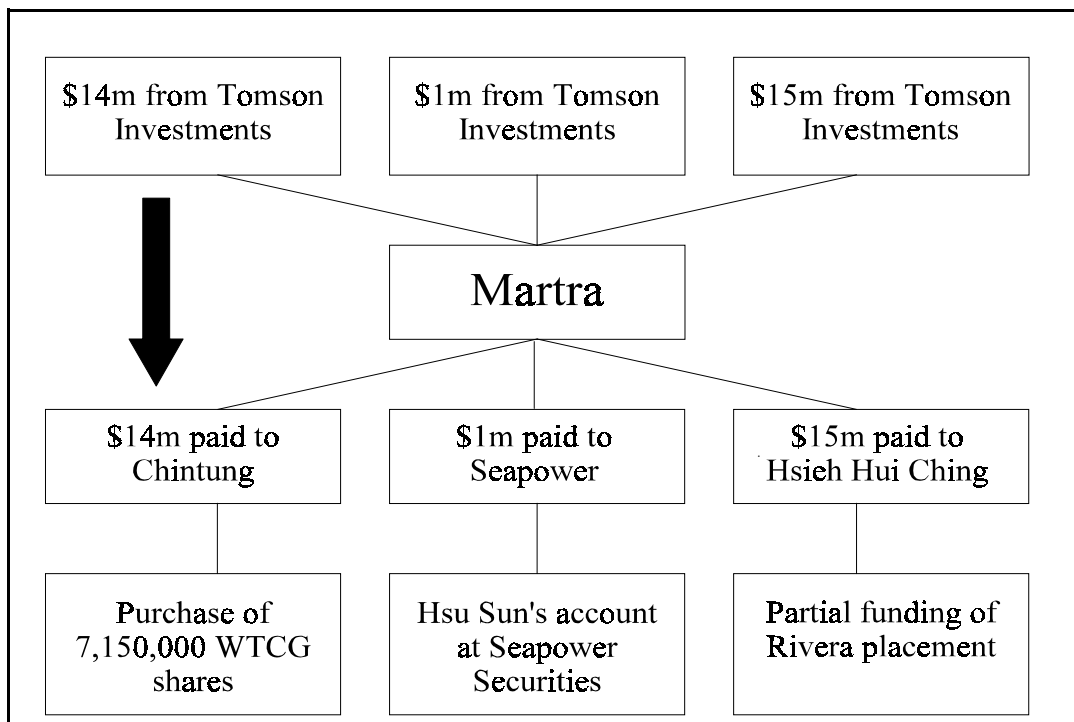
19.107 I do not know what happened to these shares. I have noted that the shares did not appear on Martra's first margin trading statement at Chintung as securities held, which suggests they were withdrawn or deposited into another account prior to 1 June 1990.



19.108 The \$1,000,000 was paid as part of a larger payment to Seapower Securities Limited ("Seapower") and was credited into an account in Mr Hsu Sun's name. This deposit was necessary following the withdrawal of Regal shares from that account.

19.109 The principal repayment of \$15,000,000 on 1 June 1990 was deposited into Martra's account at SPAB. The funds were then immediately transferred to the account of Madam Hsieh Hui Ching. Madam Hsu Jye is the sole signatory for this account. Madam Hsu Jye, through her solicitors has advised that this money was then applied towards the funding of a placement of 110,000,000 Rivera shares discussed in Chapter 18.

19.110 These payments are graphically represented in the diagram below:



\$44,000,000 loan by Tomson Investment to Martra

19.111 I have been unable to locate any documentation which sets out the terms of this loan transaction.

- 19.112 On 19 June 1990, Tomson Investment drew a cheque for \$44,000,000 in favour of Martra. Mr Jackson Chang and Mr David Tong signed the cheque. Martra then applied for a cashier's order in favour of Rivera. Madam Hsu Jye signed the application form. Rivera received \$44,000,000 from Martra and showed this receipt in its books as "*Loan from Mr Tong*". This amount equalled 8% of Rivera's net assets as at 31 March 1990.
- 19.113 Mr David Tong has stated that the entry "*Loan from Mr Tong*" was a mistake and that it should have referred to Martra.
- 19.114 At the time that Rivera was to take up 35.29% of the Tomson Pacific Rights Issue, which was to be used to fund the acquisition of WTCG, it was unable to fund this acquisition from its own cash resources. The Rights Issue was to close on 19 June 1990.
- 19.115 On 22 June 1990, David Tong Company paid Martra \$440,000 by a cheque signed by Madam Hsu Jye. Due to the lack of documentation, I am uncertain whether this is a facility fee or an unconnected payment although the amount involved is notable as it amounts to 1% of \$44,000,000.
- 19.116 Rivera paid interest on this loan although these interest charges appear to have been subsequently refunded.
- 19.117 It is not clear from the documentation I have examined when this loan was repaid and the directors of Rivera have refused to provide access to their company's records to determine the precise manner in which repayment was effected.
- 19.118 In a written advice to me, solicitors for Mr David Tong sought to explain the background to this loan. They stated:

*"The sum of HK\$44 million recorded in the account of Rivera as an advance by Mr Tong on 19 June 1990 was in fact a loan advanced by Mr Tong to Rivera. The background to the loan is as follows:-*

- (i) for the purpose of a project in Nam Wan, Macau, the Tomson Group requires HK\$44 million be deposited in Macau as deposit;*
- (ii) on 19 June 1990, Martra caused to be deposited HK\$44 million into the account of TIL [Tomson Investment] in Macau;*
- (iii) TIL reimbursed Martra in Hong Kong on 19 June 1990. Martra deposited HK\$44 million into the account of Rivera on behalf of Mr Tong either as a loan to Mr Tong or to settle Martra/Mr Koo's indebtedness to Mr Tong. The sum deposited by Martra into the account of Rivera was applied towards the drawdown of part of the loan agreed to be advanced by Mr Tong to Rivera under the loan agreement dated 15 June 1990;"*

#### Audit considerations

19.119 Mr Paul Siu has advised me that the audit staff did not review any documentation evidencing the \$44,000,000 loan.

#### \$24,000,000 loan by Tomson Investment to Martra

19.120 Tomson Investment lent \$24,000,000 to Martra, Martra in turn lent the money to Rivera, and Rivera recorded the receipt as *"loan from Mr Tong"*.

19.121 By an Agreement dated 15 June 1990, Mr David Tong agreed to lend Rivera \$150,000,000. The Recital to the Agreement stated:

*"Whereas the Borrower [Rivera] has agreed to subscribe approximately HK\$352,890,000 for new shares in Tomson Pacific Limited ("Tomson") in a rights issue ("the Rights Issue") to be made by Tomson of not less than 1,250,000,000 new shares in Tomson announced on 4 May, 1990. The lender [Mr David Tong] has agreed to lend \$150,000,000 to Rivera in order to part-finance such subscription, on the terms hereof. "*

19.122 The Agreement was signed by Mr David Tong and by Mr Jackson Chang on behalf of Rivera.

19.123 Attached to the Agreement was a confidential letter from Mr David Tong to the directors of Rivera which is at Appendix 122. The text of the letter read:

*"I [Mr David Tong] hereby unconditionally offer to make available to you [Rivera] or procure to be made available to you by a bank and/or financial institution a loan facility in the sum of not less than HK\$150 million on the best terms available in the market for such sum. In the event that I fail to procure such loan to be made available to you on or before 15th June, 1990, I undertake to make available to you said loan of not less than HK\$150 million subject to the terms and condition set out in the term of loan agreement annexed hereto.*

*My obligations herein are made irrevocably and are not subject to fulfilment of any condition. The enclosed form of loan agreement is opened for acceptance by you on or after 15th June, 1990 but before 30th June, 1990 by signing and returning to me the enclosed copy of the loan agreement (which has been executed by me in advance). "*

19.124 Mr David Tong stated that he agreed to lend these funds to Rivera to enable it to take up rights in the Tomson Pacific Rights Issue before 19 June 1990.

19.125 Mr David Tong asserted the source of the \$150,000,000 was to have been from Taiwan:

*" . . .in Taiwan there is a ceiling on the amount of money one could remit out of the country per person and that ceiling is five million dollars. So we had remitted some money through official channels in the name of our company and some of the money, part of the money, were remitted to Hong Kong with the help of the underground bank or money exchanges in Taiwan. "*

19.126 According to Mr David Tong, Mr Jackson Chang would often request money on behalf of Rivera.

*" . . .as far as Rivera was concerned it was controlled by several people. It was mainly Jackson Chang, Chang's responsibility to manage Rivera. And very often, whenever Rivera was short of cash, then he would ask me to lend the money to Rivera. "*

19.127 On 23rd June 1990, Rivera forwarded a drawdown notice for \$24,000,000 to Mr David Tong. A copy is at Appendix 123. It stated in part:

*"We refer to the above Loan Agreement, and hereby give notice that we intend to drawdown thereunder on 25th June, 1990 in the amount of HK\$24,000,000 and request you to issue a cashier order in favour of Rivera (Holdings) Ltd. for the amount of HK\$24,000,000. "*

19.128 The letter was signed by Mr Jackson Chang.

19.129 By loan facility letter dated 25 June 1990, Tomson Investment agreed to lend \$24,000,000 to Martra (Appendix 124). The important terms of the loan were:

Purpose: Working Capital  
Amount: \$24,000,000  
Interest: Prime payable bi-annually on 30 June and 31 December  
Drawdown: Within one week from 25 June 1990  
Maturity: Repayable on demand  
Security: 70,000,000 shares of Rivera pledged  
Costs: All legal, custodian or nominee fees to be paid by Martra.

19.130 At all material times, Mr David Tong was a director of Tomson Investment.

19.131 According to Mr Daniel Lui he prepared this document on the instructions of Mr Jackson Chang. Mr Daniel Lui thought Martra was owned by "*Taiwanese investors*". Although he had asked Mr Jackson Chang the purpose of the loan, he had not received an answer. He had therefore stated that it was for "*working capital*".

19.132 Mr Daniel Lui also stated that Mr Jackson Chang determined the interest rate. When asked whether it was his usual business practice to charge interest at the prime rate, Mr David Tong replied:

*"I really do not know the details about this case, but very often all the details regarding the transaction were handled by Mr Jackson Chang and he made use of Mr Koo's company to do it. But I know that we did not do that for the purpose of making money."*

19.133 He added that to make the transaction look "*official*" the security clause was inserted, and stated that the 70,000,000 Rivera shares either belonged to him or Mr Jackson Chang.

19.134 According to Mr Daniel Lui, he received a report from his staff that the security had been lodged prior to the drawdown.

19.135 Mr Daniel Lui and Madam Hsu Jye signed the facility letter on behalf of Tomson Investment and Martra respectively. Mr Daniel Lui stated that he was instructed by Mr Jackson Chang to sign the loan.

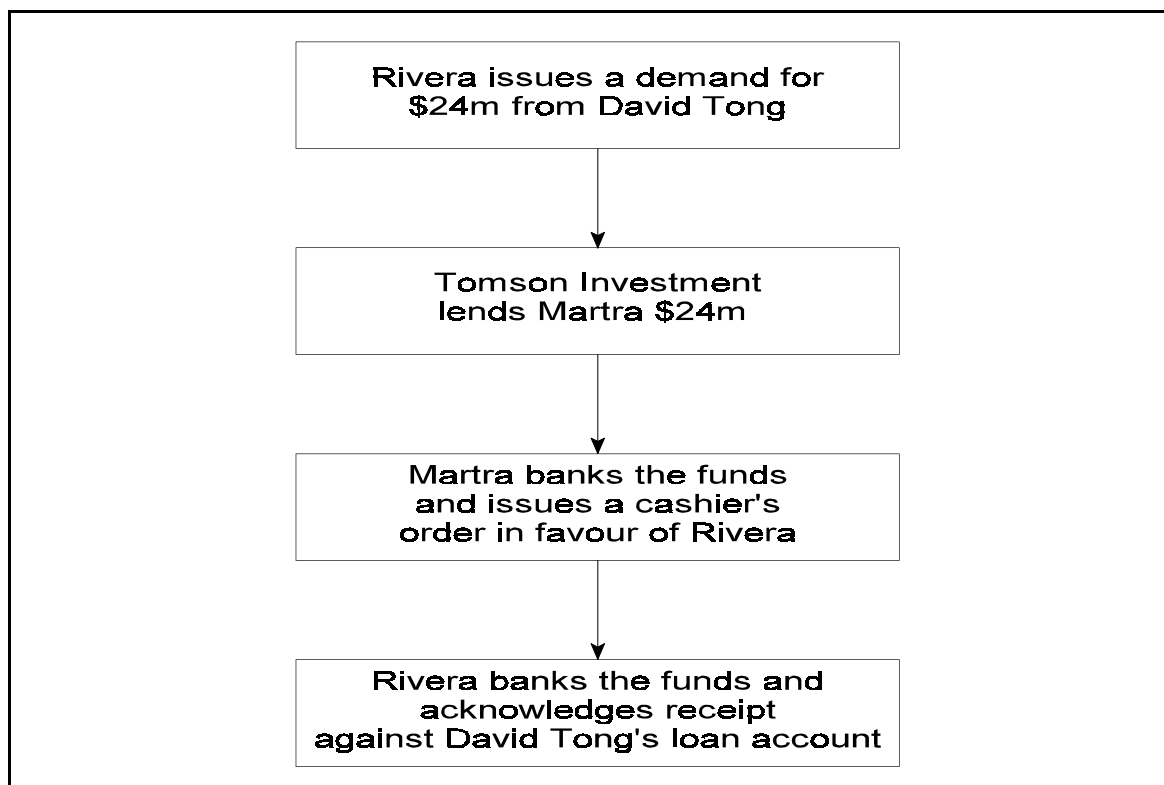
19.136 Madam Hsu Jye told me she could not remember if she had negotiated this loan or if Mr Danny Koo had, nor was she aware of the purpose for the loan.

19.137 By letter dated 25 June 1990 from Martra to Tomson Investment, the former requested \$24,000,000 be transferred to its account at SPAB. Madam Hsu Jye signed the letter on behalf of Martra. She told me that this letter was a drawdown notice to Tomson Investment.

19.138 A further letter dated 25 June 1990 (which was apparently incorrectly typed as 25 June 1989) from Martra to SPAB requested the latter open a cashier's order for \$24,000,000 in favour of Rivera. A copy of the letter is at Appendix 125. Madam Hsu Jye signed this letter.

19.139 Receipt of these funds by Rivera on 25 June 1990, was recorded as *"loan from Mr Tong"*.

19.140 A diagram of the flow of funds from this transaction is shown below:



19.141 Mr David Tong claimed that he could not remember this transaction. He said:

*"I must point out one thing, I was not often in Hong Kong during the period in question. I admit upon presentation of these evidence that whatever is put down here is correct, but I must say that I did not really know the details related to all these transactions. As far as a businessman I would only handle the really important issues and as far as transfer of funds were concerned as long as they were legal and legitimate then I would not interfere with such transfers myself."*

19.142 In relation to the entries in the books of Rivera and Tomson Investment, Mr David Tong said:

*"At that period of time it was Mr Jackson Chang who took care of all such details. And also I like to point out that during that period of time both Rivera and Tomson were very small companies. I think they also made a lot of mistakes, for example, instead of Martra they put down my name and I think that is wrong. If I were to lend money to the company from my personal funds I would not make so many transfers. But, of course, these transfers were probably made with the blessing of Mr Koo and executed by Hsu Jye."*

19.143 I asked Mr David Tong the reason for Martra's involvement in this transaction and whether it was to conceal the true nature of the transaction to which he responded:

*"My guess is that if Tomson Investment lent the money to Jackson Chang or myself and the two of us subsequently lent that sum of money to the company, it would be illegal. That is why Jackson Chang asked Mr Koo to make such an arrangement and help us."*



### Audit Considerations

- 19.144 Mr Paul Siu advised that the loan had been repaid and all interest charges settled by the balance date. Accordingly the work programme required the audit staff to review the loan agreement and check the calculation of interest, the interest rate and that the principal was repaid.
- 19.145 At the time that the loan was made, Deloitte were also auditors of Rivera.

### **CONCLUSIONS**

- 19.146 During my investigation into the affairs of Martra I have sought to establish the persons who exercised control over its transactions and those who apparently benefitted from them.
- 19.147 From my analysis I believe there were three categories of transactions entered into by Martra:
- (1) Those at the direction of Mr Jackson Chang and/or Mr David Tong and for the benefit of Mr David Tong;
  - (2) Those at the direction of Mr Jackson Chang and Mr David Tong but for whose benefit remains unascertained; and
  - (3) Those which I am unable to determine from whose direction or for whose benefit they were carried out.

### Transactions at the direction of Mr Jackson Chang and Mr David Tong and for the benefit of Mr David Tong

- 19.148 In this first category I put the three loan transactions, particularly the last two.

- 19.149 Other than the evidence of Madam Hsu Jye that Mr David Tong negotiated with Mr Danny Koo, there is nothing to support Mr Danny Koo's involvement in the first loan of \$30,000,000 made by Martra to Tomson. Conversely the funds themselves did not come from Martra's bank account. I largely discount the evidence of Madam Hsu Jye as her evidence has been shown to be inconsistent in a number of instances.
- 19.150 With respect to the application of those funds, only the \$14,000,000 that was paid to Chintung relates directly to Martra. However given that the shares were purchased prior to the repayment by Tomson Investment of the loan from Martra, it is possible that the partial repayment of the loan was directed by Mr David Tong or Mr Jackson Chang so as to fund the purchase of the WTCG shares by Martra. There is not, however, any documentary or oral evidence to support this.
- 19.151 The \$1,000,000 paid to Seapower Securities to the credit of Mr Hsu Sun's account does not appear to be connected to Martra in any way.
- 19.152 The \$15,000,000 paid to Madam Hsieh Hui Ching was directly related to the completion of a Rivera placement which appears to have been directed by Mr Jackson Chang and Mr David Tong. This placement is discussed in detail in Chapter 18.
- 19.153 The loan for \$44,000,000 from Tomson Investment to Martra which was on lent to Rivera appears to have been used to provide funds to enable Rivera to acquire shares in the Tomson Pacific Rights Issue. Martra appears to be included in the transaction to disguise the fact that the funds ultimately came from Tomson Investment.
- 19.154 As Mr Jackson Chang and Mr David Tong controlled both Tomson Investment and Rivera at the time and there has been no evidence presented to me that shows the direct involvement of Mr Danny Koo, I believe this loan was made at the direction of Mr Jackson Chang and/or Mr David Tong.

- 19.155 The funds appear to have been used to provide Rivera with resources to take up its portion of the Tomson Pacific Rights Issue and this has indirectly benefited Mr Jackson Chang and Mr David Tong as they were substantial shareholders in the company that controlled Rivera.
- 19.156 The documentation sighted in relation to the third loan of \$24,000,000 made by Tomson Investment to Martra which was on lent to Rivera as a loan from Mr David Tong strongly supports my view that the inclusion of Martra in this transaction was only to disguise the fact that Tomson Investment was lending money to Mr David Tong so that he could fulfil his obligation to Rivera to provide funds for its acquisition of shares in the Tomson Pacific Rights Issue.
- 19.157 Mr David Tong's evidence that Mr Jackson Chang made use of Mr Danny Koo's company, Martra, to put this transaction into place also supports my view. However as I have not been able to examine Mr Jackson Chang in relation to this matter I am unable to conclude whether Mr David Tong also actively promoted this arrangement.
- 19.158 I believe Madam Hsu Jye simply signed documents put in front of her in relation to Martra and this conclusion is supported by her admission of lack of knowledge about the transaction.
- 19.159 I am concerned about the conflicting roles that Madam Hsu Jye had at this time as the person in charge of share certificate custody on behalf of Tomson Investment and as the signatory pledging 70,000,000 Rivera shares as security for this loan.
- 19.160 There has been no documentary evidence presented to me by Tomson Pacific, despite repeated requests, to substantiate that the 70,000,000 Rivera shares were ever physically lodged as security.

19.161 In relation to the deposit of 41,254,000 WTCG shares by Martra with HSBC Nominees, there appears to have been little benefit to Mr Danny Koo from the loan made to South View by Rabobank. For the reasons set out in Chapter 21, I believe this is another transaction carried out at the direction of and for the benefit of Mr Jackson Chang and Mr David Tong.

Transactions at the direction of Mr Jackson Chang and/or Mr David Tong for unascertained beneficiaries

19.162 In this category I have put all those transactions where I believe Mr Jackson Chang and/or Mr David Tong have strongly influenced the manner in which the transactions were carried out, but where it is unclear whether they also received the benefit of them.

19.163 The reasons why substantial numbers of shares were bought at strategically important times in relation to Martra's dealings through Cresvale Hong Kong in the shares of Tomson Pacific, WTCG and Rivera have been difficult to determine due to the lack of any documentary evidence. It is clear, however that little of the money to fund this share trading appears to have come from Mr Danny Koo.

19.164 Mr Hsu Sun has claimed that the share trading was carried out upon the direction of his sister, Madam Hsu Jye. Madam Hsu Jye claims it was done upon the direction of Mr Danny Koo.

19.165 During the course of this investigation, I have found the evidence of Mr Hsu Sun and Madam Hsu Jye to be frequently inaccurate, misleading or inconsistent with documentary evidence. Accordingly I largely discount their statements in that regard.

19.166 Without being able to examine Mr Robin Kwan I am unable to assess who he took directions from.

- 19.167 In other evidence presented to me throughout this investigation, several people have said that Mr Jackson Chang directed the share trading activities of the companies controlled by Rivera, Tomson Pacific and WTCG during the time he was a director of those companies.
- 19.168 Mr Chiang Wee Thiong of Cresvale Hong Kong has said that he thought Martra was one of Rivera's companies.
- 19.169 From the evidence I have received, I believe it is reasonable to conclude that Mr Jackson Chang may have directed this share trading.
- 19.170 A large proportion of the funds came from David Tong Company. The use of this company supports my view that Mr David Tong actively assisted the transactions taking place in Martra's name.
- 19.171 The guarantee given by Mr David Tong in respect of Martra's margin trading account at Chintung is evidence that he actively supported the transactions carried out there.
- 19.172 The funds paid through this account from Chintung to Martra appear to have been sourced from parties associated with Mr David Tong rather than Mr Danny Koo. The \$10,000,000 was borrowed by Martra against the security of shares owned by Peace Forest and previously held by Grand Ocean and the money was paid to Mr Hsu Sun and Madam Hsu Jye.
- 19.173 The payment of \$10,000,000 to Martra's margin account on 8 September 1990 came from David Tong Company's overdraft facility at Amex Bank. Again there does not seem to be any connection with Mr Danny Koo in relation to this transaction.

Transactions which I am unable to determine from whose direction or for whose benefit they were carried out

- 19.174 As I have not had access to Martra's books and records I have had to reconstruct its activities in Hong Kong. This last category are those transactions for which I have been unable to substantiate the purpose or intent because of either a lack of documentation or because I was not empowered to trace funds through particular bank accounts.
- 19.175 The transactions that I consider form this class are the payments to Baring Securities, DMT Securities and Seapower Securities where these payments were for the purchase of shares carried out upon the instructions of Madam Hsu Jye or Mr Hsu Sun but where it is unclear what happened to these shares after purchase.
- 19.176 Also payments to the joint account of Mr Tung Ming Hsun, the joint account of Madam Hsieh Hui Ching, the account of Mr Danny Koo and the account of Madam Hsu Jye and Mr Hsu Sun come within this category.
- 19.177 The purchase of 72,000,000 Tomson Pacific shares and 12,000,000 Rivera shares by Martra on 9 and 12 October 1990 does not appear to be connected to Mr Danny Koo. As it is known that Mr David Tong and Mr Jackson Chang had previously guaranteed Mr Chiu Ming Hung and others a buyback in relation to WTCG shares (see Chapter 6), it is not unreasonable to infer that such an arrangement may have existed in respect of the 55,000,000 Tomson Pacific shares.

Beneficial Ownership and control of Martra

- 19.178 As Martra has only one bearer share in issue, and as I have not spoken to Mr Danny Koo, I am unable to state with any certainty who owns Martra.
- 19.179 Control over Martra in Hong Kong can be considered by looking at the circumstantial evidence that shows the persons who had significant influence over the transactions entered into.

- 19.180 Madam Hsu Jye was a sole signatory on Martra's bank account along with Mr Danny Koo. There is, however, no documentary evidence suggesting that Mr Danny Koo took part in the operations of Martra other than in the passing of board resolutions.
- 19.181 The involvement of Mr Jackson Chang has been difficult to quantify without his direct testimony. However his role in Martra's activities is supported by the loan documentation and the evidence of Mr Daniel Lui and of Mr David Tong. I conclude that he actively influenced Martra's activities in respect of the loans from Tomson Investment and I believe that he strongly influenced Martra's share trading at Cresvale Hong Kong and Chintung although there is little documentary evidence to support this latter conclusion.
- 19.182 Mr David Tong claims that he did not control Martra's activities. However, the use of Martra to assist the funding of Mr David Tong's liabilities being the loans from Tomson Investment and the Chiu Ming Hung Syndicate buyback of WTCG shares is evidence of his direct influence over Martra's transactions. The personal guarantee given to Chintung and the large sums paid directly from David Tong Company is evidence that he actively supported the transactions Martra was entering into. Additionally, the loans of \$44,000,000 and \$24,000,000 made to Rivera by Martra were each recorded in Rivera's books as "*Loan from Mr Tong*".
- 19.183 The auditors appeared to be unaware of the close relationship between Mr David Tong and Martra. Although the loan was repaid by the balance date, I am concerned that Deloitte made no enquiry as to why Tomson Investment lent this money and of the identity of the persons behind Martra.
- 19.184 I note that in this instance it appears the management of WTCG was endeavouring to conceal the loan to Mr David Tong by interposing Martra and that consequently the information I have discovered about Martra would have been difficult for Deloitte to ascertain.

19.185 The shares purchased by Martra were, in all but a few isolated cases, stocks in which Mr David Tong had a direct or indirect interest which again suggests he may have influenced Martra's trading in shares.

19.186 I conclude that Mr David Tong significantly influenced Martra's activities in Hong Kong, and in those transactions specifically for his benefit he controlled its activities.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"





## CHAPTER 20

### CORTNEY ENTERPRISES LIMITED

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#### 20 INTRODUCTION

20.1 Following my examination of the receipts and payments of David Tong Company I noticed that there were significant transactions with Cortney Enterprises Limited ("Cortney"). Subsequently, I became aware that Cortney was also involved in various loans to Rivera (Holdings) Limited ("Rivera") and a compensation arrangement whereby STDM was reimbursed for a loss suffered on the sale of a significant block of WTCG shares. This last matter is discussed in Chapter 6.

- 20.2 Accordingly, I was concerned to establish the person or persons who controlled Cortney and were beneficially interested in its activities.
- 20.3 Cortney is a company incorporated in Liberia with bearer shares in issue. It is "managed" by Madam Hsu Jye, Mr David Tong's sister-in-law, in Hong Kong.
- 20.4 The Financial Secretary appointed me to investigate the affairs of Cortney on 23 October 1993 in furtherance of my investigation into the affairs of Tomson Pacific and WTCG.
- 20.5 Of the Liberian companies that I have been appointed to investigate, Cortney had the least involvement with the two listed companies, which were the primary subject of my enquiry and with the transactions which formed part of my original terms of reference. Therefore, I have not spent as much time analysing Cortney's activities as I have for those of Martra and Hauxton which have received much closer attention.
- 20.6 The purpose of this chapter is to summarise Cortney's activities in Hong Kong and to draw some conclusions as to its ownership and control.
- 20.7 My investigation into this company and its transactions has been hampered by the refusal of the directors of Rivera to allow access to relevant records concerning loans between Rivera and Cortney.
- 20.8 Following a review of my preliminary conclusions, solicitors for Mr David Tong submitted that Mr David Tong was the beneficial owner of Cortney.

## **INCORPORATION, DIRECTORS AND SHAREHOLDERS**

### Incorporation

- 20.9 Cortney was incorporated in Liberia on 24 April 1990. Cortney is not registered as an oversea company with the Companies Registry in Hong Kong.

20.10 Bank account records show Cortney had a correspondence address at Room C, 12/F Wah Ying Cheong Building, 288 Des Voeux Road, Central, Hong Kong which is the address of Herman H Y Ng & Company, Certified Public Accountants. All correspondence from that address was forwarded to Mr Spancer Lau (an employee of Tomson Pacific), who I understand passed it to Madam Hsu Jye.

#### Directors

20.11 Copies of documents obtained from Cortney's bankers show that the directors of Cortney at 20 July 1990 were Mr Wang Wen Yuan and Madam Teng Huei Ju.

20.12 Until recently I have been unable to obtain contact addresses either for Mr Wang Wen Yuan or Madam Teng Huei Ju. Accordingly, I was not able to contact them to ascertain their role as directors of Cortney or to verify their signatures on documents contained with the records of Cortney that I have seen.

20.13 Madam Hsu Jye was an authorised signatory to Cortney's Bank account. She told me that Mr Wang Wen Yuan and Madam Teng Huei Ju were her schoolmates when she was studying in Taiwan.

#### Shareholders

20.14 Documents obtained from copies of Cortney's records which were provided to me by Madam Hsu Jye, show that one subscriber share was transferred to Mr Wang Wen Yuan on 25 April 1990. The issued capital appears to consist of one bearer share. I was unable to establish with any certainty who beneficially owned the company until the submission made on behalf of Mr David Tong.

20.15 In their submission to me Mr David Tong's solicitors advised that he was the beneficial owner of Cortney.

20.16 As discussed in other chapters Madam Hsu Jye is a signatory to numerous other bank accounts operated allegedly for the benefit of Taiwanese nationals.

### **BOOKS AND RECORDS**

20.17 Madam Hsu Jye provided me with two paper files of documents which comprised copies of some of Cortney's company secretarial documents, copies of loan facility agreements, copies of deeds of assignment of loans and copies of some cheques.

20.18 The records provided to me by Madam Hsu Jye did not include any of Cortney's bank statements, journals, ledgers, financial statements or other financial records. Madam Hsu Jye claims that all financial records were forwarded to Cortney's directors in Taiwan prior to my appointment.

20.19 This advice is inconsistent with Mr David Tong's assertion that he is the beneficial owner of Cortney, as I would expect it would follow that the directors of the company would be his nominees.

### **BANK ACCOUNT**

20.20 As far as I can ascertain Cortney operated one Hong Kong bank account with Security Pacific Asian Bank Limited ("SPAB").

20.21 At a meeting of the directors of Cortney on 20 July 1990 at which Mr Wang Wen Yuan and Madam Teng Hei Ju were apparently present, it was resolved to open the bank account with SPAB. The minutes of that meeting, included a resolution that the "*bank account be operated by Hsu Jye with immediate effect*".

20.22 Copies of account opening forms show that Madam Hsu Jye who, with Mr Hsu Sun, maintained a joint bank account with SPAB, wrote a letter introducing Cortney to SPAB on 28 July 1990. The text of the letter, written on the letterhead of Madam Hsu Jye and Mr Hsu Sun, was:

*"Dear Sir,*

*We have the pleasure to introduce the following two companies to open current accounts and deposit accounts with your esteemed Bank:*

- 1. Cortney Enterprises Limited*
- 2. Carisbrooke Enterprises Limited*

*The above companies, which are overseas incorporated, act primarily as investment vehicles for Taiwan investors to invest in securities in Hong Kong. It is to our understanding that these companies are of good integrity.*

*We would appreciate that you render your kind assistance in this regard.*

*Yours faithfully*

*(signed)*

*Hsu Jye"*

20.23 Cortney's SPAB bank account was opened on 1 August 1990.

20.24 I have obtained copies of Cortney's bank statements and vouchers from SPAB and have reconstructed Cortney's cash book from those records. A summary of these transactions for the period 1 August 1990 to 18 March 1991 is shown below:

Company/Individual	Payments \$	Receipts \$
David Tong Company		36,980,000
Mr Danny Koo		3,511,000
Madam Hsu Jye and Mr Hsu Sun		2,184,000
Madam Hsu Jye		170,000
Peace Forest	950,000	
Rivera	49,000,000	
Tomson Investments	20,393,972	20,000,000
Tomson Development Corporation	7,500,000	7,499,940
Chen Chang Hsiu-Chao		7,500,000
<b>TOTAL</b>	<b>\$77,843,972</b>	<b>\$77,844,940</b>

David Tong Company

20.25 The funds received from David Tong Company totalling \$36,980,000 was made up of the following deposits and applied towards the following payments made by Cortney:

<b>Date of Receipt</b>	<b>Receipt from David Tong Company</b> \$	<b>Date of Payment</b>	<b>Payment made by Cortney</b>	<b>Amount</b> \$
20/10/90	950,000	20/10/90	Peace Forest	950,000
17/12/90	15,640,000	17/12/90	Rivera	21,500,000
2/1/91	230,000	2/1/90	Tomson Investments	235,616
30/1/91	20,160,000	30/1/90	Tomson Investments	20,158,356
<b>TOTAL</b>	<b>\$36,980,000</b>			<b>\$42,843,972</b>

20.26 As can be seen from the above, Cortney only appears to have been interposed between David Tong Company and Peace Forest, Rivera and Tomson Investments (a subsidiary of Tomson Pacific).

20.27 Direct payments by David Tong Company to Rivera or Tomson Investment may have been connected transactions requiring disclosure.

20.28 The payments to Tomson Investments were repayments of a loan made by Tomson Investments to Cortney on 19 November 1990. When Cortney originally received this money in November it paid the money to Rivera. I have not been able to determine the manner in which this loan was treated in Rivera's books as the directors of that company have refused to provide me with access to the accounts of Rivera.



20.29 The payment to Rivera of \$21,500,000 was largely made up of the \$15,640,000 that came from David Tong Company, an amount of \$3,511,000 that came from an account in the name of Mr Danny Koo (a director of Martra and discussed in Chapter 19) and \$2,184,000 that came from an account in the name of Mr Hsu Sun and Madam Hsu Jye.

#### Tomson Investments

20.30 Other than the payments above totalling \$20,393,972 to Tomson Investments, there was a receipt from Tomson Investments of \$20,000,000 on 19 November 1990. This was paid to Rivera that same day. I have been unable to determine the reason for this payment for the reasons stated above.

#### Tomson Development Corporation

20.31 Tomson Development Corporation is a company in Taiwan substantially under the control of Mr David Tong and his family interests.

20.32 On 19 January 1991, Cortney received \$7,499,940 from Tomson Development Corporation and immediately used this money to fund a payment of \$7,500,000 to Rivera on 21 January 1991.

20.33 Tomson Development Corporation received \$7,500,000 from Cortney on 18 March 1991. The payment was funded by a deposit to Cortney from a Chen Chang Hsiu-Chao. I do not have any information as to the identity or relationship of this person to Cortney.

#### **LOANS**

20.34 I have established that Cortney was engaged in loan transactions with Martra, Grand Ocean, Peace Forest and Rivera.

- 20.35 With respect to Martra and Grand Ocean, Cortney was assigned their respective interests in loans they had made to Peace Forest in 1990. There is no evidence of Cortney paying consideration for the assignments of these loans.
- 20.36 The records I have seen suggest that as at 1 October 1992, Peace Forest owed Cortney \$97,796,011 and had been granted security by Peace Forest over 250,000,000 Rivera shares representing approximately 20% of the issued share capital of Rivera.
- 20.37 As at 30 June 1991, Cortney had a loan of \$66,601,913 outstanding to Rivera. The security for this loan was 272,740,874 Tomson Pacific shares representing approximately 8% of Tomson Pacific's issued share capital or approximately 30% of the Tomson Pacific shares controlled by Rivera.
- 20.38 This loan appears to have been assigned to STDM along with another loan of approximately \$70,000,000 owed by Rivera to Mr David Tong. This assignment took place on 22 August 1991 and is mentioned in Chapter 6 of this report.

#### Loans to Peace Forest

- 20.39 Peace Forest is a company which was controlled in 1990 by Mr Jackson Chang and Mr David Tong. It was the largest shareholder of, and controlled, Rivera.
- 20.40 By way of an assignment dated 19 July 1990, Grand Ocean (a company which it has been claimed was owned and controlled by Madam Hsu Jye and Mr Hsu Bin) assigned to Cortney its interest in a loan of \$32,663,120 made to Peace Forest. Accordingly, following the assignment, Peace Forest owed Cortney \$32,663,120.
- 20.41 Cortney was to have paid Grand Ocean \$32,663,120 although I have not seen any record of this payment in Grand Ocean's records.

20.42 In similar circumstances, Martra (a company allegedly controlled by Mr Danny Koo, but for the purposes of several transactions, controlled by Mr David Tong) assigned three loans to Cortney that it had outstanding with Peace Forest:

<b>Date</b>	<b>Amount</b>	<b>Security</b>	<b>Interest Rate</b>
1/9/90	\$15,930,899	90,000,000 Rivera Shares	13.5%
5/9/90	\$29,752,101	40,000,000 Rivera Shares	13.5%
23/10/90	\$620,416	Nil	13.5%
<b>TOTAL</b>	<b>\$46,303,416</b>		

20.43 Again, consideration was to have been payment of the value of the loans. There is, however, no evidence of any such payment.

20.44 After the assignment to Cortney, these loans were effectively rolled into one with the result that Cortney was ultimately owed \$97,796,011 by Peace Forest at 1 October 1992. A schedule of the loans and the various rollovers can be found at Appendix 126.

20.45 I have been unable to determine the purpose of these loans.

20.46 The loan facilities are all simple one or two page documents. An example of one of these loan agreements is shown at Appendix 127.

20.47 It is apparent that the value of shares lodged as security was often significantly less than the amount of the loans.

- 20.48 It is of note that Madam Hsu Jye who signed the loan documentation on behalf of Cortney, also acted as manager of the custodian functions for Rivera, Tomson Pacific and Peace Forest; a position where she would arrange delivery of and acknowledge receipt of securities held by these companies.
- 20.49 The interest charged by Cortney on loans with Peace Forest was either 13.5% p.a. or at the prevailing prime rate plus 1% p.a.
- 20.50 The repayment terms for most loans were on a principal plus interest on maturity basis. In all cases the loan principal plus accrued interest has simply been rolled over. No interest has been paid to Cortney's bank account.
- 20.51 All four assignments to Cortney were signed by Madam Hsu Jye for Grand Ocean and Martra and Mr Jackson Chang for Peace Forest. I am unable to verify who signed on behalf of Cortney.
- 20.52 The balance sheet of Peace Forest as at 31 August 1991 shows the following major liabilities:

	\$
Cortney	89,773,402
Mr Ming Xiao Guang	24,000,000
Mr Zhou Hua Ming	1,000,000
Mr Jackson Chang	26,574,713
Mr David Tong	<u>48,425,287</u>
	<u>\$189,773,402</u>

- 20.53 As can be seen from the above Cortney was Peace Forest's largest creditor, the next four largest creditors all being shareholders of Peace Forest.

### Loans to Rivera

- 20.54 Cortney lent Rivera \$77,958,913 by way of five loans advanced in November 1990 and January 1991. A table of the loans Cortney made to Rivera is attached as Appendix 128.
- 20.55 Cortney borrowed \$20,000,000 from Tomson Investment on 19 November 1990. On the same day, Cortney lent Rivera \$20,000,000 from these funds.
- 20.56 Both the loan of \$20,000,000 made to Cortney by Tomson Investment and the loan Cortney made to Rivera were at the same rate of interest (the prime rate), but each had different repayment terms. Interest on the loan from Tomson Investment to Cortney was payable half yearly. Interest on the loan Cortney made to Rivera was payable quarterly.
- 20.57 A further \$21,500,000 was lent to Rivera by Cortney in December 1990. Of this, \$15,000,000 was repaid also during December.
- 20.58 Two loans of \$15,000,000 each were made by Cortney to Rivera in January 1991 along with a loan of \$6,458,913.
- 20.59 The interest rate on the loans Cortney made to Rivera was either fixed at 13% p.a., the prevailing prime rate, or at the prevailing prime rate plus 1% p.a.
- 20.60 On 21 March 1991 Cortney consolidated the five loans to Rivera into one loan. At 29 June 1991 the consolidated amount outstanding in respect of these loans was \$66,601,912.

### Assignment to STDM

- 20.61 By way of a deed of assignment dated 22 August 1991, Cortney assigned to STDM the loans it had advanced to Rivera.

- 20.62 This deed of assignment noted that Rivera owed Mr David Tong and Cortney the sum of \$126,547,480, and assigned these debts to STD M. The Deed was signed by Mr Jackson Chang for Rivera and Dr Stanley Ho for STD M. Mr Wang Wen Yuan apparently signed on behalf of Cortney whilst Madam Hsu Jye witnessed his signature.
- 20.63 Dr Stanley Ho confirmed that he had signed the agreement but claimed not to have been familiar with it, and was unable to recall any loan involving Mr David Tong or Cortney that would have been owed to STD M at that time.
- 20.64 The deed does not disclose how much of the \$126,547,480 Rivera owed Cortney and how much Rivera owed Mr David Tong. I have not been able to conclusively determine whether the \$126,547,480 included the loan of \$66,601,912 due from Rivera to Cortney which was outstanding at 29 June 1991 although it would appear to be so.
- 20.65 Mr David Tong has recently told me, through his solicitor, that this assignment was a compensation arrangement he had made with STD M in connection with the purchase, by Mr Sun Tao Tsun, of 178,800,000 WTCG shares that were originally held by three parties who were associates of Dr Stanley Ho. This compensation is discussed in Chapter 6.

## **CONCLUSIONS**

- 20.66 Mr David Tong's recent advice that he is in fact the beneficial owner of Cortney is consistent with the transactions entered into by Cortney. However his submission fails to give any reason why it was necessary to cloak his involvement in the various loans in this way.
- 20.67 Cortney's involvement in the transactions upon which my investigation has focused is minor and, until quite recently, I was not aware of Mr David Tong's acknowledged direct involvement in its activities. Mr David Tong has not provided me with any documentary evidence supporting his claim, however, based upon my knowledge of Cortney's activities I accept his advice.

- 20.68 This view is supported by the nature of the transactions through Cortney's bank account. Of the \$77,844,940 in receipts examined by me, \$36,980,000 (47.5%) were from David Tong Company. A further \$20,000,000 came from Tomson Investments and \$7,499,940 from Tomson Development Corporation. In total, approximately 83% of the receipts of Cortney were directly attributable to companies under the control of Mr David Tong.
- 20.69 All of the payments made by Cortney were to companies under the control of Mr David Tong.
- 20.70 It is certainly apparent from an examination of Cortney's banking records that its named directors, resident in Taiwan, had very little to do with its activities here.
- 20.71 These directors, who are allegedly schoolmates of Madam Hsu Jye, were substantial creditors of Rivera and Peace Forest respectively in June and August of 1991. In August 1991 Cortney's asset, in the form of the debt owed to it by Rivera, was assigned to STDM in satisfaction of an obligation owed by Mr David Tong.
- 20.72 Madam Hsu Jye, is a signatory to Cortney's bank accounts as well as the bank accounts of David Tong Company, Martra and Grand Ocean.
- 20.73 The loan agreements and deeds assigning the loans appear to be hastily prepared. The loans are often unsecured. In cases where security has been required, the shares to be lodged as security were valued significantly less than the loans provided.
- 20.74 Many of the loans made to Peace Forest and Rivera were originally funded by companies other than Cortney. These loans were later assigned to Cortney without any evidence of valuable consideration coming from Cortney's bank account or going to the accounts of Martra or Grand Ocean.
- 20.75 The loans by Tomson Investment to Cortney were immediately remitted to Rivera. I consider Cortney has been interposed between Tomson Investments and Rivera to disguise a direct advance by Tomson Investments to Rivera.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"



## CHAPTER 21

### SOUTH VIEW PROPERTIES LIMITED

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21 **INTRODUCTION**

21.1 I was appointed to investigate the affairs of South View Properties Limited ("South View") by the Financial Secretary on 13 January 1993. This appointment was a result of my investigations into David Tong Company, when it became apparent that the source of funds for several key transactions was South View.

21.2 My terms of reference stated that I should conduct my investigation into South View in furtherance of my investigation into Tomson Pacific and WTCG. South View appears to be a vehicle used by some of the directors of those companies to disguise their involvement in several significant transactions.

21.3 The purpose of this chapter is to set out what is known about the ownership and control of South View so that its role can be better appreciated.

21.4 The significant transactions included the borrowing of \$100,000,000 from Far East Holdings International Limited ("FEHIL") and sale to that company of 100,000,000 Regal shares in June of 1990 as part of the transactions set out in Chapter 7 of this report. South View was also the source of funds for many purchases of Rivera, Tomson Pacific and WTCG shares bought by Martra, and it took up 20,000,000 Rivera shares in a placement in April. These matters are discussed in this chapter.

- 21.5 South View was controlled through bearer shares and there were no records retained in Hong Kong. Mr Hsu Sun claims that its directors were all Taiwanese residents.
- 21.6 In much the same manner as Madam Hsu Jye "manages" the affairs of Martra, Hauxton, Cortney and Grand Ocean, her brother, Mr Hsu Sun, "manages" the affairs of South View. Mr Hsu Sun is Mr David Tong's brother-in-law.
- 21.7 Mr Hsu Sun is a sole signatory on South View's bank account and claims to have carried out many of its transactions upon the instruction of its directors.
- 21.8 Mr Hsu Sun has claimed that South View was operated for the benefit of the Taiwanese directors and was not associated or connected with the directors of Tomson Pacific or WTCG. My investigation has shown that South View was frequently used to assist Mr Jackson Chang and Mr David Tong in obtaining shares in Rivera, Tomson Pacific and WTCG effectively disguising these transactions from public scrutiny.
- 21.9 As stated in Chapter 4, I have found Mr Hsu Sun to be a particularly difficult witness. He was frequently unable to recall substantial transactions until prompted by documents showing his involvement. I am sceptical of much of his evidence concerning the source and purpose of funds received by South View.

#### **INCORPORATION, DIRECTORS AND SHAREHOLDERS**

- 21.10 South View is a company incorporated in the Republic of Liberia on 14 July 1989.

##### Directors

- 21.11 A bank account mandate with Security Pacific Asian Bank Limited ("SPAB") shows that Madam Tsai Yueh Er (also known as Lin, Tsai Yueh Er) is a director of the company while Madam Chang Yueh Chun is director and secretary. No third director is mentioned.

- 21.12 Mr Hsu Sun was unable to recall who all the directors were but thought that a Miss Sze should be the Chairman of the board.
- 21.13 The company's account opening form with Chintung stated that the directors were Madam Tsai Yueh Er, Madam Lui Ching and Madam Chang Yueh Chun.
- 21.14 When I informed Mr Hsu Sun that these three ladies were directors of South View he was unable to tell me the occupations of the directors of South View.
- 21.15 During the course of my investigation I have endeavoured to contact the people named as the directors but have not been successful in this regard.
- 21.16 According to Mr Hsu Sun, the shareholders of the company were Madam Tsai Yueh Er, Madam Shih Hsiao Kuei and Madam Chang Yueh Chun. All are Taiwanese nationals and residents. The second of these three ladies may also be known as Miss Sze.

#### Shareholders

- 21.17 One bearer share is in issue and I am unable to establish with any degree of certainty who owns the company. I have been told by Mr Hsu Sun that Madam Shih or Madam Sze gave instructions concerning the majority of the transactions entered into by this company.

#### Address in Hong Kong

- 21.18 South View is not registered as an oversea company carrying on business in Hong Kong, therefore I have found it difficult to determine the nature and scope of its activities here.

- 21.19 The company's correspondence address in Hong Kong is Room 904-6, Hanford House, 221C-G Nathan Road, Kowloon. This address is the office of Louis K M Lai & Co, Certified Public Accountants. That firm has advised that they were only acting as a postal address for South View, acting upon the instructions of Mr Spancer Lau and forwarding correspondence to him.
- 21.20 Mr Spancer Lau is an employee of Tomson Pacific.

Mr Hsu Sun's position

- 21.21 Mr Hsu Sun has told me that he was required to sign cheques for South View upon the instructions of Miss Sze. He said he did not receive any salary or remuneration in relation to his role.
- 21.22 Mr Hsu Sun thought that he may have borrowed some money from South View and that on occasion cheques were drawn in his favour as part of Taiwanese money swaps.
- 21.23 He also told me that he had assisted in the purchase of South View in Hong Kong but failed to remember the company from which South View was bought or the details of who paid for it.

**BOOKS AND RECORDS**

- 21.24 Following my appointment as Inspector, a letter requesting all of South View's books and records was delivered by hand to the company's postal address at Louis K M Lai & Co. The staff at that office advised that they did not have any books and records of South View. I was told that Mr Spancer Lau of Tomson Pacific was the contact person and that any documents that Louis K M Lai & Co received were forwarded to him.
- 21.25 During the course of my investigation I have found Mr Spancer Lau to be an uncooperative and untruthful witness.

21.26 Prior to my enquiries at the offices of Louis K M Lai & Co I had interviewed Mr Spancer Lau on 8 October 1992 and asked if he was aware of South View. Mr Spancer Lau said:

*"I don't know this company."*

21.27 I then asked if he knew anyone connected with the company. He said:

*"I don't think I know anyone."*

21.28 During my second examination of Mr Spancer Lau on 9 February 1993 and following the recovery of documents and the evidence of witnesses who said that Mr Spancer Lau was involved with South View, he changed his evidence and admitted that he collected South View's letters on behalf of Mr Hsu Sun. I asked why he had told me during the first examination that he did not know anything about the company and he stated:

*"I don't know who the boss of this company was so the simple answer was that I didn't know."*

21.29 Mr Spancer Lau, through his solicitor, advised that any records he received for South View were passed directly to Mr Hsu Sun. He claimed that at the time I was appointed to investigate its affairs, he did not have any of South View's books or records, nor did he have any access to them.

21.30 I asked Mr Hsu Sun what he had done with the books and records and he stated:

*"Well, they should have been with me but every time after I completed a transaction I will return the papers to the people [in Taiwan], so I don't keep the accounts for them [the owners in Taiwan]"*

- 21.31 The documents I have recovered in relation to South View are predominantly those copies that have been kept by third parties such as banks or stockbrokers. I have also recovered copies of loan agreements from the files of Hong Kong parties who dealt with South View.
- 21.32 Due to the complicated way in which transactions were carried out by South View (as discussed below) I believe that South View must have maintained at least some form of basic accounting records such as a cash book and carried out frequent bank reconciliations.
- 21.33 I have not seen any evidence that supports Mr Hsu Sun's claim that the records concerning the transactions entered into by South View were in fact forwarded to the directors in Taiwan.

#### **BANK ACCOUNT**

- 21.34 South View maintained a bank account with SPAB in Hong Kong. By way of a directors' resolution made at a meeting of the directors held on 30 January 1990, at which Madam Tsai Yueh Er and Madam Chang Yueh Chun were said to be present, it was resolved that the account be opened and that either Madam Tsai Yueh Er or Mr Hsu Sun be authorised to operate the account. The mandate for accounts was allegedly signed on the same date by Madam Tsai Yueh Er and Madam Chang Yueh Chun. I have been unable to verify these signatures with the directors.
- 21.35 I have examined the bank statements and many of the cheque copies and deposit advices relating to this account. From these I have prepared a schedule of receipts and payments from 1 March 1990 to 31 December 1990. This is shown as Appendix 129.
- 21.36 In summary, the major receipts and payments for the period 1 March 1990 to 31 December 1990 were as follows:

Company/Individual	Receipts \$	Payments \$
FEHIL	100,000,000	Nil
David Tong Company	3,317,000	198,158,510
Cresvale Hong Kong	3,676,487	2,754,730
Rabobank	100,000,000	656,170
Mr Danny Koo	38,000	520,000
Martra	130,000	Nil
Peace Forest	Nil	100,000
Mr Tung Ming Hsun and/or Madam Chiang Pei Ling and/or Madam Tsai Yueh Er	652,000	30,601,500
Madam Hsieh Hui Ching and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei	130,000	69,988,000
Chow Tai Fook Jewellery	Nil	2,362,756
Mr Hsu Sun and Madam Hsu Jye	120,000	7,798,708
Bank of East Asia	Nil	16,877,400
Mr Ng A Moy	Nil	125,962
Shun Loong Company	22,500,000	Nil
Chintung	104,411,415	Nil
Baring Securities	7,665,223	1,677,192
Credit Lyonnais Sec (Asia)	Nil	3,018,745
DMT Finance	Nil	10,900,000
Mr Hsu Sun	25,000	Nil
Sai Shing Securities	15,098,320	Nil
Smith New Court	Nil	885,324
Seapower Securities	4,875,234	Nil
Others	1,050,759	17,263,649
<b>TOTAL</b>	<b>\$363,689,438</b>	<b>\$363,688,646</b>



\$100,000,000 received from FEHIL

21.37 The receipt of \$100,000,000 from FEHIL is discussed in Chapter 7. In summary this represents the proceeds of a loan from FEHIL to South View in which South View provided security of 100,000,000 shares in Regal Hotels International Limited ("Regal"). These Regal shares were subsequently sold to FEHIL.

21.38 The \$100,000,000 received on 4 June 1990, was disbursed as follows:

Payee	\$
Mr Tung Ming Hsun	30,601,500
David Tong Company (SPAB account)	63,088,500
David Tong Company (Ka Wah account)	5,400,000
Madam Hsieh Hui Ching	910,000
Total	\$100,000,000

21.39 Mr Hsu Sun, signed the cheques, but has told me that he cannot remember anything about these payments.

21.40 Madam Hsu Jye thought that the Regal shares were owned by a number of her Taiwanese friends and that the money was disbursed according to the amount of shares they held and after setting off various money swap transactions.

\$30,601,500 paid to Mr Tung Ming Hsun

21.41 I have been unable to trace the \$30,601,500 which was paid by a cheque dated 4 June 1990 to Mr Tung Ming Hsun. Mr Hsu Sun signed the cheque. Without access to Mr Tung Ming Hsun's bank account at SPAB, which I understand is controlled by Madam Hsu Jye (Mr Hsu Sun's sister), I cannot tell how this money was applied.

\$63,088,500 paid to David Tong Company

- 21.42 The \$63,088,500 paid into David Tong Company's SPAB bank account was paid by way of two cheques dated 4 June 1990. Both cheques were made payable to David Tong Company and signed by Mr Hsu Sun. The cheques were for \$1,500,000 and \$61,588,500 respectively. I have not been able to ascertain the reason for drawing two cheques.
- 21.43 Following receipt by David Tong Company the \$1,500,000 appears to have been paid from David Tong Company to Pineast Pictures Limited ("Pineast Pictures") on 5 June 1990. Madam Hsu Feng, Mr David Tong's wife, signed the cheque. Both Madam Hsu Jye and Madam Hsu Feng are actively engaged in film production through a company known as Tomson Films (HK) Limited ("Tomson Films"). Mr David Tong has told me this payment was made on behalf of Tomson Films. Tomson Films is owned by Mr David Tong and Madam Hsu Feng.
- 21.44 The \$61,588,500 appears to have been disbursed through various payments set out in the table below:

Payee	Amount \$
Mr Danny Koo	7,910,000
Martra	8,050,000
Madam Hsieh Hui Ching	10,870,000
Madam Hsu Jye	500,000
Gilded Gain	1,550,000
Mr Tung Ming Hsun	27,711,000
Grand Ocean	3,460,000
Other	1,537,500
TOTAL	\$61,588,500

- 21.45 The amounts paid to Madam Hsieh Hui Ching, Mr Tung Ming Hsun and Mr Danny Koo were paid in several tranches between 5 June 1990 and 28 June 1990. As I cannot access their bank accounts I am unable to establish the ultimate destination of \$46,491,000 of the \$100,000,000 advanced by FEHIL. I understand that Madam Hsu Jye is a signatory on the bank accounts of these individuals.
- 21.46 Of the remaining \$15,097,500, I have been able to trace \$13,560,000.
- 21.47 The majority of this was used for the purchase of Tomson Pacific, WTCG and Regal shares.
- 21.48 In addition \$1,550,000 went to Gilded Gain Limited ("Gilded Gain") a company controlled by Mr David Tong and Madam Hsu Feng.
- 21.49 The \$3,460,000 received by Grand Ocean was applied to a large part of the brokerage and commission expenses relating to the sale of the 100,000,000 Regal shares, which had provided the security for the loan of \$100,000,000 to South View.
- 21.50 As these expenses directly related to the sale of the 100,000,000 Regal shares by South View, it is not clear why South View did not pay these expenses itself. Madam Hsu Jye has told me, through her solicitors, that she cannot recall the reason why Grand Ocean paid these amounts.
- 21.51 The "other" payments totalling \$1,537,500 have not been traced by me as these funds appear mixed with other funds in the David Tong Company SPAB bank account.

\$5,400,000 paid to David Tong Company

- 21.52 The next payment from the \$100,000,000 paid to South View was a payment of \$5,400,000 made to the David Tong Company Ka Wah Bank bank account. This account had an overdraft of just under \$5,400,000 at the time this payment was made. The \$5,400,000 was subsequently used to partially fund a placement of Rivera shares allegedly to parties independent of Rivera on 19 June 1990. Madam Hsu Jye and Mr Hsu Sun signed the cheques involved in this circuitous set of transfers.
- 21.53 The Rivera placement is discussed in Chapter 18. It is evident that the parties who were alleged to be placees of these Rivera shares do not appear to be connected to the alleged beneficial owners of South View.
- 21.54 I have, however, noted that Mr Jackson Chang appears to have been closely involved in both the negotiations to sell the Regal shares and the arrangement of the Rivera placement. In addition I have noted that a refund of commissions received by the placing agent was refunded to South View and ultimately David Tong Company, not as would have been expected, to the named placees.
- 21.55 Mr David Tong has said that during this period of time in 1990, Madam Hsu Jye was accustomed to act upon Mr Jackson Chang's directions. This statement by Mr David Tong would appear substantiated by the above payment of \$5,400,000 from David Tong Company to Madam Hsieh Hui Ching and ultimately to Rivera.

\$910,000 paid to Madam Hsieh Hui Ching

- 21.56 I have not been able to trace the \$910,000 paid to Madam Hsieh Hui Ching. It is anomalous that this payment was made direct by South View as my detailed analysis showed that another \$10,870,000 was paid to her from the same ultimate source via David Tong Company.

21.57 It is apparent that during 1990, Madam Hsu Jye was closely involved in the operation of Madam Hsieh Hui Ching's bank account as she was a sole signatory.

Receipts from and payments to David Tong Company

21.58 A total of \$3,317,000 was received from David Tong Company in 13 separate amounts from 16 July 1990 to 11 December 1990.

21.59 A large portion of these funds were used to purchase Rivera, Tomson Pacific and WTCG shares.

21.60 A total of \$198,158,510 was paid to David Tong Company by South View. The source of the majority of this money was as follows:

\$68,488,500	(A portion of the \$100,000,000 received from FEHIL)
\$100,000,000	(Received from Rabobank, discussed below)
<u>\$ 20,340,000</u>	(Received from Chintung, discussed below)
<u>\$188,828,500</u>	

21.61 The remaining \$9,330,010 was sourced from various parties and was disbursed by way of 8 payments to David Tong Company.

21.62 A detailed analysis has shown that there appears little relation between these payments to David Tong Company and the alleged beneficial owners of South View and that is more likely, in this instance, that the payments were made in accordance with the instructions of Mr David Tong and Madam Hsu Jye and for the benefit of Mr David Tong.

\$100,000,000 received from Rabobank

- 21.63 On 9 July 1990 \$100,000,000 was received by South View. This sum appears to be an advance made by Rabobank. Precise details of this transaction have been very difficult to determine due to Singapore Banking Regulations which do not give me access to South View's account details in Singapore or banking transactions carried out on its behalf.
- 21.64 Mr David Tong has said that he knows nothing about the reasons for this receipt and said that he thought that Mr Hsu Sun may know.
- 21.65 Mr Hsu Sun has told me that he did not know the purpose of that deposit and that the directors of South View may know. It should be restated that he claims to know very little about exactly who these directors were.
- 21.66 As stated above my attempts to contact the alleged directors of South View have been unsuccessful.
- 21.67 I believe this payment by Rabobank represented a loan and the evidence in support of this is set out below.
- 21.68 By way of a letter dated 2 July 1990 (Appendix 130) Martra instructed Cresvale Hong Kong to deposit 41,254,000 WTCG shares into an account in Rabobank's name at HSBC Nominees. Madam Hsu Jye signed the letter. Mr Hsu Sun said he had no knowledge of this transaction.
- 21.69 At that time 41,254,000 WTCG shares represented approximately 3% of that company's issued share capital.
- 21.70 Madam Hsu Jye said she signed the letter of instruction upon the direction of Mr Danny Koo, but when asked if she was aware of any loan from Rabobank she said:

*"I am not clear about it. "*

*"Well, I don't have a good recollection about this loan but if you can show me the documents perhaps I can help you. "*

21.71 I then presented Madam Hsu Jye with documents showing that on 8 October 1990, David Tong Company arranged a cable transfer of \$2,804,302.86 from its Amex Bank bank account (Appendix 131). The narration on this transfer was:

*"Payment 9.7.90 - 9.10.90, loan interest of South View Properties Ltd. "*

21.72 This transfer was made on Madam Hsu Jye's instruction.

21.73 Another transfer this time dated 12 October 1990 instructed Amex Bank to pay \$73,340 to Rabobank debiting the David Tong Company account. The narration on this transfer was:

*"Payment HSBC Nominees [Hongkong Bank Nominees] on the custodian charges, South View Properties Limited. "*

21.74 On 27 December 1990 a third transfer this time for \$5,000,000 from David Tong Company was paid to Rabobank. The narration read:

*"This is to authorize your bank to transfer Hong Kong Dollars Five Million Only (HK\$5,000,000.00) from our current account #011-795-080-0486-7 to The Hongkong and Shanghai Banking Corporation Ltd's, current account #567-211966-001, for the account of Rabobank Nederland, Singapore Branch, with immediate effect. "*

21.75 This payment appeared to be a partial repayment.

21.76 After seeing these documents Madam Hsu Jye said:

*"What I know is all shown in these letter, that is South View borrowed \$100 million from Rabobank against the security of the Bond [WTCG] shares. "*

21.77 Madam Hsu Jye said she did not know who negotiated the loan and when asked who gave her instructions to make the above payments she stated:

*"Well, I already said that there were a lot of transactions between David Tong and South View but it is very difficult for me now to pinpoint specific transactions. "*

21.78 Madam Hsu Jye later stated as justification for her lack of knowledge about these transactions:

*". . . you were aware that I have signed many, many cheques but it is quite impossible for me to remember what happened with each cheque, three years ago. It is quite impossible for me to give you exactly what happened because there had been a lot of transactions which really involved swap transactions between Taiwan and Hong Kong. For instance, somebody in Taiwan would require money to be paid in Hong Kong, they would ask us to do so and then they would pay us back in Taiwan. So, it's quite impossible for me to remember each transaction. "*

21.79 Further evidence relating to the nature of this receipt from Rabobank was found amongst records held by Chintung in relation to South View's margin account with them.

21.80 A letter dated 20 January 1992 on South View letterhead and signed by Mr Hsu Sun was addressed to Rabobank and read:



*"Re: 40 Million shares of World Trade Centre Group Ltd*

*2.8 Million shares (New) of Tomson Pacific Ltd*

*We only withdraw 50 Million shares (Old) of Tomson Pacific Ltd on 18th January 1992. As advice by "Chin Tung Ltd", we request your bank to issue a instruction to HKBC Nominees Ltd and ask them to book-transfer the balance of securities (40 Million shares of World Trade Centre Group Ltd. and 2.8 Million shares (New) of Tomson Pacific Ltd) from your bank's account to ChinTung Ltd account number 567658182088 in favour of "South View Properties Limited". This arrangement will save the physical transfer of shares and those shares will remain under HKBC Nominees Ltd' custody. "*

21.81 This letter suggests that on or about 18 January 1992 whatever loan facility was held at Rabobank was settled and the security released. The letter mentions a delivery of 50,000,000 "old" Tomson Pacific shares and the rebooking of a further 2,800,000 "new" Tomson Pacific shares and 40,000,000 WTCCG shares.

21.82 South View's dealings at Chintung are discussed below.

21.83 The full amount of \$100,000,000 went to David Tong Company on 10 July 1990 to the following accounts:

	<u>₹</u>
SPAB account	69,700,000
Amex account	25,000,000
Ka Wah account	<u>5,300,000</u>
	<u>\$100,000,000</u>

21.84 David Tong Company in turn paid those funds into other accounts operated by Madam Hsu Jye some of which I have been able to trace, whilst others are not within my powers to pursue.

21.85 I have traced a total of \$39,705,000. This money was used to purchase 35,000,000 Rivera shares, 6,640,000 WTCG shares and 20,000 Tomson Pacific shares. All of these purchases were booked into the name of Martra.

21.86 In Chapter 19 I conclude that Martra was frequently used for the benefit of Mr David Tong. In this instance I am unable to conclude for whose benefit these share purchases were carried out nor the ultimate recipient of the share certificates. From the evidence I have received I believe that Mr Hsu Sun and Madam Hsu Jye were actively engaged in acquiring these shares although they both claim to have forgotten their precise role in those share acquisitions.

21.87 At the time 35,000,000 Rivera shares represented 3.95% of Rivera's share issued capital and 6,640,000 WTCG shares represented 0.49% of WTCG issued share capital.

21.88 Of the \$60,295,000 remaining from the \$100,000,000 loan, I have been able to trace the following payments out of David Tong Company to the following accounts:

Account	Amount \$
Mr Tung Ming Hsun and/or Madam Chiang Pei Ling and/or Madam Tsai Yueh Er	18,530,000
Mr Huang Wen Hui	12,835,000
Mr Danny Koo	7,450,000
Madam Hsieh Hui Ching	20,300,000
Unknown	1,180,000
Total	\$60,275,000

21.89 I am unable to determine what these funds were used for, however I note that all of the payees have a close relationship to Mr David Tong in that:

1. Mr Tung Ming Hsun is the alleged borrower of approximately \$3,800,000 from Mr David Tong which, it is claimed, was repaid monies remitted to Hauxton as part of the Tian Teck transactions discussed in Chapter 9;
2. Madam Chiang Pei Ling is named as a director of Hauxton and I believe was a former employee of Tomson Development in Taiwan;
3. Mr Huang Wen Hui is discussed in detail in Chapter 6 and appears to have been a nominee of Mr Sun Tao Tsun, a director of Tomson Pacific, in holding WTCCG shares;
4. Mr Danny Koo is apparently the General Manager of, and a large shareholder in, Tomson Development in Taiwan and a close friend of Mr David Tong; and
5. Madam Hsieh Hui Ching is a director of Hauxton and her bank account was used in connection with the Rivera placement.

21.90 All of the above persons are known by either Madam Hsu Jye or Mr Hsu Sun and have bank accounts in Hong Kong operated by one of them.

Payment to The Bank of East Asia, Limited

21.91 On 9 March 1990 South View paid \$16,877,400 to The Bank of East Asia, Limited ("Bank of East Asia"). The source of these funds was a cheque from Chintung for \$37,224,725.

21.92 The \$37,224,725 from Chintung was approximately 90% of the net proceeds of the sale of 50,000,000 Tomson Pacific shares on 5 March 1990 (Appendix 132). I have ascertained that the remaining 10% was paid to Chintung Finance, but I have been unable to trace the monies received by them.

- 21.93 This particular payment by South View of \$16,877,400 to Bank of East Asia appears to have been made for the direct benefit of Mr David Tong and Madam Hsu Feng.
- 21.94 The \$16,877,400 was applied in part settlement of an agreement to purchase the 29th Floor of the Bank of America Tower in Central, Hong Kong and five car parking spaces. The contract for the purchases of these properties shows the total cost of the properties purchased was \$84,086,000 with completion to take place on 9 March 1990. The purchaser was stated to be Gilded Gain a company owned by Mr David Tong and Madam Hsu Feng.
- 21.95 Given the use of the funds it appears that Mr David Tong or Madam Hsu Feng, both directors of Tomson Pacific at the time, had some beneficial interest in the 50,000,000 Tomson Pacific shares sold as they directly benefitted from the proceeds of the sale.

### **SHARE TRADING**

21.96 South View opened share dealing accounts with the following brokers:

- \* Seapower Securities;
- \* Baring Securities;
- \* Cresvale Hong Kong; and
- \* Chintung.

#### Seapower Securities

- 21.97 The Seapower Securities Customer Trading Agreement was allegedly signed by Madam Tsai Yueh Er and witnessed by Mr Spancer Lau on 8 February 1990. The Customer Trading Agreement states that at a meeting of the Board of Directors of South View held on 8 February 1990, it was resolved that Mr Hsu Sun was authorised to operate the account with Seapower. I have not seen a copy of this board resolution.
- 21.98 Mr Hsu Sun also maintained an account at Seapower Securities in his own name.

21.99 South View only conducted one transaction through Seapower Securities. This transaction was the sale of 6,000,000 Tomson Pacific shares on 1 March 1990 realising net proceeds of \$4,875,234. The cheque for the proceeds was banked in to South View's bank account where \$4,870,000 was subsequently transferred to David Tong Company's bank account with SPAB. The monies were used to reduce that Company's overdraft. I have not traced how this overdraft arose.

21.100 I have been unable to trace the source of the shares due to the lack of documentation retained by South View, although the way in which the funds were applied suggests Mr David Tong or Madam Hsu Feng had some interest in these shares as David Tong Company directly benefited from this deposit.

Baring Securities

21.101 Baring Securities have advised me that they do not have any account opening forms for South View. A summary of South View's share trading at Baring Securities can be seen in the table below:

Date	WTCG		Tomson Pacific		Rivera	
	BUY	SELL	BUY	SELL	BUY	SELL
<b>1990</b>						
July	0	2,000,000	500,000	0	0	0
Aug	0	1,810,000	0	0	0	0
Sept	520,000	1,590,000	0	0	0	1,000,000
Oct	570,000	0	1,000,000	0	0	0
Nov	0	0	0	0	0	0
Dec	20,000	0	0	0	0	0
<b>1991</b>						
Jan	0	0	270,000	0	0	0
Feb	0	0	0	0	0	0
Mar	0	0	300,000	0	0	0
<b>TOTAL</b>	<b>1,110,000</b>	<b>5,400,000</b>	<b>2,070,000</b>	<b>0</b>	<b>0</b>	<b>1,000,000</b>

21.102 During this period, most of the WTCG shares were traded in small lots, except July 1990 when the 2,000,000 WTCG shares were sold as one lot on 11 July 1990.

21.103 Except for the Tomson Pacific shares traded in January 1991 which were in a few small lots, all Tomson Pacific and Rivera Shares were traded in single parcels.

21.104 From the information I have seen I am unable to determine who received the benefit of these transactions.

Cresvale Hong Kong

21.105 South View also conducted share trading through Cresvale Hong Kong. The table below shows the share trading carried out by South View at Cresvale Hong Kong:

Date	WTCG		Tomson Pacific		Rivera	
	BUY	SELL	BUY	SELL	BUY	SELL
1990 Sept	1,860,000	0	240,000	3,000,000	4,600,000	0
Oct	70,000	0	1,470,000	1,690,000	2,030,000	160,000
Nov	10,000	100,000	0	0	1,608,000	0
Dec	10,000	370,000	50,000	0	50,000	0
Total	1,950,000	470,000	1,760,000	4,690,000	8,288,000	160,000

21.106 On 21 September 1990, 1,824,000 WTCG shares were bought which represented the majority of share trading for that month.

21.107 The 3,000,000 Tomson Pacific shares sold in September and the 1,690,000 sold in October were single parcels.

21.108 I am unable to determine who received the benefit of these transactions.

## Chintung

- 21.109 By way of a directors' meeting held on 16 January 1992 Madam Tsai Yueh Er and Madam Chang Yueh Chun allegedly resolved that a Hong Kong dollar margin account be opened with Chintung and that Madam Tsai Yueh Er be authorised to operate the account. The account opening form was apparently signed by Madam Tsai Yueh Er, also on 16 January 1992.
- 21.110 South View was granted a \$10,000,000 trading limit. The account executive for South View was Mr Peter Mou.
- 21.111 Madam Hsu Jye signed an unlimited personal guarantee for the company's margin account on 27 February 1992 and Mr Spancer Lau witnessed this guarantee.
- 21.112 The only 2 transactions at Chintung involving WTCG shares was a deposit of 40,000,000 on 12 May 1992 and the withdrawal of the same shares on 10 August 1992.
- 21.113 I have not considered the transactions that occurred during 1992.

## **PLACEMENT OF RIVERA SHARES IN APRIL 1990**

- 21.114 It has come to my attention that South View was an "independent placee" of 20,000,000 Rivera shares in a placement in April 1990. Because of the close relationship between many of the other transactions carried out by South View and the directors of Tomson Pacific I consider that South View's involvement in this placement is worthy of comment. However, as the Rivera placement is specifically not included within my terms of reference it has not been investigated in detail.

### Participation in the Rivera Placement by South View

- 21.115 On 23 April 1990, Rivera placed 266,000,000 shares using Chintung as the placing agent. Cresvale Hong Kong was in turn asked to place 100,000,000 of these shares. The 266,000,000 shares represented an additional 30% of the issued share capital of Rivera prior to the placement and 23% of the enlarged capital following the placement.
- 21.116 South View were allocated 20,000,000 shares as part of the Rivera placement arranged by Chintung. These Rivera shares represented approximately 1.73% of the issued capital of Rivera at that time.
- 21.117 In addition to the shares allocated to South View, 96,300,000 Rivera shares were allocated to Mr David Tong which represented 8.35% of the enlarged issued share capital of Rivera following the placement. This figure coupled with the 28.7% held by Peace Forest Limited following the placement represented 37.05% of Rivera's issued share capital.
- 21.118 The remaining 169,000,000 shares were issued to various parties, the majority of which appear to be independent institutional buyers.
- 21.119 I am assured by Mr Chiang Wee Thiong, then the Manager of institutional sales at Cresvale Hong Kong, who principally executed the placement of 100,000,000 shares, that the parties to whom shares were placed were to the best of his knowledge independent of and not acting in concert with Rivera. As Cresvale Hong Kong allocated their shares predominantly to institutions this statement would appear correct. A full list of all places is shown at Appendix 133.

### **CONCLUSIONS**

- 21.120 The purpose of my investigation into the affairs of South View has been to determine who exercised control over the company and which person or persons benefitted from its activities.



21.121 For the reasons set out below I conclude that South View was used for a dual purpose. In one group of transactions in which it was involved, it is apparent that Mr Jackson Chang was closely involved in their negotiation and completion and that Mr David Tong benefitted from them.

21.122 With respect to the remainder of transactions entered into by South View which I have investigated, I have found it very difficult to determine who exercised control over these transactions or who benefitted from them. I have, however, noted that there is no documentary evidence supporting Mr Hsu Sun's belief that the majority of the transactions entered into by South View were at the behest of its directors.

Transactions at the direction of Mr Jackson Chang from which Mr David Tong benefitted

21.123 Two transactions that appear to fit into this category are the loan of \$100,000,000 from FEHIL to South View and the loan of \$100,000,000 from Rabobank to South View.

21.124 Within Chapter 7 I set out in detail the facts surrounding the negotiation of the FEHIL loan. It is clear from that analysis that Mr Jackson Chang was involved in arranging that loan; both Mr Hsu Sun and Madam Hsu Jye had only secondary roles. However it is not clear whether Mr David Tong had knowledge of the loan in June 1990.

21.125 After analysing the disbursement of the FEHIL loan funds from South View it can be seen that ultimately Mr David Tong directly benefitted from the payments; the \$1,500,000 paid to Pineast Pictures and \$1,550,000 paid to Gilded Gain. In total, \$63,088,500 of the \$100,000,000 went to David Tong Company before being disbursed to other bank accounts to which his sister-in-law, Madam Hsu Jye, was the sole signatory.

- 21.126 The \$5,400,000 paid to David Tong Company from the FEHIL loan funds was used to partially fund the Rivera placement. This placement indirectly assisted Mr David Tong maintain control of Tomson Pacific, as it assisted Rivera to meet it's requirement for cash to participate in the Tomson Pacific Rights Issue. This is considered in further detail in Chapter 18.
- 21.127 As I have not been able to investigate all the bank accounts involved and as, almost without exception, all shares purchased were held in names unrelated to the owners, I have been unable to say with any certainty whether Mr David Tong received the benefit of the balance of the \$100,000,000.
- 21.128 In respect of the \$100,000,000 loan from Rabobank, I discount Mr Hsu Sun's evidence that he believes the transaction was a money swap as all documentary evidence points to it being a loan. It is clear that South View was not necessary for the transaction to proceed as it did not provide the security nor did it receive the advance. The \$100,000,000 went to David Tong Company and the security appears to have been provided, at least partly, by Martra.
- 21.129 Out of the \$39,518,118 that I was able to trace, I determined that 35,000,000 Rivera shares, 6,580,000 WTCG shares and 20,000 Tomson Pacific shares were purchased from the Rabobank loan proceeds.
- 21.130 Mr David Tong had an interest as both director of, and shareholder in each of Rivera, WTCG and Tomson Pacific and there has been no evidence presented to establish that any other person ordered these transactions or took the benefit of the shares purchased. Accordingly, I believe it reasonable to conclude that Mr David Tong was the person or one of the persons responsible for the share acquisitions and benefited from them.

### Transactions for the benefit of Mr David Tong

- 21.131 The advance by South View of \$16,877,400 to partially satisfy the purchase of the properties at the Bank of America Tower was clearly a transaction carried out for the benefit of Mr David Tong and his wife.
- 21.132 Whilst the payment was expressed to be an advance, I have received no evidence of its repayment.
- 21.133 I have not obtained any evidence concerning the 50,000,000 Tomson Pacific shares that were sold in order to partially fund this payment however the way in which the funds were applied suggests that Mr David Tong may have had some role in the sale or an interest in the shares. I have found no evidence which helps me determine whether or not Mr Jackson Chang was involved in this transaction.
- 21.134 From the limited evidence available there is a strong suggestion that the sharetrading at Seapower Securities may also have been for the benefit of Mr David Tong, as is evidenced by his ultimate use of the \$4,870,000 of the sale proceeds to reduce his David Tong Company overdraft at SPAB.

### Transactions where the beneficiary remains unknown

- 21.135 Into this last category I have placed the majority of sharetrading conducted by South View at Baring Securities, Cresvale Hong Kong and Chintung as I have not been able to determine who provided the shares that were sold, or who received those purchased.

### The evidence of Mr Hsu Sun

21.136 I have found the evidence given by Mr Hsu Sun to be unconvincing. He was a sole signatory on a bank account with deposits of \$324,939,755 and disbursements of \$324,718,382 during 1990. Yet he is unable to recall the details of any of these transactions other than to say that these were some form of undocumented currency swaps.

21.137 In response to this criticism Mr Hsu Sun has stated through his solicitors that Mr Hsu Sun:

*". . . had been heavily trusted by his good friends such as Madam Tsai and others, he was asked to take care of the account of South View. All documents in relation to the transactions carried out by the South View thereafter were returned to the directors in Taiwan. Our client [Mr Hsu Sun] did not keep any record thereof. It was agreed that at one stage in time South View was very active in its business. And the amount involved were in some cases quite substantial. Our client, in the absence of the detail records, could not be expected to give full details as to the nature of the events or the transactions took place in the past. Nevertheless, it was according to our client that those transaction should basically concern with the currency swaps amongst the local and Taiwan investors. "*

21.138 I do not believe that Mr Hsu Sun's alleged lack of knowledge of the transactions conducted by South View is credible. Instead I am of the view that Mr Hsu Sun has deliberately withheld information from me about the true nature and extent of South View's activities and I am critical of him in this respect.

21.139 Mr Hsu Sun's failure to maintain proper books of account for South View and/or to produce these to me, has added greatly to the resources I have had to devote to the investigation of South View's activities. I should stress that Mr Hsu Sun has not provided any corroborative evidence, nor has any other witness corroborated his claim, that all records concerning South View's transactions were sent to Taiwan.

Mr Jackson Chang

21.140 Without being able to examine Mr Jackson Chang I am unable to reach a firm conclusion as to the nature of his role in South View. As stated elsewhere in this report I am critical of his failure to provide me with evidence.

The Directors of South View

21.141 The directors of South View have ignored my requests to meet with them to discuss their role in these transactions. I am critical of their failure in this regard. I do note however, that these directors may have been reluctant to appear before me due to possible repercussions if they had participated in underground banking transactions, as was alleged by Mr Hsu Sun.

Rivera Placement

21.142 My investigation has not specifically addressed whether or not, in this particular instance, South View was acting independently of the directors and controlling shareholders of Rivera. However from the evidence obtained with respect to other transactions entered into by South View I suspect that the management of Rivera may have exercised some influence over these placement shares and I believe further enquiry is merited by the relevant authorities.

## CHAPTER 22

### GRAND OCEAN CORPORATION

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## 22 INTRODUCTION

- 22.1 My terms of reference directed me to investigate the relationship between various parties involved in the Tian Teck share transaction and the directors and shareholders of WTCG. It became apparent during my investigation that Grand Ocean Corporation ("Grand Ocean") was also involved in this transaction.
- 22.2 Accordingly, I was subsequently appointed to investigate Grand Ocean by the Financial Secretary on 13 January 1993 in furtherance of my investigation into the affairs of Tomson Pacific and WTCG.
- 22.3 As well as being directly involved in the Tian Teck shares transaction discussed in Chapter 9, Grand Ocean also participated in the purchase of large blocks of Rivera, Tomson Pacific and WTCG shares.
- 22.4 Grand Ocean is managed by Madam Hsu Jye in Hong Kong. Unlike Martra, Cortney and Hauxton which Madam Hsu Jye says she manages but has no beneficial interest in, Madam Hsu Jye says that Grand Ocean is operated for the benefit of her brother, Mr Hsu Bin and herself.
- 22.5 The purpose of this chapter is to set out in detail the results of my investigation into the operations of Grand Ocean in Hong Kong, particularly those in 1990.
- 22.6 Despite several attempts I have been unable to make contact with Mr Hsu Bin.

## **INCORPORATION, DIRECTORS AND SHAREHOLDERS**

- 22.7 Grand Ocean was incorporated on 22 June 1988 in the Republic of Liberia. At the first meeting of the company held on 26 July 1988, Mr David Tong, Madam Hsu Feng and Madam Hsu Jye were appointed directors. At a meeting of the directors held on 8 August 1988 Mr David Tong was appointed President, Madam Hsu Feng Vice-President and Madam Hsu Jye Secretary and Treasurer of Grand Ocean.

22.8 I note from minutes of a meeting of directors that Mr David Tong resigned as President and a director of the company with effect from 7 January 1989. When I asked Madam Hsu Jye why Mr David Tong was originally the President and a director of the company. Madam Hsu Jye responded by stating that simply that the company was Mr David Tong's but was subsequently transferred to her.

22.9 Madam Hsu Jye said in relation to the reasons for her buying this company that:

*"The intention of purchasing this company was we would like to see what business opportunities were there for me and my brother in Hong Kong."*

22.10 Madam Hsu Jye was unable to provide me with any documentary evidence to support her claim that she purchased the company.

22.11 Importantly the bearer shares initially issued by Grand Ocean were transferred into the name of Becmac Limited ("Becmac") at the time Mr David Tong became a director. I have examined records held by Becmac (a secretarial company operated as part of the accountancy firm of Deloitte Touche Tohmatsu) and note that on 22 November 1988 the bearer share certificates were delivered to Rivera. There has been no evidence presented to me that shows that these shares were ever formally transferred to Madam Hsu Jye or her brother.

22.12 In relation to the ownership of Grand Ocean's shares, Madam Hsu Jye stated:

*"Because this happened a long time ago, so I cannot recall exactly what happened then, but anyway from the 7th January 1989 my brother and I acquired this company, that was all that happened, but I cannot recall whether I paid the consideration on the same day."*

22.13 In a recent submission to me by her solicitor, Madam Hsu Jye advised that Grand Ocean was dissolved on 4 April 1991.



## **BOOKS AND RECORDS**

22.14 I wrote to Madam Hsu Jye on 18 January 1993 requiring that she produce to me all the books and records of Grand Ocean. On 3 February, 1993 she delivered to me copies of all company records she claimed she had which included directors' minutes, a bank account mandate with Security Pacific Asian Bank Limited ("SPAB") and margin account statements from Chintung. There were also a loan facility statement, letters, a copy of a cheque, a receipt and fixed deposit advice in respect of a loan of \$60,000,000 from Grand Ocean to Peace Forest.

22.15 When I asked Madam Hsu Jye where the primary books and records of Grand Ocean such as cheque stubs, deposit advices and bank statements were kept she said:

*"I don't have any such information now, after we have reconciled our accounts that would be the end of it . . . I have given them to Hsu Bin but I don't know whether he still keeps them."*

22.16 I have endeavoured several times to contact Mr Hsu Bin from telephone numbers and addresses provided by Madam Hsu Jye. He has not responded to any of my enquiries.

22.17 I have reconstructed a statement of receipts and payments from March to August 1990 from the cheque copies which SPAB provided to me. I have also analysed the share trading carried out by Grand Ocean during 1990, particularly the share trading conducted through Chintung and DMT Securities. This analysis is discussed below.

## **BANK ACCOUNT**

22.18 At a meeting of directors held on 27 October 1989, Madam Hsu Jye and Mr Hsu Bin resolved to open a bank account with SPAB. Madam Hsu Jye was authorised to be the sole signatory on the account.

- 22.19 This is approximately the time when Madam Hsu Jye was taking steps to open an account for Martra, as discussed in Chapter 19. As also mentioned in that chapter, Mr Daniel Lui introduced Grand Ocean to SPAB with a letter from Tomson Pacific dated 20 February 1990. The letter is shown at Appendix 134.
- 22.20 The bank account with SPAB was operated between 2 April 1990 and 13 August 1990.
- 22.21 Madam Hsu Jye wrote to SPAB on 3 September 1990 instructing them to close the current account and all time deposit accounts with immediate effect.
- 22.22 The reconstructed schedule of receipts and payments from this account is shown as Appendix 135.
- 22.23 The receipts and payments to and from the SPAB account are summarised as follows:

Company/Individual	Receipts \$	Payments \$
David Tong Company	41,280,000	23,368,569
Fulldiamond	NIL	2,250,000
Mr Hsu Sun	1,760,000	NIL
Kuanyun Trading	2,250,000	NIL
Madam Hsu Jye	1,012,386	NIL
Mr Jackson Chang	864,000	NIL
Gilded Gain	NIL	558,828
DMT Finance	4,723,806	36,800,000
Seapower Securities	NIL	6,300,000
Rorola Company	1,046,876	NIL
Lee Tat & Co	561,582	NIL
Chintung	8,804,757	NIL
Smith New Court	NIL	683,362
Wader	713,148	NIL
Madam Wong Man Ling	943,757	NIL

Mr Wong Wai	3,883,581	NIL
Mr Chan Hei Gei	Nil	583,620
Mr Tung Ming Hsun	2,700,000	670,000
Others	4,337,551	3,687,801
Total	\$74,881,444	\$74,902,180

### **DETAILED TRANSACTION ANALYSIS**

22.24 Of the \$41,280,000 received from David Tong Company, 6 receipts amounted to \$40,660,000. The date and amount of these receipts are set out below:

Date	Amount
10/5/90	7,750,000
11/5/90	3,000,000
14/5/90	4,300,000
18/5/90	8,300,000
21/5/90	13,850,000
14/6/90	3,460,000
Total	\$40,660,000

22.25 The funds from the first five receipts were in turn paid to DMT Securities Limited ("DMT Securities") by Grand Ocean for the purchase of shares. The share trading through DMT Securities is discussed below.

- 22.26 The receipt of \$3,460,000 on 14 June 1990 was the primary source of funds for payments respectively of \$2,250,000 to Fulldiamond and \$1,923,750 to Chintung. Both of these payments were made in connection with the sale of 100,000,000 Regal shares discussed in Chapter 7 and represented a commission (in the case of Fulldiamond) and brokerage (in the case of Chintung) on the sale of those Regal shares.
- 22.27 As stated in Chapter 7, I find it anomalous that these payments were made by Grand Ocean. I have received no evidence to show that the alleged beneficial owners of Grand Ocean, Madam Hsu Jye and Mr Hsu Bin, had any interest in the Regal shares.
- 22.28 Chapter 7, contains evidence to support the conclusion that Mr Jackson Chang and, most probably, Mr David Tong rather than Madam Hsu Jye or Mr Hsu Bin were actively engaged in arranging this transaction.
- 22.29 There were seven major payments to David Tong Company totalling \$22,400,005, the dates and amounts of these payments are set out below:

Date	Amount \$
06/04/90	700,000
11/04/90	1,000,000
07/05/90	7,130,000
29/05/90	3,100,000
09/07/90	1,220,000
19/07/90	1,250,000
13/08/90	8,000,005
TOTAL	\$22,400,005

- 22.30 I have conducted a detailed analysis of the receipts and payments of David Tong Company, although this is not reproduced in this report.

- 22.31 In summary, the primary source of funds required to make these payments, was mostly receipts from sharebrokers. It appears that not all these receipts were related to share sales by Grand Ocean, for example, the source of the payment of \$1,220,000 to David Tong Company on 9 July, 1990, was an account at DMT Securities in the name of Madam Chang Yueh Chun.
- 22.32 The majority of the payments were almost immediately drawn from David Tong Company and paid to other bank accounts operated by Madam Hsu Jye. In cases where I have been able to examine the operation of these bank accounts, it is evident that the funds were used to purchase either Rivera, Tomson Pacific or WTCCG shares.
- 22.33 I have conducted a detailed review of the receipts and payments into and out of this bank account. Of the total of \$71,941,448 received into the Grand Ocean account, only \$1,012,386 came directly from Madam Hsu Jye or Mr Hsu Bin. There were no payments directly to either of them.

### **SHARE TRADING**

- 22.34 Grand Ocean has conducted share trading through various brokers. However, as the majority of the trading was conducted through Chintung and DMT Securities my analysis is centred on the trading through these two brokers.

#### Chintung

- 22.35 At a board meeting of Grand Ocean held on 9 June 1989, at which Madam Hsu Jye and Mr Hsu Bin were allegedly present, it was resolved to open a margin account with Chintung Finance. The account was to be operated by Madam Hsu Jye solely. Account opening documents were signed by Madam Hsu Jye and witnessed by Mr Spencer Lau on the same date.

22.36 By way of a letter dated 13 June 1989, Grand Ocean was granted margin trading facilities with a \$3,000,000 limit. No personal guarantee was required.

22.37 The Chintung client agreement showed Madam Hsu Jye as director and president of Grand Ocean.

Application Form for Account Trading Facilities with Chintung

22.38 A copy of Chintung's "*Application Form for Account Trading Facilities*" in respect of Grand Ocean is attached at Appendix 136. Several notations on this form are worthy of comment.

22.39 Mr Peter Mou is shown as the account executive.

22.40 In the section headed "*History*" it says:

*"This account is managed by Mr Jackson Chang who is the Managing Director of Tomson [Pacific] Ltd which is a quoted company in Hong Kong"*

22.41 In relation to this Madam Hsu Jye said:

*"I just do not know why Chintung have this information. "*

22.42 When asked if Mr Jackson Chang ever had a role in relation to Grand Ocean Madam Hsu Jye said:

*"Well he should have nothing to do with Grand Ocean. "*

22.43 The form is dated 13 June 1989 and Mr Peter Mou appears to have completed it.

22.44 Mr Peter Mou explained the entry by saying that Madam Hsu Jye was introduced by Mr Jackson Chang and:

*"First thing, I am found that this account belongs to Jackson Chang but, after we received the account, that it belongs to Hsu Jye; so that is why I need a personal guarantee from them. "*

22.45 It can also be seen from this application that Chintung subsequently increased the margin facility to \$25,000,000 but that a personal guarantee was required.

22.46 Mr David Tong personally guaranteed Grand Ocean's margin account with Chintung on 9 June 1990 (an extract of which is shown as Appendix 137).

22.47 On 20 June 1989, Madam Hsu Jye wrote to Chintung Finance to inform them that Madam Hsu Feng, the wife of Mr David Tong, was also authorised to operate the margin account singly with immediate effect.

22.48 On the Application Form For Account Trading Facilities a handwritten note says: "*Per FK, A/C to close per David Tong 20/11/91*" (Appendix 136). "FK" are the initials of Mr Freddie Kwan who worked as an account executive at Chintung in 1990. I have not been able to locate Mr Freddie Kwan.

22.49 When I asked Madam Hsu Jye why Mr David Tong gave the instruction to close Grand Ocean's account, Madam Hsu Jye said:

*"I do not know because at that time the company was mine. I remember when I closed that account I had to prepare a letter for them to close the account. "*

### Trading through the Chintung account

22.50 The majority of trading through the Grand Ocean margin account at Chintung in terms of value was done in Tomson Pacific and WTCG shares. This trading was conducted in the months of May through to August 1990.

22.51 The table below summarises the number of WTCG shares bought and sold during that period. No WTCG shares were traded by Grand Ocean in June or July 1990:

	May	August	TOTAL
Bought	21,812,000	118,200,000	140,012,000
Sold	5,000,000	116,500,000	121,500,000
NET TOTAL	16,812,000	1,700,000	18,512,000

22.52 The 16,812,000 WTCG shares shown above as the net purchases during May 1990 appear to have been removed from the account on 7 June 1990. It is not clear from Chintung's records who collected these WTCG shares. At that time 16,812,000 WTCG shares represented approximately 1.26% of WTCG's issued share capital.

22.53 The purchase and sale of the WTCG shares in August 1990 is discussed in detail in Chapter 9 as these shares formed an integral part of the Tian Teck shares swap.

22.54 There is in Chapter 9, evidence to show that Mr Jackson Chang directly ordered the purchase of at least 50,000,000 of the 118,200,000 WTCG shares purchased in August 1990.

22.55 The 118,200,000 WTCG shares represented approximately 8.8% of WTCG's issued share capital at that time.



22.56 The purchase of Tomson Pacific shares by Grand Ocean from various brokers in May and June 1990 is discussed in Chapter 18. In summary 50,908,000 Tomson Pacific shares were purchased by Grand Ocean in the period from 1 May 1990 to 19 June 1990 (the closing date for the Tomson Pacific Rights Issue). Of these, 26,378,000 Tomson Pacific shares were purchased by Grand Ocean through Chintung in May 1990. There were no other purchases or sales through Chintung.

22.57 As there were other Tomson Pacific shares held as security in respect of Grand Ocean's margin account with Chintung, it is difficult to precisely determine when those 26,378,000 Tomson Pacific shares were released as security. The margin statements show that 21,000,000 Tomson Pacific shares were released on 29 June 1990 and 9,462,000 on 9 July 1990.

22.58 At that time 30,462,000 Tomson Pacific shares represented approximately 1.22% of Tomson Pacific's issued share capital.

Deposits of a large parcel of shares into the Grand Ocean margin account

22.59 Of particular note is the deposit of a large parcel of shares to Grand Ocean's margin account at Chintung on 20 April 1990 and their withdrawal on 23 April 1990.

22.60 The following shares were deposited and later withdrawn:

<u>Company</u>	<u>Number of shares</u>
Tomson Pacific	377,206,000
Regal	74,144,000
Cathay City International	11,822,500
Far East Consortium	1,434,000
Rivera	8,522,966

22.61 Copies of the relevant delivery and withdrawal slips are attached at Appendix 138.

22.62 At that time 377,206,000 Tomson Pacific shares represented approximately 30% of the issued share capital of Tomson Pacific.

22.63 Following withdrawal of the large parcel of shares from Grand Ocean's margin account at Chintung I have been advised that the Tomson Pacific and Regal shares were deposited to the following accounts:

Account at Chintung	Tomson Pacific Shares	Regal Shares
Grand Ocean	26,090,000	9,694,000
Tomson Investment	Nil	60,000,000
Forty Enterprises Limited	8,012,000	4,450,000
Shine Trip Limited	343,104,000	Nil
TOTAL	377,206,000	74,144,000

22.64 Tomson Investment is a subsidiary of Tomson Pacific, and Forty Enterprises Limited ("Forty") and Shine Trip Limited ("Shine Trip") are subsidiaries of Rivera.

22.65 Also of note is a deposit of 96,347,220 Rivera shares on 7 May 1990. The deposit of these Rivera shares provided margin facility to support the purchase of Tomson Pacific and WTCG shares purchased May 1990, discussed above. I believe that a parcel of Rivera shares this size is likely to have come from Peace Forest (a company controlled by Mr David Tong and Mr Jackson Chang in 1990 and a company, which in turn, controlled Rivera).

22.66 This indicates to me that those persons controlling Rivera in 1990 (Mr Jackson Chang and Mr David Tong) were also involved in the management of Grand Ocean.

22.67 In a submission to me by Madam Hsu Jye's solicitors I was advised that:

*"In relation to the deposits of large parcels of shares into the Grand Ocean margin account. Madam Hsu Jye recalls that Rivera, Tomson Pacific and WTTCG were moving offices during the month of April 1990 and the shares owned by the listed companies and/or Grand Ocean were deposited with Chintung for safety reasons. However the Tomson Pacific and Regal shares owned by Rivera, Tomson Pacific and their subsidiaries were mistakenly deposited into the account of Grand Ocean. This mistake was realised and rectified shortly afterwards."*

#### Share Trading at DMT Securities

22.68 At a board meeting held on 30 June 1989, the directors of Grand Ocean resolved to open a margin account with DMT Finance Limited ("DMT Finance") (the finance arm of the brokerage house, DMT Securities) and either one of Madam Hsu Jye and Madam Hsu Feng was authorised to operate the account. At this time DMT Finance granted Grand Ocean a margin limit of \$5,000,000.

22.69 The Customer Trading Agreement dated 30 June 1989 provided in Clause 3.13 that the names and specimen signatures of the directors of Grand Ocean be shown. Madam Wong Man Ling and Madam Hsieh Hui Ching were shown as directors. A copy of the agreement is at Appendix 139. From this copy it can be seen that in fact Madam Hsu Jye signed her usual signature passing it off as Madam Hsieh Hui Ching's signature.

22.70 I asked Madam Hsu Jye why Madam Wong Man Ling and Madam Hsieh Hui Ching were mentioned as directors of the company. Madam Hsu Jye said she did not know why. She said Madam Wong Man Ling was not a director but was made an authorised signatory. However, she claims she could not remember the reason for making her a signatory. Madam Wong Man Ling is a reporter with the Sing Pao newspaper and is discussed in Chapter 6.

- 22.71 I then asked Madam Hsu Jye why she signed for Madam Hsieh Hui Ching. Madam Hsu Jye said that it was a mistake claiming that Madam Hsieh Hui Ching's name should not have been included. When I asked why Madam Hsieh Hui Ching's passport copy (as a means of identification) was found in DMT Securities' file relating to Grand Ocean, Madam Hsu Jye replied that this was also a mistake.
- 22.72 Two sets of signature cards for Grand Ocean's account were found. Both were dated 30 June 1989. One was signed by Madam Hsu Jye and Madam Hsu Feng with the business address given as that of Tomson Pacific. Another was signed by Madam Wong Man Ling and Madam Hsu Jye with the business address of Flat E, 12/F, Shing Hing Commercial Building, 21-27 Wing Kut Street, Hong Kong, which is the address of Herman H Y Ng & Company, Certified Public Accountants. As discussed in Chapter 6, Herman H Y Ng & Company supplied Hauxton as a shelf company for Madam Hsu Jye.
- 22.73 The latter signature card was apparently completed, concurrently with a letter dated 20 October 1989 from Grand Ocean and signed by Madam Hsu Jye which informed DMT Securities of the change of correspondence address to Flat E, 12/F, Shing Hing Commercial Building, 21-27 Wing Kut Street, Hong Kong.

Shares purchased using DMT Securities

- 22.74 Grand Ocean purchased, through DMT Securities, a total of 24,130,000 Tomson Pacific shares and 11,904,000 WTCG shares during May 1990.
- 22.75 A total of \$36,800,000 was paid to DMT Securities by Grand Ocean and a total of \$4,723,809.96 was received by Grand Ocean from DMT Securities.

- 22.76 I have conducted a detailed analysis of these receipts and payments. In summary, there is no evidence that this share trading was carried out for the benefit of Madam Hsu Jye or Mr Hsu Bin. Rather the funds paid to DMT Securities has come from a variety of sources including the personal account of Mr David Tong and Madam Hsu Feng and from Tomson Development in Taiwan, a company controlled by Mr David Tong and of which Mr Danny Koo is the General Manager.
- 22.77 Accordingly, it would appear that the DMT Securities account was being operated for the benefit of various Taiwanese including Mr David Tong and Madam Hsu Feng.

Loans from Grand Ocean to Peace Forest

- 22.78 By way of a facility letter dated 19 October 1989, Grand Ocean agreed to advance \$60,000,000 to Peace Forest, the company which controlled Rivera in 1989 and 1990. Major terms were of the facility letter were as follows:

Purpose	:	Securities Investment
Interest Rate	:	Prime plus 1%
Interest Repayment	:	Quarterly
Maturity	:	On demand, not later than 18 April 1990

- 22.79 There was no mention of security being provided by Peace Forest.
- 22.80 Madam Hsu Jye executed the agreement on behalf of Grand Ocean and Mr Jackson Chang executed it on behalf of Peace Forest.
- 22.81 A copy of a loan statement dated 18 April 1990 (Appendix 140) shows that the \$60,000,000 was advanced in two parts; \$43,000,000 and \$17,000,000 paid respectively on 19 and 20 October 1989.

- 22.82 On 23 October 1989 \$30,000,000 appears to have been repaid and, after interest accruals, the balance of \$31,714,297.57 was repaid on 18 April 1990.
- 22.83 Grand Ocean's records do not show the source of the funds used to advance the loan nor do they indicate the source of Peace Forest's repayments.
- 22.84 This loan is discussed in this Chapter as the amount of the advance matches an alleged loan existing in June 1990 between Grand Ocean and Peace Forest where Madam Hsu Jye claims the security was Rivera shares. It is claimed, 90,000,000 Rivera shares, were pledged by Grand Ocean as security in respect of its margin account at Chitung which allowed the withdrawal of 100,000,000 Regal shares for a sale to Far East Holdings International Limited. This is discussed in Chapter 7.
- 22.85 I note that no documentation in respect of this latter loan has been provided to me by Madam Hsu Jye.

## **CONCLUSIONS**

- 22.86 Grand Ocean played a significant part in the Tian Teck share swap discussed in Chapter 9. Because of its role I have sought to investigate its activities further in order to establish the persons who are beneficially interested in, and controlled Grand Ocean.
- 22.87 As Grand Ocean is a Liberian company that had only bearer shares in issue, I am unable to state with any certainty who beneficially owned the company.
- 22.88 Madam Hsu Jye claims Grand Ocean is owned by Mr Hsu Bin and her. She has, however, failed to provide any evidence to substantiate the alleged purchase of the company by Mr Hsu Bin and her from Mr David Tong. It is not disputed that Mr David Tong did, prior to 1990, hold a beneficial interest in Grand Ocean.

22.89 Therefore I have used the evidence of the various transactions that Grand Ocean was involved in to guide me in forming an opinion as to its ownership and control during 1990.

Share trading - Chintung

22.90 Grand Ocean's primary function appears to have been share trading. The majority of its investments in shares were in companies controlled by Mr David Tong and Mr Jackson Chang.

22.91 It is of note that Grand Oceans' bank account commenced operation on 2 April 1990 (approximately when Tomson Pacific was negotiating the acquisition of a controlling interest in WTCG) and was closed on 3 September 1990 (some two weeks after the placement of WTCG shares that completed the process of Tomson Pacific acquiring control over WTCG).

22.92 With respect to the acquisition of 118,200,000 WTCG shares by Grand Ocean in August 1990 I have concluded in Chapter 9 that for at least 50,000,000 of these shares, there is documentary evidence showing that Mr Jackson Chang ordered the purchase of the shares, then arranged for them to be booked into the account of Grand Ocean. Furthermore, he negotiated a loan of \$50,000,000 from Mr David Chiu in order to partially fund the purchase of the 50,000,000 shares.

22.93 Therefore I conclude that Mr Jackson Chang had a significant influence over Grand Ocean's affairs being able to incur on its behalf a liability of \$135,816,750.

22.94 In support of my conclusion that Mr Jackson Chang significantly influenced the operations of Grand Ocean at Chintung is the Chintung Application Form for Account Trading Facilities. This form specifically names Mr Jackson Chang as the person managing the account. However, I place less weight on this document as it was dated 13 June 1989 and it is possible that between June 1989 and August 1990 circumstances did change.

22.95 Of greater significance in determining the extent of control over the operations of the Chintung margin account are the following four factors:

1. A personal guarantee given by Mr David Tong executed on 4 June 1990;
2. The deposit of large parcels of Rivera shares lodged as margin security in order to fund purchases of Tomson Pacific and WTCG shares;
3. The notation on the Chintung Application Form for Account Trading Facilities dated 20 November 1991 which states that Mr David Tong has directed that the margin facility be closed; and
4. The significant volume of funding through David Tong Company.

22.96 In addition there is the deposit, albeit briefly, of approximately 30% of Tomson Pacific's issued share capital into the Chintung margin account in April 1990. However this may well have been a mistake as is claimed by Madam Hsu Jye.

22.97 These factors individually may be explained by concluding that Madam Hsu Jye was simply assisted by Mr David Tong from time to time to further her own business interests. However when taken as a whole, I believe they support the conclusion that Mr David Tong exercised a significant influence over the operations of the Chintung margin account. So much so, that without Mr David Tong's personal guarantee, the extent of trading that actually occurred would not have been possible.

22.98 It is my view that Mr David Tong was interested in the transactions carried out by Grand Ocean through the Chintung margin account.



### Share trading - DMT Securities

- 22.99 Unlike the trading through Chintung, there is only limited evidence to suggest the involvement of either Mr Jackson Chang or Mr David Tong in the operation of this account. For example, \$7,000,000 of the money paid into the DMT Securities account appears to have come from the bank accounts of Mr David Tong and Madam Hsu Feng.
- 22.100 However, due to the variety of sources from which funding for the share trading came, I am unable to conclude exactly who benefitted from the share trading activities through DMT Securities.
- 22.101 What is evident is the fact that Grand Ocean does not appear to have acted solely for the benefit of Madam Hsu Jye or Mr Hsu Bin in respect of the share trading through DMT Securities.

### Loans

- 22.102 The books and records produced to me by Madam Hsu Jye were insufficient to allow me to properly investigate the full extent of Grand Ocean's activities.
- 22.103 I have only considered one loan made in October 1989, whereas it appears, from correspondence with Madam Hsu Jye, that there were more loans made between Grand Ocean and Peace Forest.
- 22.104 Such loans are important as I have found (specifically with regard to Martra in Chapter 19) that the funds from some of the loans were used in 1990 to assist in obtaining control of WTTCG, or in assisting Rivera complete its part of the Tomson Pacific Rights Issue.
- 22.105 I am critical of Madam Hsu Jye for not making Grand Ocean's records available to me. If she actually sent these to her brother, Mr Hsu Bin, I believe it would be to ensure that I did not have access to them.

22.106 Due to the lack of records made available to me I am unable to reach any conclusion about the true purpose and intent of the loans made by Grand Ocean in 1990.

Mr Hsu Bin

22.107 I am particularly critical of Mr Hsu Bin for failing to respond to my requests to meet with him.

22.108 I believe it is reasonable to infer that through his brother, Mr Hsu Sun, and sisters, Madam Hsu Feng and Madam Hsu Jye, he is well aware of the investigation and its scope and therefore his importance as a witness.

22.109 If he was present in Hong Kong, such a failure to assist me would result in an application by me to the Court to consider contempt proceedings pursuant to my powers under section 145(3) of the Companies Ordinance. As he remains overseas, I am unable to invoke this section.

Summary

22.110 It is not disputed that Mr David Tong and Madam Hsu Feng once owned Grand Ocean and that Mr Jackson Chang assisted in its direction. At issue is whether such control and ownership passed to Madam Hsu Jye and Mr Hsu Bin.

22.111 I have concluded that in 1990, in circumstances similar to those for of Martra, Hauxton, South View and David Tong Company, Grand Ocean was used for twin purposes. Firstly for the benefit of Madam Hsu Jye, Mr Hsu Bin and their friends but when required for the benefit of Mr David Tong and Mr Jackson Chang. Such a requirement, I believe, arose when Mr David Tong and Mr Jackson Chang wished to disguise their involvement in transactions involving Rivera, Tomson Pacific and WTCG.

## CHAPTER 23

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#### 23 INTRODUCTION

23.1 Spinus Limited ("Spinus") is a company which has featured in two of the transactions that I have investigated. It received a commission on the sale of the World Trade Centre from Hongkong Land to WTCG of \$34,400,000. In addition Spinus received a profit of \$46,600,000 from the sale of 145,000,000 Tian Teck Land Limited ("Tian Teck") shares to WTCG. These transactions are discussed in detail in Chapters 8 and 9 respectively.

- 23.2 My terms of reference in respect of the World Trade Centre transaction directed, in part, that I consider "*whether there were any irregularities in the payment by WTCC of commission in connection with that acquisition*". In respect of the Tian Teck transaction I was directed to specifically consider the involvement of Spinus.
- 23.3 The Financial Secretary appointed me to investigate the affairs of Spinus on 23 October 1992 in furtherance of my investigation into the affairs of Tomson Pacific and WTCC.
- 23.4 The purpose of this chapter is to set out in greater detail than was discussed in Chapters 8 and 9 the nature of Spinus's business in Hong Kong with particular regard to its ownership and control.
- 23.5 Spinus is a company incorporated in Liberia with one bearer share in issue. Accordingly, I have been unable to determine with certainty its beneficial ownership. Therefore I have looked to the transactions carried out by Spinus to guide me in forming an opinion as to its ownership and control.
- 23.6 Spinus appears to have been controlled by Mr David Chiu in 1990 and used by him for several reasons including the avoidance of tax.
- 23.7 Madam Eva Hui (at the time Mr David Chiu's personal assistant) however, claims that Spinus was beneficially owned by her in 1990 and only borrowed by Mr David Chiu for receipt of the commission on the acquisition of the World Trade Centre Building. I have found that there is little evidence to show that Spinus has been used for her benefit.
- 23.8 Spinus's operations were confined to two transactions. I have found that it only received and disbursed the commission in respect of the sale of the World Trade Centre Building, and the profit in respect of the Tian Teck share transaction.
- 23.9 Following those transactions, Spinus was dissolved.

## INCORPORATION, DIRECTORS AND SHAREHOLDERS

- 23.10 Spinus was incorporated in Liberia on 22 November 1982. Spinus has not been registered as an oversea company with the Hong Kong Companies Registry.
- 23.11 Madam Eva Hui has told me that the Mr David Chiu's family purchased Spinus as a shelf company in 1982 and that the company was subsequently transferred to Madam Eva Hui in 1987, although I understand that no consideration was paid for the acquisition. Madam Eva Hui has told me that she required a company to conduct investments for herself.
- 23.12 A notice issued by the Minister of Foreign Affairs in Liberia on 16 March 1992 proclaimed Spinus as being dissolved and revoked Spinus's Articles of Incorporation. This notice cited the non payment of annual corporation registration fees and/or the failure to maintain a registered agent in the Republic of Liberia as the reasons for revoking Spinus's Articles of Incorporation.
- 23.13 For the period from 23 November, 1982 until the dissolution of Spinus in March 1992, the directors were:

<u>Name</u>	<u>Date Appointed</u>	<u>Date Resigned</u>
Mr David Chiu	23/11/82	1/11/83
Mr Dick Chiu Tat San	23/11/82	1/11/83
Mr Deacon Chiu	23/11/82	1/11/83
Mr Ringo Wong Lai Chuen	1/11/83	1/5/87
Mr Stanley Wong Cheung Kwan	1/11/83	8/8/90
Madam Eva Hui	1/5/87	

- 23.14 Messrs David Chiu, Dick Chiu and Deacon Chiu replaced the three directors who were appointed when Spinus was incorporated and who held office whilst it was a shelf company.

23.15 Spinus's register of members showed the shareholders were:

Name	Address	Shares Acquired		Shares Sold		Current Holding
		<u>Date</u>	<u>No</u>	<u>Date</u>	<u>No</u>	
Mr S.V. Fully	80 Broad Street Monrovia Liberia	22/11/82	1	23/11/82	1	-
Far East Consortium Limited	16/F Far East Consortium Building 121 Des Voeux Rd Central Hong Kong	23/11/82	1	1/11/83	1	-
Brentford Investments Inc.	80 Broad Street Monrovia Liberia	1/11/83	1	1/11/83	1	-
Vast World Investment Company Limited	18/F Far East Consortium Building 121 Des Voeux Rd Central Hong Kong	1/11/83	1	1/5/87	1	-
Madam Eva Hui	Flat E 12/F Block Block 16, City One Sha Tin New Territories	1/5/87	1	-	-	1

23.16 Far East Consortium Limited, Brentford Investments Inc and Vast World Investment Company Limited were all companies substantially under the control of Mr David Chiu and his family during the time that they were shareholders of Spinus.

23.17 Madam Eva Hui was asked if Spinus was in fact operated for the benefit of Mr David Chiu to which she replied that:

*"No, no there were two major transactions, one involving Mr [David] Chiu and the other involving Mr Tsoi [Mow Hung] and whatever money they made, they would withdraw from the account and I drew a very clear line of distinction between the two of them. "*

23.18 Madam Eva Hui was asked whether there were any transactions put through Spinus's account for which she was the controller and beneficiary and she said no.

23.19 My delegate put to her the following question:

*"Can I properly characterise the [Spinus bank] account as an account which you seem to have control of to a certain degree and certainly you are registered as the owner of the company which owns the account but, in fact, you are not really the operator of the account, you just do what other people tell you?"*

23.20 Madam Eva Hui responded "yes".

23.21 According to Madam Eva Hui the commissions paid to Spinus for the World Trade Centre Building transaction was money which belonged to Mr David Chiu. The profit made on the sale of the Tian Teck shares was money which belonged to Mr Tsoi Mow Hung.

### **BOOKS AND RECORDS**

23.22 The statutory records and bank account records of Spinus were kept at 16/F Far East Consortium Building, 121 Des Voeux Road, Central, Hong Kong. This is also the address of Far East Consortium Limited, of which Mr David Chiu is the Managing Director.

23.23 Spinus's records consisted of one box file of financial information, containing a cash journal for the period 8 August 1990 to 7 September 1990 plus bank vouchers and bank statements. No financial accounts have been prepared.

### **TAX RETURNS**

23.24 I have not found any evidence which shows that Spinus has lodged a Hong Kong Profits Tax Return or paid any tax in Hong Kong. When I asked Madam Eva Hui whether Spinus has made any provision for Hong Kong Profits Tax, Madam Eva Hui replied:

*"Well, we [Mr David Chiu, Mr Tsoi Mow Hung and Madam Eva Hui] all had the understanding and the agreement that in principle it wasn't necessary to pay any tax because we were using the Liberian company, but if it so happened that we were required to pay tax then they would agree to contribute."*

23.25 I asked Mr David Chiu why he used Spinus to issue debit notes to WTCCG for the commission payable in respect of the World Trade Centre Building transaction when the commissions had purportedly been earned by Mr David Chiu and Mr George Tan. Mr David Chiu explained:

*". . . we . . . try to be low profile and try not to have a Hong Kong company to issue the debit note that we might be liable for tax . . . any of my companies is just more high profile and the tax department might be more interested and that's why I try to use a Liberian company and try to be more low profile."*

23.26 Mr Tsoi Mow Hung has similarly told me that Spinus was used for the acquisition and sale of the Tian Teck shares *"because of tax reasons."*



## **BANK ACCOUNT**

- 23.27 Spinus operated a current account and a call deposit account with the First Pacific Bank's Exchange Square Branch.
- 23.28 At a director's meeting on 2 August 1990 attended by Madam Eva Hui and Mr Stanley Wong (an employee of the Far East Group of Companies), it was resolved to open a bank account at First Pacific Bank. Madam Eva Hui has told me that the account was opened for the purpose of receiving a commission on the World Trade Centre Building transaction.
- 23.29 Spinus opened a bank account with First Pacific Bank on 6 August 1990. The signatories to this account were Mr David Chiu, Madam Eva Hui and Mr Lam Din-Cheong, Edward ("Mr Edward Lam"). Mr David Chiu was authorised to sign the account singly. Madam Eva Hui and Mr Edward Lam were required to sign jointly.
- 23.30 Madam Eva Hui told me the reason that she was not a sole signatory was because:
- "the commission [from the World Trade Centre Building transaction] was earned by Mr [David] Chiu himself and it also happened around 1990 . . . I was in China very often, and so since the money was earned by Mr [David] Chiu so I naturally want him to open an account so that he could collect the money."*
- 23.31 Madam Eva Hui told me that Mr Edward Lam was a colleague in the Accounting Department at the Far East Group.
- 23.32 It is clear that Spinus only received income from two transactions, the World Trade Centre Building commission on 8 August 1990 and the profit from the Tian Teck transaction on 9 August 1990.

23.33 Spinus's bank account records show the receipt of this income and the subsequent disbursement of the proceeds. The table below summarises movements of funds between 6 August 1990 and 30 September 1990:

Company/Individual	Payments to \$	Receipts from \$
WTCG (World Trade Centre Commission)		34,400,000
Hauxton (Tian Teck share profit)		46,600,000
Mr Felix Wong		1,113,400
Mr Clarence Cheng		271,600
Mr Roy Loffill	53,999,998	
Boughton Peterson Yang & Anderson (Canada)	12,895,225	
McLeod Dixon Trust (Canada)	677,850	
Yu On Securities Co Ltd	125,453	
Mansion House Securities (FE) Limited	226,163	
Audrey P F Chow	1,317,733	
Mr Francis Lau	20,000	
Shearn Delamore & Co (Malaysia)	4,221,214	
Cash (10/8/90)	79,578	

Keen Investments	4,590,000	
Shiu Wah Enterprises	3,000,000	
Cash (24/8/90)	1,224,000	
Cash (3/9/90)	10,000	
Cash (4/9/90)	10,000	
TOTAL	\$82,397,214	\$82,385,000

23.34 I have grouped Spinus's transactions accordingly:

- \* Payments to Mr Roy Loffill;
- \* Transfers to Canada;
- \* Share Trading; and
- \* Other Payments;

Payments to Mr Roy Loffill

23.35 Spinus issued three cheques to Mr Roy Loffill out of the proceeds of the World Trade Centre Building commission and the profit from the sale of the Tian Teck shares. Mr Roy Loffill is discussed in Chapter 10. In summary I conclude that he was acting as the nominee of Mr George Tan in respect of these transactions. Details of these payments are:

<u>Date Cleared</u>	<u>Transaction</u>	<u>Cheque signed by</u>	<u>Amount</u> \$
9/8/90	World Trade Centre Building Commission (one third)	Mr David Chiu	11,466,666
9/8/90	World Trade Centre Building Commission (one third)	Mr David Chiu	11,466,666
11/8/90	Tian Teck profit share (two thirds)	Mr David Chiu	31,066,666
		Total	<u>\$53,999,998</u>

23.36 Madam Eva Hui confirmed the handwriting on the cheque to Mr Roy Loffill for \$31,066,666 was her own (Appendix 141). The handwriting on the Wing Hang Bank's current account deposit slip for this cheque also resembles Madam Eva Hui's (Appendix 142), which suggests that Madam Eva Hui deposited the cheque into Mr Roy Loffill's account directly. However, Madam Eva Hui told me that she did not bank the cheque directly into Mr Roy Loffill's account:

*"I remembered I had hand over the cheque to Mr Roy Loffill's staff and they banked the cheque themselves."*

23.37 The handwriting on the other two cheques for \$11,466,666 each paid to Mr Roy Loffill also appears to be Madam Eva Hui's handwriting (Appendix 143).

23.38 These payments are all discussed within Chapters 8,9 and 10 of this report.

#### Transfers to Canada

23.39 Spinus transferred a total of HK\$13,573,075 (C\$2,000,000) to Canada. Details of the transfers are:

<u>Date</u>	<u>Cheque signed by</u>	<u>C\$</u>	<u>\$</u>
9/8/90	David Chiu	150,000	1,016,575
9/8/90	Eva Hui/Edward Lam	100,000	677,850
14/8/90	David Chiu	1,550,000	10,521,090
14/8/90	Eva Hui/Edward Lam	200,000	1,357,560
		C\$ <u>2,000,000</u>	<u>\$13,573,075</u>

23.40 The transfers of C\$150,000, C\$1,550,000 and C\$200,000 were all transfers to a Hongkong Bank account in Vancouver, Canada for Boughton Peterson Yang & Anderson ("BPYA"), a firm of Canadian solicitors.

23.41 Documents obtained from Spinus's records suggest that the payment of C\$200,000 on 14 August 1990 was paid on behalf of Mr Felix Wong and Mr Clarence Cheng for payments for their 8% and 2% interests respectively in a property situated at 570 Dunsmuir Street, Vancouver, Canada ("the Dunsmuir property"). I understand from Madam Eva Hui that this property represented an investment interest of Mr David Chiu and a few of his friends. I have obtained evidence that Madam Alice Lam of Fulldiamond utilised part of the commissions paid to Fulldiamond which are discussed in detail in Chapter 24 to fund her interest in the Dunsmuir property.

23.42 Mr Felix Wong and Mr Clarence Cheng repaid Spinus the C\$200,000 with three cheques. Details of these repayments to Spinus are:

<u>Date</u>	<u>Received from</u>	<u>C\$</u>	<u>\$</u>
14/8/90	Mr Felix Wong	120,000	814,800
15/8/90	Mr Felix Wong	40,000	271,600
5/9/90	Mr Clarence Cheng	<u>40,000</u>	<u>271,600</u>
		C\$ <u>200,000</u>	<u>\$1,358,000</u>

- 23.43 The receipts of \$1,113,400 and \$271,600 from Mr Felix Wong and Mr Clarence Cheng are identified in Spinus's records as reimbursements of payments Spinus made to BPYA for its investment in the Dunsmuir property. Therefore, Spinus paid a net amount of \$11,510,225 from its own funds.
- 23.44 The transfer of C\$100,000 (\$677,850) on 9 August 1990 was authorised by Madam Eva Hui and Mr Edward Lam. The beneficiary of these funds was the McLeod Dixon Trust, Calgary Alberta, Canada. I have not determined the reason for the payment.

### Share Trading

- 23.45 Spinus purchased at least 1,147,000 Far East Consortium shares and sold 40,000 of those shares between 14 August 1990 and 4 September 1990. Mr David Chiu is the Managing Director of Far East Consortium. A summary of Spinus's share trading in Far East Consortium shares is set out below:

<u>Trade Date</u>	<u>No of Shares</u>	<u>Bought/ Sold</u>	<u>Price per Share</u>	<u>Amount</u> \$	<u>Amount of Cheque Drawn</u> \$	<u>Broker</u>
14/8/90	42,000	Bought	1.36	57,466.03		Audrey Chow
	200,000	Bought	1.37	275,659.89		Audrey Chow
14/8/90	(10,000)	Sold	1.40	(13,900.30)	319,225.62	Audrey Chow
17/8/90	244,000	Bought	1.39	341,214.44	341,214.44	Audrey Chow
21/8/90	10,000	Bought	1.40	14,099.70	14,099.70	Yu On
21/8/90	144,000	Bought	1.37	198,475.70		Audrey Chow
21/8/90	(10,000)	Sold	1.40	(13,900.30)		Audrey Chow
22/8/90	(10,000)	Sold	1.35	(13,417.59)		Audrey Chow
22/8/90	(10,000)	Sold	1.40	(13,914.53)	157,243.28	Audrey Chow
22/8/90	73,000	Bought	1.30	95,475.40		Audrey Chow
22/8/90	94,000	Bought	1.31	123,886.62	219,362.02	Audrey Chow
22/8/90	10,000	Bought	1.40	14,085.47		Yu On
22/8/90	10,000	Bought	1.35	13,582.41	27,667.88	Yu On
31/8/90	10,000	Bought	1.42	14,288.31		Mansion House
31/8/90	90,000	Bought	1.40	126,762.30		Mansion House
31/8/90	60,000	Bought	1.41	85,113.03	226,163.64	Mansion House
3/9/90	100,000	Bought	1.39	139,840.95		Audrey Chow
3/9/90	100,000	Bought	1.40	140,847.00	280,687.95	Audrey Chow
3/9/90	[Unascertained]			<u>83,685.11</u>	<u>83,685.11</u>	Yu On
	<u>1,147,000</u>			<u>\$1,669,349.64</u>	<u>\$1,669,349.64</u>	

23.46 Spinus purchased and sold Far East Consortium shares through three brokers, Audrey P F Chow ("Audrey Chow"), Yu On Securities Co Ltd ("Yu On") and Mansion House Securities (FE) Limited ("Mansion House"). I understand that Spinus has only ever traded in Far East Consortium shares.

23.47 The contract notes issued by Audrey Chow were originally issued in the name of Saxton, however this name has been crossed out and the name of Spinus has been inserted. Copies of the contract notes obtained from Spinus's records for transactions conducted through the Yu On and Mansion House show that the purchases were all in the name of Spinus.

#### Multiple cashbooks

23.48 When I first attended Spinus's office on 31 October 1992, shortly after my appointment to investigate the affairs of Spinus, I sighted a cash book ("the first cash book") (Appendix 61) which was quite different to one produced by Madam Eva Hui at her examination approximately two months later.

23.49 Madam Eva Hui produced a cash book ("the second cash book") (Appendix 62) at her interview on 6 January 1993 which showed that all payments settling the purchase of Far East Consortium shares were made at the request of Mr Tsoi Mow Hung.

23.50 The first cash book is in different handwriting to the second cash book. It would appear that the cash books were written at different times.

23.51 The first cash book made no mention of whom the share trading transactions through Spinus were conducted for. The second cash book classified the receipts and payments as being at the request of one of either Mr David Chiu, Mr Tsoi Mow Hung or Madam Eva Hui.

23.52 The second cash book indicated that all the share trading was conducted at the request of Mr Tsoi Mow Hung.



23.53 Mr David Chiu signed all cheques settling the purchases of the Far East Consortium shares. Madam Eva Hui told me that these trades were made on behalf of Mr Tsoi Mow Hung. When I interviewed Mr Tsoi Mow Hung, he did not appear to be familiar with details of these share purchases made on his behalf and did not know the whereabouts of the share certificates.

23.54 I have not determined why these share purchases were made.

Other Payments

23.55 Spinus made eight other payments from the commission receipts. Details of these payments are:

<u>Date</u>	<u>Description</u>	<u>Signed by</u>	<u>Amount</u>
			\$
9/8/90	Francis Lau (Surveyors) Ltd	Mr David Chiu	20,000.00
14/8/90	Telegraphic Transfer to Shearn Delamore	Madam Eva Hui/ Mr Edward Lam	4,221,213.75
10/8/90	Cash	Mr David Chiu	79,578.00
20/8/90	Chitung	Mr David Chiu	4,590,000.00
24/8/90	Cash		10,000.00
24/8/90	Transfer	Mr David Chiu/ Madam Eva Hui	1,224,000.00
29/8/90	Shiu Wah Enterprise	Mr David Chiu	3,000,000.00
4/9/90	Cash	Mr David Chiu	<u>10,000.00</u>
			<u>\$13,154,791.75</u>

- 23.56 Mr David Chiu signed the cheque for \$20,000 to Francis Lau (Surveyors) Limited on 9 August 1990. Spinus's second cash book identified this payment as a payment made at the request of Mr David Chiu. This cheque was a part payment of fees for a feasibility study of the industrial estate in Guangzhou, People's Republic of China conducted by Raine Horne & Lau and Francis Lau & Co (Surveyors) Ltd. This payment was made in connection with the transaction in which Mr David Chiu sold his interest in Hammul Limited to WTCG. This transaction is discussed in Chapter 11 of this report.
- 23.57 On 14 August 1990, Madam Eva Hui and Mr Edward Lam instructed the First Pacific Bank to transfer M\$1,462,500 (\$4,221,213.75) to an account in the name of Shearn Delamore & Co with the Hongkong Bank in Kuala Lumpur, Malaysia.
- 23.58 The transfer instructions referred to a property Geran (formerly CT No 2609) Lot 162 Section 57 Kuala Lumpur, and asked that a Madam Teng Wee Ming be notified once the transfer of the funds had been effected.
- 23.59 The transfer of funds to Malaysia was classified in Spinus's second cash book as being made on behalf of Mr Tsoi Mow Hung.
- 23.60 A search of the registered records relating to this property showed that the property, situated in the district of Wilayah Persekutuan Kuala Lumpur, Malaysia, was owned by Wisma Perkasa Sdn Bhd. I am not aware of any relationship between Mr Tsoi Mow Hung, Mr David Chiu or Madam Eva Hui and Wisma Perkasa Sdn Bhd.
- 23.61 Solicitors for Mr Tsoi Mow Hung have advised me that approval for the purchase of the property was not granted from the Malaysian Foreign Investment Commission in this property and therefore Mr Tsoi Mow Hung was forced to withdraw his investment. Mr Tsoi Mow Hung's solicitors did not provide any evidence to substantiate this claim.

- 23.62 Mr David Chiu signed a cash cheque for \$79,578 on 10 August 1990. According to Madam Eva Hui, the cash from this cheque was paid to Mr Tsoi Mow Hung. Madam Eva Hui alleges that she paid Mr Tsoi Mow Hung these monies to reimburse him for souvenirs he purchased on her behalf. Madam Eva Hui's evidence seems inconsistent with her previous evidence that the commissions and profit were funds of Mr David Chiu and Mr Tsoi Mow Hung. The second cash book identifies this cash cheque as being at the request of Mr Tsoi Mow Hung. If these funds belonged to Mr Tsoi Mow Hung in the first place then Madam Eva Hui could not reimburse Mr Tsoi Mow Hung from his own monies as she has claimed. I discount her evidence in this respect.
- 23.63 The cheque for \$79,578 shows that the cash was collected from the bank by the holder of Hong Kong identity card number K208680(8). I have not been able to trace who collected this money.
- 23.64 On 23 August 1990, Mr David Chiu signed a cheque for \$4,590,000 made payable to Chintung. The second cash book refers to this payment as being at the request of Mr Tsoi Mow Hung. Madam Eva Hui told me that this payment was for share transactions conducted by Mr Tsoi Mow Hung.
- 23.65 The cheque for \$4,590,000 was credited to the account of Keen Investments at Chintung. Mesdames Alice Lam and Stella Hui, directors of Fulldiamond, are directors of Keen Investments. This money is discussed in Chapter 9 where I concluded it is a payment made in relation to the Tian Teck transaction.
- 23.66 On 24 August 1990, Mr David Chiu and Madam Eva Hui signed a cheque for \$1,224,000 with the payee left blank. The cheque appears to have been cashed although I have not been able to determine who collected this cash.
- 23.67 An amount of \$3,000,000 was paid to an account in the name of Shiu Wah Enterprise ("Shiu Wah") at the Hua Chia Commercial Bank on 29 August 1990 upon the instructions of Mr David Chiu.

- 23.68 A search of the records maintained at the Companies Registry in Hong Kong revealed that a company called Shiu Wah Enterprises Limited is registered with an office at Rooms 1007-1011, Realty Building, 71 Des Voeux Rd, Central Hong Kong. The search shows that Mr Ip Wing Cheong owns the majority of the issued capital of Shiu Wah Enterprises Ltd. Mr Ip Wing Cheong (British) and Mr Santiago Aurelio Loo (Panamanian) are listed as the directors of Shiu Wah Enterprises Limited. I have written to the directors of Shiu Wah to determine the reason for this payment although no response has been received. I do not know whether Shiu Wah is the same company as the Shiu Wah Enterprises described in Spinus's cashbook.
- 23.69 Madam Eva Hui explained to me that she had heard from Mr Chiu that the payment of \$3,000,000 was to help Shiu Wah Enterprises to change money into Renminbi. I have not ascertained the connection Mr David Chiu and/or Spinus had with Shiu Wah Enterprises.
- 23.70 The second cash book identifies a \$10,000 payment on 4 September 1990, as being made on behalf of Madam Eva Hui. This is the only payment that Spinus made that appears to be for Madam Eva Hui.

Outstanding Balances in Spinus's accounts

- 23.71 The second cash book shows that payments made on behalf of Mr David Chiu exceeded his receipts by \$3,768,407; this means that Mr David Chiu was a debtor of Spinus. The second cash book also shows that receipts for Mr Tsoi Mow Hung exceeded payments Spinus made on behalf of Mr Tsoi Mow Hung by \$3,828,770; this means that Mr Tsoi Mow Hung was a creditor of Spinus. As there was only a small cash balance in Spinus's bank account at the time of the payments, the second cash book shows that approximately \$3,700,000 which allegedly belonged to Mr Tsoi Mow Hung was lent to Mr David Chiu.

23.72 When I asked Mr David Chiu about the reasons why he apparently still owed Spinus \$3,768,407, he stated:

*". . . this is only one of the business that you see of my relationship with Eva Hui. There are several companies that I also involve with Eva Hui okay, that may prove she owe[s] me money. That is what I am saying. And, I mean, Eva is so close to me she is the sort of person said boss I run out of five million dollars today, you know, for argument sake, I mean if I can afford it I will just give her a cheque or I lend her the shares, I lend her some asset to support her. I mean, if she want to buy a, you know, car, buy a boat, I would give her that. "*

23.73 Mr David Chiu also told me:

*". . . There could be tax . . . we can't wipe out that there is a possibility that one day there could be tax for all the profit that I have made. So, if you calculate, I probably owe her more than \$3.7 million. "*

23.74 When I asked Mr Tsoi Mow Hung why \$3,828,770 had been left with Spinus he stated:

*"Because of problems concerning taxation on profit I usually keep money with Eva Hui. "*

## **CONCLUSIONS**

23.75 I believe that there is compelling evidence to show that Mr David Chiu had substantially more influence over Spinus than he has admitted to me. In particular, I rely on the following evidence in support of this conclusion.

- 23.76 The sole director and shareholder of Spinus at the time the transactions investigated by me took place was Madam Eva Hui. Madam Eva Hui has claimed that she acquired Spinus for her own transactions. However, it is apparent from Madam Eva Hui's own evidence that Spinus has never been used for her own benefit but rather, it has been used on behalf of certain other individuals, most significantly Mr David Chiu.
- 23.77 I note that Madam Eva Hui paid no consideration for the acquisition of Spinus. Additionally, as the sole shareholder and director of Spinus I would expect her to have sole signing powers over the bank account maintained at First Pacific Bank. However, the sole signatory on this account was Mr David Chiu. Madam Eva Hui was required to sign jointly with Mr Edward Lam.
- 23.78 Indeed Madam Eva Hui has told me that she did not really operate Spinus's account but rather she just did what people told her. I believe that these facts are consistent with the role of a nominee.
- 23.79 Mr David Chiu had, through his and his relatives' directorships, and through the shareholding of Far East Consortium, an historic interest in Spinus. Madam Eva Hui and Mr Edward Lam both worked for Mr David Chiu at Far East Consortium and the statutory and financial records were kept at the offices of Far East Consortium.
- 23.80 Mr David Chiu was a sole signatory on the bank account of Spinus at First Pacific Bank. I believe this is a significant fact which points to control over the company. Madam Eva Hui explained that Mr David Chiu was given sole signatory power over the bank account because she was frequently in China. This evidence does not explain why Madam Eva Hui was not given a sole signatory power in addition to Mr David Chiu or indeed why Mr David Chiu was not given joint authority with Mr Edward Lam. Furthermore there is evidence to show that Madam Eva Hui was drawing cheques for Mr David Chiu to sign.

- 23.81 The accounting records of Spinus indicate that the company was engaged in three principal transactions. Firstly, it received Mr David Chiu's commission for his role in WTCG's acquisition of the World Trade Centre Building. Secondly, Spinus acquired and sold the Tian Teck shares. Thirdly, the company engaged in active trading of shares in Far East Consortium Limited.
- 23.82 Of these transactions it is clear that the receipt and use of the commission for the World Trade Centre Building transaction was at the instruction of and for the benefit of Mr David Chiu.
- 23.83 I do not accept, for the reasons set out below and in Chapter 9, that the use of Spinus to acquire, sell and utilise the profit from the Tian Teck shares, was at the direction of or for the benefit of Mr Tsoi Mow Hung. I have received no direct evidence to suggest that the use of Spinus in this transaction was at the instruction of and for the benefit of Mr David Chiu, but have concluded that there are substantial indirect reasons to believe he was at least involved in this transaction.
- 23.84 Lastly, in respect of the trading in shares in Far East Consortium, I note that Mr David Chiu is a director of this company and that his family have a controlling interest in it.
- 23.85 All of the cheques in settlement of share trading by Spinus were signed by Mr David Chiu. I was told that trading in these shares was at the direction of Mr Tsoi Mow Hung. Mr Tsoi Mow Hung, however, seemed unfamiliar with the active trading in the Far East Consortium shares; I did not find Mr Tsoi Mow Hung's evidence compelling in this regard. I have concluded that it is more likely that this share trading was at the direction of Mr David Chiu.
- 23.86 Spinus's second cash book shows that payments which were made on behalf of Mr David Chiu were funded out of sums allegedly belonging to Mr Tsoi Mow Hung. No settlement of this imbalance has been made by Mr David Chiu nor, I understand, has any request for settlement been made by Mr Tsoi Mow Hung.

- 23.87 I do not accept the assertions of Madam Eva Hui or Mr Tsoi Mow Hung that the use of Spinus for the acquisition and sale of the Tian Teck shares was at the direction of and for the benefit of Mr Tsoi Mow Hung. Many of the reasons relied upon in coming to this conclusion are set out in Chapter 9. In addition to these reasons, the evidence I have found in conducting my investigation in the affairs of Spinus bear out this conclusion. In particular, I rely on the following:
- 23.88 When I attended Spinus's offices there were no records which give any indication of Mr Tsoi Mow Hung's involvement with Spinus. I note that the second cash book which I was not shown when I first visited Spinus's office does make a number of references to Mr Tsoi Mow Hung. Details contained in the second cash book differ from the details in the first cash book which I was shown when I first visited the company. I have concluded that there may, therefore, be reason to believe that the second cash book was manufactured for the purpose of my enquiry.
- 23.89 Spinus was paid \$46,600,000 in respect of the profit on its sale of the Tian Teck shares. If the evidence of Mr Tsoi Mow Hung is correct, one quarter of this sum belonged to him and three quarters to his alleged Japanese partner. Mr Tsoi Mow Hung refused to provide the name of his Japanese partner. Spinus paid two thirds of the \$46,600,000 profit to Mr Roy Loffill supposedly on behalf of Mr Tsoi Mow Hung's partner. I find it strange that Mr Tsoi Mow Hung's unnamed Japanese partner with a three quarter interest in the monies should withdraw two-thirds of the profit. The cheque for this payment was signed by Mr David Chiu. Mr Roy Loffill's activities in dealing with the profits, commissions and other monies arising in a number of the transactions that I have investigated is dealt with in detail in Chapter 10. I have found no evidence which suggests that Mr Tsoi Mow Hung's alleged Japanese partner received any monies from Mr Roy Loffill or from the 12/F Cash Client account at Cheung On where I believe the monies were diverted.
- 23.90 Mr Tsoi Mow Hung's knowledge of the trading in the shares in Far East Consortium Limited which was allegedly instigated at his direction, seems inadequate.



23.91 There is no evidence to suggest that Mr Tsoi Mow Hung, or his alleged Japanese partner, received any of the profit from the sale of the Tian Teck shares. Indeed part of this profit was used by Mr David Chiu.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 24

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#### 24 INTRODUCTION

24.1 Fulldiamond Limited ("Fulldiamond") is a company whose employees appear to be involved in three of the six transactions I was originally directed to consider by the Financial Secretary. In addition, a director of Fulldiamond was involved in another one of the six transactions.

- 24.2 Specifically Fulldiamond received a commission for allegedly assisting in the disposal of the Guangzhou Land from Mr David Chiu to WTCG (Chapter 11) and a commission for arranging the disposal of 50% of the Far East Biscuit Factory from the Far East Group to Tomson Pacific (Chapter 12).
- 24.3 Mr Eddie Lo, a consultant to Fulldiamond was actively involved in the acquisition of 145,000,000 Tian Teck shares by WTCG from the Great Eagle Group of companies and the sale of 116,500,000 WTCG shares from Grand Ocean/Hauxton to the Great Eagle Group of Companies (Chapter 9).
- 24.4 Madam Alice Lam, a director of Fulldiamond and the wife of Mr Eddie Lo, was a placee of WTCG shares in July of 1990 (Chapter 6).
- 24.5 In addition to those four chapters, Fulldiamond and its directors/employees also feature prominently in Chapter 7. This chapter considers the series of transactions which include the sale of 100,000,000 Regal shares from Grand Ocean/South View to Far East Holdings International Limited ("FEHIL") in June of 1990 and the eventual placement of those shares by Chintung for the Far East Group in July of 1990.
- 24.6 The Financial Secretary directed me to investigate the affairs of Fulldiamond on 23 October 1992 in furtherance of my investigation into the affairs of Tomson Pacific and WTCG.
- 24.7 My primary concerns with respect to Fulldiamond have been twofold. Firstly whether the commissions paid by Tomson Pacific and WTCG were validly paid, that is, that Fulldiamond deserved them and secondly, whether Fulldiamond enjoyed all the benefits of those commissions, specifically, whether Fulldiamond was used as a conduit to channel monies, notionally paid in commission, to parties connected to the management of Tomson Pacific and WTCG.
- 24.8 Discussion of the first concern is contained within Chapters 11 and 12. Discussion of the second concern is contained within this chapter.

24.9 In addition I have considered the issue of the ownership and control of Fulldiamond as part of my analysis of the second concern.

24.10 It became apparent following my initial enquiries that Mr Eddie Lo personally generated almost all of Fulldiamond's income and that he was an undischarged bankrupt. Therefore in some instances I have sought to clarify the role of various companies Mr Eddie Lo acts as a consultant to where those companies are directly or indirectly associated with other aspects of my investigation.

### **INCORPORATION, DIRECTORS AND SHAREHOLDERS**

24.11 Fulldiamond was incorporated in Hong Kong on 22 July 1983.

24.12 Fulldiamond's registered office and principal place of business is at 416-418 Central Building, 1-3 Pedder Street, Central, Hong Kong.

24.13 The directors of Fulldiamond are Madam Lam Pui Tsing, Alice ("Madam Alice Lam") and Madam Hui Sau Ling, Stella ("Madam Stella Hui").

24.14 Madam Stella Hui has told me that Madam Alice Lam, her cousin, *"is the boss."*

24.15 Mr Eddie Lo claims he is a consultant to Fulldiamond, although it is apparent from the transactions conducted that he is the main income producer. Madam Alice Lam confirmed to me that Mr Eddie Lo is the main income producer of Fulldiamond.

24.16 Mr Eddie Lo is married to Madam Alice Lam, and according to Madam Stella Hui, has a *"quite significant influence"* in the day to day affairs of the company.

24.17 Mr Eddie Lo is an undischarged bankrupt. Madam Alice Lam has told me that Mr Eddie Lo receives a monthly salary of \$5,000 because *"there is an Ordinance stipulating the maximum salary you can pay a person who still has an undischarged bankruptcy situation"*.

24.18 When I asked Mr Eddie Lo how he was remunerated as a consultant to Fulldiamond, Mr Eddie Lo replied:

*"After commission has been earned, and since my wife has a current account in the company, . . . she was in a position to withdraw part of that, and if I needed the money I could ask my wife to support me. "*

24.19 Madam Alice Lam advised me that as a consultant Mr Eddie Lo *"was not entitled to receive anything"*. Madam Alice Lam also confirmed to me that she would withdraw cash from Fulldiamond and that she would fund her husband if he needed money.

24.20 Mr Eddie Lo held a Shanghai Commercial Bank Visa Card which was in Fulldiamond's name. This credit card appears to have been used by Mr Eddie Lo to book entertainment and other expenses to Fulldiamond.

24.21 Madam Alice Lam explained to me that Fulldiamond employed three or four staff. Madam Ho Tse Mei, Irene ("Madam Irene Ho") has approved numerous cheque requisition vouchers and appears to be the manager and accountant. Madam Irene Ho has also collected the funds from the cashing of large sums of Fulldiamond cheques on some occasions.

24.22 Fulldiamond's shareholders are:

<u>Name</u>	<u>Address</u>	<u>No. of shares</u>
Boulton Limited ("Boulton")	P.O Box 71 Craigmuir Chambers Road Town Tortola British Virgin Islands	999
Madam Alice Lam	71 Mount Kellett Road The Peak Hong Kong	1 _____
		<u>1,000</u>

24.23 Cheng Yeung & Co, solicitors for Fulldiamond, told me that Boulton, a company incorporated in the British Virgin Islands, is controlled by Madam Alice Lam, Madam Stella Hui and Madam Nerrissa Lo. Madam Stella Hui told me that Madam Nerrissa Lo is the daughter of Madam Alice Lam and Mr Eddie Lo.

### **BOOKS AND RECORDS**

24.24 I attended Fulldiamond's offices shortly after I was appointed Inspector of the company. Fulldiamond maintained a basic accounting system which was sufficient to enable annual financial accounts to be prepared. The Company's records consisted of cheque books, cheque requisition vouchers, bank vouchers, bank statements, journals and ledgers. Annual financial accounts have been prepared and audited by a firm of Certified Public Accountants. I have seen evidence that the company has lodged tax returns with the Inland Revenue Department.

### **BANK ACCOUNTS**

24.25 Fulldiamond maintained two bank accounts that I am aware of:

<u>Bank</u>	<u>Branch</u>
Shanghai Commercial Bank Ltd	Tsim Sha Tsui East
Hongkong Bank	Mongkok

24.26 Fulldiamond's bank account with the Shanghai Commercial Bank was opened on or about 14 July 1984. Madam Alice Lam and Mr Eddie Lo were the original authorised signatories to the account and both could sign singly. On 27 October 1987 the authorised signatories were changed by deleting Mr Eddie Lo. On 21 August 1990 Madam Stella Hui was made an authorised signatory, with power to sign singly.

- 24.27 Fulldiamond opened its bank account with Hongkong Bank on 17 February 1989 and Madam Alice Lam was the authorised signatory to the account. Madam Stella Hui was added as an authorised signatory on 21 August 1990, and cheques could be signed by either Madam Alice Lam or Madam Stella Hui singly.
- 24.28 Fulldiamond's financial accounts for the year ended 31 March 1991 described the company's principal activities as *"investment holding, property investments and acting as commission agent in dealing with properties and shares"*.
- 24.29 Fulldiamond's financial accounts for the year ended 31 March 1990 showed its principal activities also included *"trading of shares and gold"*.
- 24.30 A summary of Fulldiamond's profit and loss accounts as extracted from audited financial accounts is shown below:

	Year Ended 31 March		
	<u>1991</u>	<u>1990</u>	<u>1989</u>
Turnover	<u>\$6,907,745</u>	<u>\$20,608,646</u>	<u>\$13,945,136</u>
Profit for the year	<u>\$783,455</u>	<u>\$10,423,181</u>	<u>\$3,587,003</u>

- 24.31 A table of some of the receipts and payments I have traced through Fulldiamond's accounts in the year ended 31 March 1991 is set out below:

<b>Company/Individual</b>	<b>Payments</b>	<b>Receipts</b>
WTCCG		1,100,000
Tomson Pacific		1,000,000
Grand Ocean		2,250,000
Chintung		4,001,500
Cash - Madam Stella Hui	1,150,000	
Cash - Madam Irene Ho	1,000,000	
Cash - Mr David Lo	300,000	
Cash - Leung Kim Fun	250,000	
Cash - House of Cissy (Children's Goods) Ltd	30,000	
Madam Alice Lam	556,591	
Mandarin Development	1,655,507	
Kalgon Ltd	1,125,000	
Boughton Peterson Yang & Anderson	525,422	
Pacific BMW (USA)	389,009	
Funds transfer (no details)	40,000	
Crown Groupage Ltd	34,844	
<b>TOTAL</b>	<b>\$7,056,373</b>	<b>\$8,351,500</b>

24.32 I have traced from Fulldiamond's accounts, the proceeds of commissions and placement fees received by Fulldiamond on the following transactions which occurred during the 1991 financial year:



	<u>₹</u>
! Commission from Guangzhou Land transaction (Chapter 11)	1,100,000
! Brokerage from the Far East Biscuit (HK) transaction(Chapter 12)	1,000,000
! Commissions for the introduction of the Far East Group to purchase Regal shares (Chapter 7)	2,250,000
! Placement fee from Regal shares (Chapter 7)	1,044,000
! Consultancy fee for placing Regal shares (Chapter 7)	2,275,000
! Commission for introducing Regal shares (Chapter 7)	<u>682,500</u>
	<u>\$8,351,500</u>

24.33 These commissions and fees received by Fulldiamond all appear to have been earned by Mr Eddie Lo for Fulldiamond, and contributed significantly to Fulldiamond's total revenue. All involved Tomson Pacific, WTCG, or associated companies. Fulldiamond's role in these transactions is also discussed in the respective chapters of this report.

Commission of \$1,100,000 from Guangzhou Land Transaction

24.34 Fulldiamond received a commission payment of \$1,100,000 from WTCG for allegedly introducing Mr David Chiu to WTCG in the transaction involving the sale of land in Guangzhou, People's Republic of China to WTCG. Details of the transaction are discussed more fully in Chapter 11 of this report.

24.35 The cheque for \$1,100,000 was deposited into Fulldiamond's Hongkong Bank account on 15 September 1990. From the proceeds of these funds, Madam Stella Hui drew and cashed two cheques on 18 September 1990, details of which are:

<u>Date</u>	<u>Explanation In Fulldiamond's Records</u>	<u>Amount</u>
		<u>₹</u>
18/9/90	Loan to shareholders - cash for director	300,000
18/9/90	Loan to shareholders - cash for director	<u>350,000</u>
		<u>\$650,000</u>

24.36 The balance of the commission payment, after these cash disbursements appears to have been absorbed in Fulldiamond's operations.

24.37 Madam Alice Lam has told me, and I have obtained copies of the cheques which confirm this, that Madam Stella Hui collected the money from the bank. When I queried why two cheques were withdrawn and not one, Madam Alice Lam told me:

*"That is because if you withdraw everything with one cheque, it would be too dangerous because if we were robbed then we would be robbed of the entire amount. That's why we use two cheques."*

24.38 I questioned the logic of drawing two cheques on that basis as both cheques were cashed at 11:41am on 18 September 1990. Madam Alice Lam told me:

*"I asked Stella to withdraw the total amount in two separate batches. I don't know how she did it but, anyway, I instructed her to make two withdrawals."*

24.39 Madam Stella Hui gave me a similar explanation but claims that issuing two cheques was her suggestion. Madam Stella Hui alleges:

*"Well when she [Madam Alice Lam] requested the sum and I felt that since it was such a large amount, if I were only to issue one cheque it might not be safe for me, so I suggested to her that two cheques should be issued, rather than one."*

24.40 Madam Alice Lam told me that she paid "several hundreds of thousands" of Hongkong dollars for her daughter's dowry and that she kept part of the money for herself. When I asked for more details on how the money was used for her daughter's dowry, Madam Lam replied:

*"I used the money to pay for the purchase of jewellery, a car, and whatever my daughter needed for her dowry . . .if I needed to buy anything for my daughter's dowry in the [United] States [ of America], I have a relative who would pay for those things in the States and I would pay him back in Hong Kong. "*

24.41 I asked Madam Lam whether she had any receipts for the items she bought for the dowry and Madam Lam replied:

*"I don't. Because many of these things were bought, I asked someone else to buy them for me . . . I didn't need any receipts to prove anything.*

*. . . since we are relatives and I know that they would not cheat me. "*

Commission of \$1,000,000 from the Far East Biscuit (HK) transaction

24.42 Fulldiamond received two commissions from the transaction in which a subsidiary of Tomson Pacific acquired 50% of the issued share capital of Far East Biscuit (HK) Limited from a subsidiary of Far East Consortium International Limited. Far East Consortium International Limited (the vendor) provided Fulldiamond with 5% of the Tomson Pacific shares it received as consideration for the sale of its interest in Far East Biscuit. In addition, Tomson paid Fulldiamond a \$1,000,000 commission for their role in the transaction. This transaction is covered in Chapter 12 of this report.

24.43 The commission of \$1,000,000 was deposited into Fulldiamond's Shanghai Commercial Bank account on 13 September 1990. This commission was used to fund three disbursements:

<u>Date</u>	<u>Details</u>	<u>Amount</u>
		<u>\$</u>
14.9.1990	Transfer to Canada	525,421.99
18.9.1990	Cheque Cashed	250,000.00
18.9.1990	Cheque Cashed	<u>250,000.00</u>
		<u>\$1,025,421.99</u>

- 24.44 The transfer of \$525,421.99 to Vancouver, Canada was made by Madam Stella Hui. These funds were converted to C\$78,561.90 and remitted to a firm of Canadian solicitors, Boughton, Peterson, Yang & Anderson. The transfer was recorded as a "*cash advance to shareholders*" in Fulldiamond's ledger.
- 24.45 Fulldiamond's payment of \$525,421.99 appears to be an investment in a property situated at 570 Dunsmuir Street, Vancouver, Canada ("the Dunsmuir Property").
- 24.46 Madam Eva Hui, a director of Spinus, told me that Mr David Chiu, Mr Felix Wong, Mr Clarence Cheng and Fulldiamond were partners in the purchase of the Dunsmuir property. Madam Eva Hui identified payments Spinus made to Boughton Peterson Yang & Anderson as being payments for the purchase of the Dunsmuir property.
- 24.47 Although Madam Eva Hui named Fulldiamond as a partner, Mr Eddie Lo claims that it was his wife, Madam Alice Lam, who had a share in the Dunsmuir property.
- 24.48 The two cheques of \$250,000 each were both drawn and cashed by Madam Stella Hui on 18 September 1990; the same day, but one hour earlier than when Madam Stella Hui cashed two cheques from the commissions received from the Guangzhou Land transaction discussed earlier in this chapter. These cash withdrawals were classified as "*cash advances to shareholders*" in Fulldiamond's ledger.
- 24.49 Madam Stella Hui explained that "*It was very common for her [Madam Alice Lam] to do that, to withdraw cash like that, so I rarely would ask her the reason why.*"

24.50 Madam Alice Lam gave me a similar explanation as the one given regarding the commissions drawn for Guangzhou Land when asked why she requested two cheques be drawn:

*"Again, I was simply playing safe, I was worried that half a million would be too large a sum and that's why I asked her to sign two separate cheques".*

24.51 Both cheques were presented together and were obviously taken at the same time although Madam Alice Lam explained that she had asked Madam Stella Hui to *"collect the money in two separate batches."*

24.52 Madam Alice Lam explained how she spent the total of \$1,150,000 in cash she had arranged to be withdrawn on 18 September 1990 by stating:

*"I think I spent about \$300,000 odd or so for . . . my daughter's dowry, and the rest I kept for myself. I put it in my pocket, in the safety box. Under the mattress you could say."*

24.53 Madam Alice Lam has no receipts for the jewellery she allegedly purchased for her daughter's dowry. Fulldiamond has records which suggest a motor vehicle was purchased in the United States but the funds for this purchase were not paid from the \$1,150,000 cash Madam Alice Lam withdrew on 18 September 1990.

24.54 I have not been able to determine how the cash was disbursed.

Commission of \$2,250,000 received for introducing Far East to the purchase of Regal shares

24.55 Fulldiamond received a commission of \$2,250,000 from Grand Ocean for their role in introducing Far East Consortium to the acquisition of 100,000,000 Regal Hotel shares from South View. Grand Ocean's cheque for \$2,250,000 was deposited into Fulldiamond's Shanghai Commercial Bank account on 15 June 1990 and credited to Fulldiamond's "Commission Received" account.

24.56 Fulldiamond's role in this transaction is discussed in Chapter 7 where I concluded that it appears to have done little to deserve this commission.

24.57 These commission monies were used to fund the following disbursements:

<u>Date</u>	<u>Explanation of Payment in Fulldiamond's records</u>	<u>Amount</u>
		\$
15.6.90	Cash advance to David Lo	300,000
15.6.90	1/2 of commissions paid to Kalgon Ltd as an agency fee	1,125,000
15.6.90	Funds transfer	40,000
15.6.90	Cash advance to director (repayment of loan to Madam Alice Lam)	700,000
20.6.90	Shareholders account - Loan to director for The House of Cissy Children's Goods	30,000
		<hr/> <u>\$2,195,000</u>

24.58 The payment of \$300,000 was debited to the "*shareholders account*" and described as a "*cash advance to David Lo*" in Fulldiamond's accounts. A copy of the cheque shows that the cheque was cashed by Mr Lo Man Ching, David ("Mr David Lo"). Madam Stella Hui told me that Mr David Lo is Mr Eddie Lo's brother.

- 24.59 The payment of \$1,125,000 representing 50% of the commission paid by Grand Ocean was shown in Fulldiamond's records as an agency fee. Mr Eddie Lo has told me that he worked with Mr Felix Wong of Kalgon Limited in introducing FEHIL to South View in respect of the transactions discussed in Chapter 7. This payment represents Kalgon Limited's half share of that commission.
- 24.60 The cheque for \$700,000 was drawn by Madam Alice Lam and cashed on 15 June 1990 by Madam Irene Ho. This payment was debited to Fulldiamond's shareholders account and described as a cash advance to director. The purpose of this large cash withdrawal has not been established. The cashing of this one cheque for \$700,000 appears inconsistent with Mesdames Alice Lam and Stella Hui's earlier explanation that it was "*dangerous*" to cash such a large cheque.

Placement fee of \$1,044,000 from Regal Shares

- 24.61 On 20 June 1990, Fulldiamond received a cheque for \$1,044,000 from Chintung being a placement fee for share transactions. This amount was credited to Fulldiamond's commission received account and was described as a "*placement fee for Regal shares*". The cheque for \$1,044,000 was deposited into Fulldiamond's Hongkong Bank current account which was in overdraft at the time. It would appear that these funds have been absorbed to repay the overdraft in Fulldiamond's other transactions. I have not identified any specific disbursements made from these funds.

Consultancy fee of \$2,275,000 for placing Regal Shares

- 24.62 Chintung paid Fulldiamond a cheque for \$2,275,000 which was recorded in Fulldiamond's "*Commissions Received Account*" as a commission for placing 110,000,000 Regal shares at \$2.25. The cheque was deposited into Fulldiamond's Hongkong Bank account on 18 July 1990.
- 24.63 Fulldiamond's role in this transaction is discussed in Chapter 7.

24.64 These commission monies were used to fund the following disbursements:

<u>Date</u>	<u>Explanation of Payment in Fulldiamond's records</u>	<u>Amount</u>
		<u>\$</u>
20.7.90	Alice Lam (Repayment of loan to Felix and loan to Regent Leader)	256,591
20.7.90	Loan to director	150,000
20.7.90	Loan to director	150,000
20.7.90	Loan to shareholders	300,000
25.7.90	Mandarin Development consultancy fee	1,000,000
		<hr/>
		<u>\$1,856,591</u>

24.65 Fulldiamond's accounts show that the amount of \$256,591 paid to Madam Alice Lam and marked as a "*repayment of the loan to [Mr] Felix [Wong] and loan to R.L. [Regent Leader]*" was debited to the following accounts:

<u>Account</u>	<u>\$</u>
Shareholders account	134,561
Sundry Debtor (Drivers salary for Regent Leader)	5,300
Sundry Creditor (Repayment of cash advance to Kalgon Ltd)	113,000
Interest	3,730
	<hr/>
	<u>\$256,591</u>

24.66 Two cheques for \$150,000 each were drawn on Fulldiamond's Hongkong Bank account on 20 July 1990. One cheque was cashed by Madam Irene Ho, and the other by Madam Leung Kim Fun. I have not been able to determine what these funds were used for and why the cash was collected by two different persons.



- 24.67 The cheque for \$300,000 was also presented on 20 July 1990 and was debited to the shareholder account and labelled "*loan to director*". A copy of this cheque shows that it was made payable to Madam Alice Lam.
- 24.68 The payment of \$1,000,000 to Mandarin Development was debited to an account for legal and professional fees and was described as "*consultation with shares [and] investment*". This cheque appears to have been banked to a Union Bank of Switzerland account held by Mandarin Development. I have not traced these monies through Mandarin Development's accounts.
- 24.69 A copy of a consultancy agreement between Fulldiamond (the agent) and Mandarin Development (the principal) dated 1 October 1989 was attached to Fulldiamond's payment voucher (Appendix 51). This agreement notes that Mandarin Development is a consultancy firm which specialises in procuring the purchase and sale of real estate on behalf of property developers over the world. Under the agreement, Fulldiamond agreed to pay \$1,000,000 for comprehensive professional real estate advice or advice on various orders of purchase and sale in the property market and other investment properties such as trading of bullion shares commodities. I believe at that time, Mandarin Development was controlled by Mr Arthur Lai, the then Chairman of Chintung Group of Companies, and is discussed further in Chapter 6. This commission is discussed in detail in Chapter 7.

Commission of \$682,500 for introducing Regal Shares

- 24.70 Fulldiamond received two further cheques for \$113,750 and \$568,750 respectively from Chintung being placement commissions, and banked these cheques into its Shanghai Commercial Bank account on 18 July 1990. Fulldiamond's ledger labelled these receipts as "*Commission for introducing Regal shares*".
- 24.71 This transaction is discussed in Chapter 7.

24.72 These two commission payments which total \$682,500 were used to fund the following payments:

<u>Date</u>	<u>Explanation in Fulldiamond's Accounts</u>	<u>Amount</u>
		\$
21.7.90	Telegraphic Transfer of US\$50,033.38 to First Interstate Bank Account : Pacific BMW	389,009.50
28.7.90	Shareholders account cash advance to director	150,000.00
28.7.90	Shareholders account cash advance to director	100,000.00
03.8.90	Freight charges for personal/household effects shipped to Vancouver, Canada	34,844.00
		<hr/> \$673,853.50

24.73 The transfer of \$389,009.50 was converted to US\$50,033.38 and transferred to a United States Bank Account in the name of Pacific BMW. Madam Alice Lam told me that she had spent approximately \$300,000 for her daughter's dowry which included the purchase of a motor vehicle. This transaction appears to be the purchase of the vehicle for the daughter of Mrs Lam and Mr Lo who resides in the United States of America. However, the payment of the \$389,009.50 to Pacific BMW appears to be in addition to rather than from the cash withdrawn from the Guangzhou Land transaction as Madam Alice Lam had claimed.

24.74 Madam Alice Lam's explanations regarding the disbursement of the commission are deficient in that they do not explain the ultimate destination of the commission.

24.75 The cheques for \$150,000 and \$100,000 were cashed on 28 July 1993 by Madam Leung Kim Fun and Madam Irene Ho respectively. Both payments were debited to Fulldiamond's shareholders account and labelled in Fulldiamond's ledger as "*cash advance to director*" and "*loan to director*" respectively.

24.76 I note that the simultaneous cashing of two cheques for similar amounts out of the proceeds of commissions received, occurred on four occasions, namely the transactions relating to Guangzhou Land, Far East Biscuit (HK) and Regal shares, including the consultancy fee.

Other payments to Mandarin Development

24.77 In addition to the payment of \$1,000,000 made to Mandarin Development for consultancy services mentioned above, Fulldiamond also made the following payments to Mandarin Development:

<u>Date</u>	<u>Explanation in Fulldiamond's Accounts</u>	<u>Amount</u>
		<u>\$</u>
26.6.90	0.25% commission for procuring the sale of 100,000,000 Regal shares (0.25% x \$225,000,000)	562,500.00
18.7.90	Legal and professional fees Commission for consultation on share placement of General Nominees Ltd April 1990 to July 1990	<u>93,006.80</u>
		<u>\$655,506.80</u>

24.78 These cheques appear to have been deposited into a Union Bank of Switzerland account held by Mandarin Development.

24.79 The payment of \$562,500 was made in relation to the sale of 100,000,000 Regal shares from South View to Far East Holdings. Chintung were the brokers used in the trade and Mr Eddie Lo claims it was a deal he introduced. This transaction is discussed in detail in Chapter 7.

24.80 I have not investigated further the reasons for the payment of the \$93,006.80 to Mandarin Development.

Summary of Fulldiamond's cash withdrawals and transfers

24.81 In all these transactions, Madam Stella Hui, a director of Fulldiamond, made large cash withdrawals from the proceeds of commissions received. A total of \$3,000,000 was drawn in cash or transferred from these commissions received between 15 June 1990 and 18 September 1990:

<u>Date</u>	<u>Source of Funds</u>	<u>Cheque Payee</u>	<u>Amount</u> \$	<u>Cash taken by</u>
15/6/1990	Commission from Grand Ocean	David Lo	300,000	David Lo
15/6/1990	Commission from Grand Ocean	Cash	700,000	Irene Ho
20/7/1990	Commission from Chintung for placing Regal shares	Cash	150,000	Leung Kim Fun
20/7/1990	Commission from Chintung for placing Regal shares	Cash	150,000	Irene Ho
20/7/1990	Commission from Chintung for placing Regal shares	Lam Pui Tsing	300,000	Transfer to Alice Lam
28/7/1990	Placement fee received from Chintung	Cash	150,000	Leung Kim Fun
28/7/1990	Placement fee received from Chintung	Cash	100,000	Irene Ho
18/9/1990	Commission from Far East Biscuit	Cash	250,000	Stella Hui
18/9/1990	Commission from Far East Biscuit	Cash	250,000	Stella Hui
18/9/1990	Commission from Guangzhou Land	Cash	300,000	Stella Hui
18/9/1990	Commission from Guangzhou Land	Cash	<u>350,000</u>	Stella Hui
			<u>\$3,000,000</u>	

24.82 On 20 July and 28 July 1990, out of the proceeds of the commissions received from Chintung, two cash withdrawals were made at the same time. Madam Irene Ho of Fulldiamond collected cash from each transaction, as did Madam Leung Kim Fun. On both occasions, the cheques were cleared within minutes of each other which indicates that Madam Irene Ho and Madam Leung Kim Fun cashed the cheques at the same time.

### Keen Investments Limited

24.83 Keen Investments Limited ("Keen Investments") appears to be a Liberian company with a registered office at 80 Broad Street, Monrovia, Liberia. Madam Alice Lam is also a director of Keen Investments. Keen Investments received a commission of \$3,262,500 from Ditton Investments Limited, a member of the Great Eagle Group of Companies, from the Tian Teck share transaction, in which Mr Eddie Lo was involved. This transaction is discussed in Chapter 9. In addition, it is the beneficiary of \$4,590,000 paid by Spinus from the profit made on the sale of the Tian Teck shares, although Madam Stella Hui denies that this payment from Spinus is connected in that way.

### **CONCLUSIONS**

24.84 I am concerned that after examination of Fulldiamond's records, a significant portion of the commission received by them remains unaccounted for. Such concern is accentuated by my belief that Fulldiamond, through Mr Eddie Lo, did little to deserve these commissions in some instances, notably the Guangzhou Land transaction (discussed in Chapter 11) and the transactions involving Regal shares (discussed in Chapter 7).

24.85 This is disputed by Mr Eddie Lo who, through his solicitor, has claimed that:

*"To the best of Mr Eddie Lo's recollection, he introduced Mr David Chiu to the Tomson Group in early 1990. Since the parties knew each other through the introduction of Mr Eddie Lo, Fulldiamond would be entitled to a commission on all business transactions subsequently entered into between the parties. Moreover, Mr Eddie Lo also played the role of a middleman and helped the parties to settle some of their differences during the negotiation."*

- 24.86 Mr Eddie Lo's involvement in Fulldiamond appears to be more than as a salaried consultant earning \$5,000 per month. Mr Eddie Lo has been described by directors of Fulldiamond as the company's major income earner with a significant influence over the day to day affairs of Fulldiamond.
- 24.87 In 1990, Fulldiamond received most of its income through commissions from transactions between Far East Consortium, Tomson Pacific, WTCG and associated companies. Of the \$8,351,500 receipts from these transactions which I have traced \$3,000,000 in cash has been withdrawn or transferred allegedly for the use of directors or shareholders of Fulldiamond.
- 24.88 I consider it unusual that many of the cash withdrawals were made on the same day at the same time by multiple cheques. I am strongly critical of Madam Alice Lam's inability to substantiate how an amount of money this size has been disbursed. I do not believe that her evidence in this respect has been credible. Accordingly, in light of the lack of credible evidence received about the ultimate recipient of the monies and in light of the question of whether some of the commission payments were properly earned, I suspect that some part of these commissions were shared with parties having an interest in the transactions.
- 24.89 The purchase of a motor vehicle for Madam Alice Lam's daughter's dowry does not appear to have been funded from these cash withdrawals as Madam Alice Lam has alleged.
- 24.90 Further enquiries should be made to ascertain who Madam Leung Kim Fun is and why she collected cash payments with Madam Irene Ho from Fulldiamond. Madam Leung Kim Fun appears to have met Madam Irene Ho at Fulldiamond's bank to collect funds from the proceeds of receipts from Chintung. On two occasions Madam Leung Kim Fun collected a cash payment from Fulldiamond's bank at the same time as Madam Irene Ho.

24.91 The payment of the \$1,000,000 consultancy fee paid to Mandarin Development from the proceeds of commissions from Chintung is of note. Mr Arthur Lai of Mandarin Development has claimed that there is no relationship between the payment from Chintung and the payment from Fulldiamond to Mandarin Development.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 25

### DAVID TONG COMPANY LIMITED

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25      **INTRODUCTION**

- 25.1      I was not specifically appointed to investigate the affairs of David Tong Company Limited ("David Tong Company"), but have the powers to do so pursuant to Section 144(d) of the Companies Ordinance. This section provides that I may investigate the affairs of a company substantially under the control of a person who also substantially controls one of the companies I was appointed to investigate.
- 25.2      Mr David Tong was substantially in control of Tomson Pacific, WTCG and David Tong Company during 1990.
- 25.3      Accordingly, I have power under the Companies Ordinance to report on the affairs of David Tong Company so far as I think the results of such investigation are relevant to my investigation of the affairs of Tomson Pacific and WTCG.
- 25.4      David Tong Company is a company owned by Mr David Tong and his wife, Madam Hsu Feng. It is a company central to several aspects of my investigation as it appears to have been used not only as a vehicle for the investments of Mr David Tong but also as a clearing account for the processing of many other substantial transactions.
- 25.5      My investigation has shown that David Tong Company was managed on a daily basis by Madam Hsu Jye. Mr Spancer Lau was responsible for maintaining the books and records.
- 25.6      Madam Hsu Jye was a sole signatory on the bank account and signed the majority of the cheques that were issued.
- 25.7      As a company incorporated in Hong Kong that carried on business, David Tong Company was required to maintain books of account. These books of account were required to be kept for a period of seven years.

- 25.8 It has been claimed that the books of account of David Tong Company have been lost. The circumstances surrounding this loss have been considered by me and are reported upon in this chapter. Considerable time has been expended by my staff and I in reconstructing records so that we could trace the activities of this company.
- 25.9 Audits of David Tong Company were carried out, as is required by the Companies Ordinance, by Louis K M Lai & Company, Certified Public Accountants ("Louis K M Lai & Co"). I have noted that the audited accounts do not properly reflect the transactions carried out by the company.
- 25.10 David Tong Company provided the funds to acquire Hauxton Limited (which was the placee of 60,000,000 WTCG shares and which is discussed in Chapter 6), it received \$3,800,000 from Hauxton as part of the Tian Teck shares transaction (discussed in Chapter 9), it paid \$75,460,000 to Mr Hsu Sun so that he could acquire 30,000,000 WTCG shares in December 1990 as part of a share buyback discussed in Chapter 6 and it provided funds to companies operated by Madam Hsu Jye and Mr Hsu Sun for the purpose of trading in WTCG, Tomson Pacific and Rivera shares.
- 25.11 Mr David Tong and Madam Hsu Jye have both claimed that David Tong Company was used as a conduit to receive monies through the underground banking channels from Taiwan.
- 25.12 In my investigation into David Tong Company I have sought to determine whether this claim is true. I have been told that Madam Hsu Jye operated David Tong Company for the benefit of her Taiwanese friends. Madam Hsu Jye maintains that monies would arrive from Taiwan and be deposited into the bank accounts that she operated in Hong Kong and that she would deal with these monies as instructed by her Taiwanese friends.

- 25.13 I have evidence of Madam Hsu Jye and, her brother, Mr Hsu Sun operating twenty-seven accounts, all allegedly for the benefit of her Taiwanese friends or her relatives. In addition I have found twenty-one separate share dealing accounts operated by Madam Hsu Jye and Mr Hsu Sun at a variety of brokers under different company and individual names.
- 25.14 The primary function of David Tong Company in 1990 appeared to be that of a clearing account for other bank accounts operated by Madam Hsu Jye and Mr Hsu Sun. Funds would come into David Tong Company from many different sources, usually accounts under the control of Madam Hsu Jye or Mr Hsu Sun. Once money was received by David Tong Company it would be distributed to other accounts and used for share trading.
- 25.15 The arrangements were made significantly more complex by the mixing of funds amongst the alleged interests of different Taiwanese. For example on 4 July 1990 Martra (discussed at Chapter 19) purchased 1,000,000 WTCG shares through Cresvale Hong Kong at a total cost of \$2,288,763.75. This was largely funded by way of two cheques from David Tong Company of \$2,165,000 and \$110,000. The \$2,165,000 cheque came from David Tong Company's Amex Bank account and was drawn against an overdraft facility guaranteed by Mr David Tong. The \$110,000 cheque drawn on the SPAB bank account of David Tong Company was funded from mixed deposits. As the \$110,000 payment to Martra was made on 5 July 1990, the most likely deposit funding this was a \$100,000 transfer made on 4 July 1990, from David Tong Company's Amex Bank account also from the overdraft facility. Over time the overdraft was cleared by payments from deposits from various accounts in the names of different Taiwanese.
- 25.16 The above arrangement is complex involving three transfers and the purchase of shares. Between 1 April 1990 and 31 December 1990 there were approximately 40 similar dealings between Martra and Cresvale Hong Kong. During this period David Tong Company was involved in sharedealing with other companies and individuals, using other sharebrokers.

- 25.17 Furthermore there has been no evidence presented to suggest that the interest on the overdraft was ever charged by David Tong Company to the alleged Taiwanese beneficiaries.
- 25.18 In addition to these extraneous transactions, a number of transactions were carried out for Mr David Tong's and Madam Hsu Feng's personal benefit.
- 25.19 Keeping an account of these purchases, sales, payments and receipts would have been an exacting task.
- 25.20 I have had no evidence that detailed accounting was undertaken to ensure that balances between individuals could be reconciled. Accordingly I have inferred that such reconciliation was unnecessary due to some special relationship between the parties involved.
- 25.21 The relationship between Mr David Tong and the various Taiwanese parties appears to be very close.
- 25.22 This is material to my investigation as many of the transactions carried out by Madam Hsu Jye and Mr Hsu Sun where money passed through or was sourced from David Tong Company are not transactions that Mr David Tong or Madam Hsu Feng should have been involved in whilst they were directors of Tomson Pacific or WTCG.
- 25.23 The evidence given by Mr David Tong, Madam Hsu Feng, Madam Hsu Jye and Mr Spancer Lau in relation to the activities of this company is frequently contradictory and in several instances I believe it has been given to deliberately mislead me and hinder the progress of my investigation.

#### **INCORPORATION, DIRECTORS AND SHAREHOLDERS**

- 25.24 David Tong Company was incorporated in Hong Kong on 5 September 1986.

- 25.25 Mr David Tong and Madam Hsu Feng were David Tong Company's two directors during 1990 and I understand they have remained the company's only directors since that date.
- 25.26 The company has two shares of \$1.00 each in issue and these are held by Mr David Tong and Madam Hsu Feng respectively.

### **BANK ACCOUNTS**

- 25.27 During the period under review David Tong Company maintained bank accounts at Security Pacific Asian Bank Limited ("SPAB"), American Express Bank Limited ("Amex Bank"), Ka Wah Bank Limited ("Ka Wah Bank") and Republic National Bank of New York ("Republic National Bank").

#### Security Pacific Asian Bank Accounts

- 25.28 David Tong Company maintained two bank accounts at SPAB, one a current account and the other being a 24 hour call deposit account.
- 25.29 The account mandate was signed on 18 May 1989 and the two authorised signatories were Madam Hsu Feng and Madam Hsu Jye.
- 25.30 I am not aware of any credit facilities maintained for David Tong Company at SPAB, although the account, during January 1990, was overdrawn to the extent of \$30,000,000.
- 25.31 During 1990 in excess of \$500,000,000 was deposited into the accounts at SPAB. The vast majority of the transactions through the SPAB accounts were concealed in the Directors' Loan Account in the audited accounts of David Tong Company.

- 25.32 I have reconstructed a statement of receipts and payments from the bank statements, cheque copies and deposit advices for the majority of transactions through the current and call accounts. This schedule is shown at Appendix 144.
- 25.33 The SPAB accounts appear to be the most active of the bank accounts maintained by David Tong Company. Madam Hsu Jye signed almost all of the cheques drawn on the current account and gave almost all instructions relating to the call account.
- 25.34 The major receipts and payments through the SPAB accounts identified by me during 1990 were as follows:

<b>Company/Individual</b>	<b>Receipts \$</b>	<b>Payments \$</b>
David Tong Company (Amex)	1,800,000	84,725,020
David Tong Company (Ka Wah)	21,500,000	16,430,000
Mr Danny Koo	21,135,000	85,407,000
Tomson Films	0	600,000
Madam Hsu Feng	0	1,266,477
Martra	32,695,385	55,662,347
South View	136,138,500	1,161,000
Madam Hsieh Hui Ching &/or Madam Chiang Pei Ling &/or Madam Tsai Yueh Er	6,672,673	33,113,000
Cortney	0	15,640,000
Robert WH Wang & Co	8,011,444	0
Madam Sun Huei Chuan &/or Madam Lui Ching &/or Mr Hsu Sun	28,700,000	0
Mr Huang Wen Hui	14,640,000	0
Rivera	60,000	66,557,232

Grand Ocean	14,840,000	41,280,000
Gilded Gain	1,440,000	2,030,000
Peace Forest	0	600,005
Mr Hsu Sun	105,200,000	0
Madam Hsu Jye	700,000	2,817,577
Mr Jackson Chang	3,200,000	500,000
Madam Hsu Jye & Mr Hsu Sun	10,770,000	57,705,918
Madam Hsu Feng & Mr David Tong	36,000,000	7,800,005
Mr Tung Ming Hsun &/or Madam Chiang Pei Ling &/or Madam Tsai Yueh Er	24,310,000	75,338,351
Mr Wong Wai	650,000	0
Mr Ling Tat Tong	0	1,000,000
Mr Tang Chun Nien	29,999,970	0
Richards Butler	10,962,000	0
Pineast Pictures	0	2,700,000
Hampton Winter & Glynn & Denton Hall	0	7,800,000
Tomson Development Corporation	29,999,970	0
Herman H Y Ng & Company	0	32,400
Mr Wong Yuan Chi	0	609,250
Vivien Viman Chong & Sun Tao Tsun	0	1,000,000
<b>TOTAL</b>	<b>\$539,424,942</b>	<b>\$561,775,582</b>

Note: David Tong Company's call account had an opening balance of \$22,655,917.88 and closing balance of \$12,501.88.

- 25.35 I have conducted a thorough analysis of the source and application of the receipts and the application of the payment made from this account.
- 25.36 There are several instances of David Tong Company being used for the benefit of Mr David Tong and Madam Hsu Feng along with many other transfers and payments to other bank accounts operated by Madam Hsu Jye.
- 25.37 The following general issues arise from my detailed analysis:

Mr Danny Koo

- 25.38 Mr Danny Koo is a director of Martra and a close associate of Mr David Tong. Martra is discussed in Chapter 19. No plausible explanation has been given about the payments of \$85,407,000 to, and receipts totalling \$21,089,000 from, Mr Danny Koo, other than that these transactions were "*cash swaps*" or underground banking arrangements between Mr David Tong and Mr Danny Koo. I understand that the majority of the money received by Mr Danny Koo was used to purchase Rivera, Tomson Pacific and WTCG Shares.

Martra

- 25.39 An amount of \$8,040,000 paid to Martra from this David Tong Company bank account was used to partially fund Martra's purchase of 30,000,000 WTCG shares discussed in Chapter 6.
- 25.40 With respect to the majority of the transactions through this account the explanations given by Mr David Tong and Madam Hsu Jye of the purpose of those transactions are similar to the explanation given about the transactions with Mr Danny Koo in that they were "*cash swaps*". I have not established why the David Tong Company account was required for "*cash swaps*" when Madam Hsu Jye already allegedly operated two bank accounts for Mr Danny Koo's benefit in Hong Kong.



Tomson Films and Gilded Gain

- 25.41 Tomson (Hong Kong) Films Limited ("Tomson Films") and Gilded Gain Limited ("Gilded Gain") were wholly owned beneficially by Mr David Tong and Madam Hsu Feng during 1990.
- 25.42 Payments to these companies, and payments to Pineast Pictures (which was paid \$2,700,000 on behalf of Tomson Films) are payments made on behalf of Mr David Tong and Madam Hsu Feng.

Mr Tung Ming Hsun

- 25.43 Mr Tung Ming Hsun is apparently a friend of Mr David Tong's and is discussed in Chapter 9. As can be seen from the table he received \$75,338,351 from David Tong Company. This amount was made up of 17 payments of varying amounts paid at different times from 17 April 1990 to 3 October 1990. Madam Hsu Jye operated a bank account in Mr Tung Ming Hsun's name at this time.

Mr David Tong, Madam Hsu Feng, Madam Hsu Jye, Mr Hsu Sun and Grand Ocean

- 25.44 Total payments to these five from this account were \$110,869,977 whilst receipts totalled \$167,510,000. Several of the payments to, and receipts from, these people and Grand Ocean have been considered by me.
- 25.45 Again I have been advised that the majority of these transactions are "*cash swaps*".
- 25.46 It is possible in this instance that David Tong Company is being used for the benefit of the above individuals. Grand Ocean is allegedly operated for the benefit of Madam Hsu Jye and, her brother, Mr Hsu Bin.

Mr Tang Chun Nien and Tomson Development Corporation

25.47 Two amounts of \$29,999,970 (the net proceeds of \$30,000,000 telegraphic transfers from Taiwan in the amount of \$30,000,000 each) were received by David Tong Company; one from Mr Tang Chun Nien, the other from Tomson Development Corporation.

25.48 Mr Tang Chun Nien paid the money on 24 April 1990.

25.49 I asked Mr David Tong to explain the purpose of this deposit and he replied, through his solicitors:

*" Mr Tong does not know any person by that name "*

*"Mr Tong cannot remember the purpose of this transaction through the account of David Tong Company Limited"*

*"At the relevant time, Madam Hsu Jye had also used the account for her personal purposes and she has also confirmed that she has no recollection of this transaction. "*

25.50 With respect to the \$29,999,970 from Tomson Development Corporation received by David Tong Company on 31 May 1990, Mr David Tong was again unable to explain the reason why this money was remitted, although Tomson Development Corporation was a company substantially under Mr David Tong's control. Through his solicitors he told me:

*" Mr Tong has no record of the source of these funds.*

*Mr Tong cannot remember the purpose of this transaction through the account of David Tong Company Limited.*

*As far as David Tong Company Limited is concerned, the transfer should have been made or handled by Hsu Jye. Mr Tong has no recollection as to the person arranging the transfer in Tomson Development Limited."*

*"Although Mr David Tong is a director and shareholder of Tomson Development Limited, the records of that company during the period in question were not properly kept and Mr David Tong is unable to ascertain the source or the purpose of that payment despite a diligent search."*

- 25.51 As has been mentioned in other chapters, during late April and May of 1990 David Tong Company was indirectly funding a large volume of trading in the shares of Rivera, Tomson Pacific and WTCC. The above two receipts appear to have been used largely for that purpose.

#### Segregation of Payments

- 25.52 Importantly, there appears no separation of activities between those payments ostensibly for the benefit of Mr David Tong and Madam Hsu Feng and those payments for the benefit of others. If there was a difference between the cheques drawn for the benefit of directors and those drawn for third parties sophisticated and detailed records would need to have been maintained in order to reconcile the position of any one third party at any point in time.
- 25.53 There is no evidence to confirm that any such records were maintained, not only in the case of David Tong Company (where it is claimed that all records were lost), but also in the case of the third parties (where it is claimed that all records were returned to Taiwan).

### Amex Bank Accounts

- 25.54 David Tong Company maintained three accounts with Amex Bank. These consisted of a current account, a deposit account and a foreign exchange account. The Amex Bank account agreement was signed on 4 June 1990 and executed by Madam Hsu Feng on behalf of David Tong Company. The authorised signatories to the accounts were Madam Hsu Feng and Madam Hsu Jye. Mr David Tong has confirmed that the board of directors had approved those two signatories.
- 25.55 By way of a letter dated 22 June 1990, Amex Bank granted a \$25,000,000 credit facility to David Tong Company. Security on the loan was to be a pledge of Tomson Pacific or Rivera shares and a personal guarantee signed by Mr David Tong. An arrangement fee of \$125,000 was payable upon acceptance of the overdraft facility.
- 25.56 The Amex Bank current account was opened with a deposit of \$5,000 on 7 June 1990, although the account was not actively operated until 4 July 1990. This date coincided with the granting of the overdraft facility.
- 25.57 A summary of major receipts and payments through the Amex Bank current account, between 7 June 1990 and 31 December 1990, are shown on the table below:

<b>Company/Individual</b>	<b>Receipts \$</b>	<b>Payments \$</b>
David Tong Company (SPAB)	71,525,000	1,800,000
David Tong Company (Ka Wah)	5,300,000	210,000
Mr Tung Yu Jeh	0	8,510,329
Mr Cheng Yuet Chow	0	8,250,000
Cortney	0	950,000
Madam Hsu Jye	300,000	0

Martra	16,840,000	93,956,000
Mr Danny Koo	24,055,000	50,451,000
South View	25,560,000	2,156,000
Mr Liu Yong Shoi	0	8,250,000
Paget Limited	28,000,000	0
Rabobank NL Singapore	0	7,877,643
Madam Hsieh Hui Ching and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei	24,995,000	30,920,000
Mr Tung Ming Hsun &/or Madam Chiang Pei Ling &/or Madam Tsai Yuet Er	35,750,000	57,803,000
Grand Ocean	8,515,000	0
Mr Hsu Sun	28,190,000	468,760
Mr David Tong and Madam Hsu Feng	0	12,117,045
Mr Huang Wen Hui	1,698,000	24,235,000
Carisbrooke Ltd	7,897,000	0
Madam Hsu Jye & Mr Hsu Sun	3,090,000	54,380,000
Hauxton	1,300,000	0
Chow Tai Fook Jewellery	0	25,000,000
Mr Wong Yuan Chi	0	1,229,808
The Mirage	0	2,953,550
Unknown Clearing Cheques	100,514,967	0
Tomson Films	100,000	610,000
Rivera	0	24,175,799
<b>TOTAL</b>	<b>\$383,629,967</b>	<b>\$416,303,934</b>

Note: An additional \$13,200,000 was transferred from the David Tong Company SPAB account directly to the David Tong Company Amex Overnight (call) account.

25.58 A copy of the reconstructed schedule of receipts and payments in relation to this account is shown as Appendix 145.

25.59 Of particular note is a payment from this account of \$34,380,000 to Madam Hsu Jye and Mr Hsu Sun on 19 December 1990. This money was used as part of the funding of Mr Hsu Sun when he acted as nominee of Mr David Tong in the purchase of 30,000,000 WTCG shares as set out in Chapter 6. The total cost of the shares was \$75,453,750. In this instance it is evident that David Tong Company is being used for the benefit of Mr David Tong.

25.60 Also of interest is the receipt of \$1,300,000 from Hauxton which was ultimately part of the profit made upon the disposal of 145,000,000 Tian Teck shares discussed in Chapter 9.

25.61 In summary, the accounts have been operated in much the same way as the SPAB account with allegedly a dual purpose of funding investments for various Taiwanese individuals, and investments of Mr David Tong and Madam Hsu Feng, with little segregation between those purposes.

25.62 Given Mr David Tong's personal guarantee of the overdraft facility and the pledge of Tomson Pacific or Rivera shares necessary to maintain the overdraft I have concluded that Mr David Tong had a significant influence over the operation of the account.

25.63 I have not been able to determine why David Tong Company paid Rivera \$24,175,799 as Rivera have declined to assist me in my investigation. The amount was paid by way of cashier's order on 21 September 1990.

### Ka Wah Bank Account

- 25.64 Another bank account was maintained by David Tong Company at Ka Wah Bank.
- 25.65 I have not sought details with regard to the opening of this account as it was opened well before 1990. It is evident though that the account signatory was Madam Hsu Jye and that the account had an overdraft limit of \$5,400,000.
- 25.66 Security for this overdraft was Apartment H, 8th Floor, Block GH, Grenville House, Magazine Gap Road, Hong Kong. I understand, at the time, this was the personal residence of Mr David Tong and Madam Hsu Feng.
- 25.67 A copy of the reconstructed schedule of receipts and payments in relation to this account is shown as Appendix 146.
- 25.68 In summary, the major receipts and payments through the Ka Wah account between 1 April 1990 and 31 December 1990 were as follows:

<b>Company/Individual</b>	<b>Receipts \$</b>	<b>Payments \$</b>
David Tong Company (SPAB)	16,430,000	21,500,000
David Tong Company (Amex)	210,000	5,300,000
South View	11,250,000	0
Grand Ocean	30,000	0
Hauxton	2,500,000	0
Tomson Investment	0	243,111
Mr Tung Ming Hsun	5,300,000	0
Mr Danny Koo	500,000	0
Mr Hsu Sun & Madam Hsu Jye	0	5,300,000
Madam Hsieh Hui Chung and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei	0	5,300,000
<b>TOTAL</b>	<b>\$36,220,000</b>	<b>\$37,643,111</b>

25.69 The volume of transactions through this bank account is less than that for the accounts held at SPAB and Amex Bank, although it seems to be used for similar purposes.

25.70 The amount of \$2,500,000 received from Hauxton relates to the Tian Teck transaction discussed at Chapter 9.

25.71 The amount of \$5,300,000 paid to Mr Hsu Sun and Madam Hsu Jye from this account was paid on 19 December 1990 and relates to the partial funding of the purchase of 30,000,000 WTCG shares by Mr Hsu Sun as Mr David Tong's nominee, as discussed in Chapter 6.



### Republic National Bank of New York Account

25.72 Whilst David Tong Company maintained an account with this bank during 1990 the volume of transactions was immaterial. The account has not been examined in detail by me.

### **LOST BOOKS AND RECORDS**

25.73 As mentioned above, because David Tong Company is a Hong Kong company it is required under the Companies Ordinance to keep proper books of account. Section 121(1) of the Companies Ordinance provides that:

*"Every company shall cause to be kept proper books of account with respect to:-*

- (a) All sums of money received and expended by the company in the matters in respect of which the receipt and expenditure takes place;*
- (b) All sales and purchases of goods by the company;*
- (c) The assets and liabilities of the company. "*

25.74 Pursuant to Section 121(3A) books of account are required to be preserved for a period of seven years from the end of the financial year to which the last entry made or matter recorded therein relates.

25.75 Mr Spancer Lau told me that he looked after the accounts of David Tong Company, but when I asked him to deliver all books and records of that company to me, he delivered a small box of records which were all from May of 1992 onwards. In reply to my request for the previous records, he stated :

*"Well, we moved our office this year and in the process of relocation we lost all the records prior to the year 1992"*

25.76 He went on to say that the records were lost around March or April or 1992, along with records of another company controlled by Mr David Tong, namely Tomson Films.

25.77 When I asked what sort of records were lost, Mr Spencer Lau replied that they were mostly ledgers packed in a box. He did not recall how many boxes there were.

25.78 I then asked if there were any records of David Tong Company stored on computer, and Mr Spencer Lau replied:

*"When we moved our office the computer broke down and some of the data belonging to David Tong Company Limited would not be loaded again."*

25.79 Mr Spencer Lau was asked if there were any backup discs with this data concerning David Tong Company and he said he was not responsible for looking after the backup discs. I have not been able to locate anyone at Tomson Pacific who had access to backup discs containing the records concerned.

25.80 I asked him if he was concerned about the loss of the records and whether David Tong Company would be able to comply with its responsibilities under the Companies Ordinance. He responded:

*"Well, the data which was lost actually belongs to those financial years for which our auditors have already checked those accounts."*

25.81 He said that he did not inform Mr David Tong that the records were lost although he thought that he had informed Madam Hsu Jye. However he claimed that he had spoken to the removalist in relation to the Tomson Films records that were lost. He said:

*"After we have moved it was Tomson Film (HK) Limited which first discovered that they had lost something. We only realised several months afterwards that David Tong Company Limited also lost some of its documents. We thought it would be futile for us to ask the carrier because even Tomson Film (HK) Limited couldn't find its lost records so there was no way for us to find the lost records of David Tong Company Limited."*

25.82 He said that whilst they had recently written to the removalists they had not received any response. The letter, dated 30 March 1992 read in part:

*"Further to our telephone conversation on 24th March 1992, this letter serves as a notice to you that during the removal of our office from 44 & 45th Floor, Lippo Tower, Bond Centre to Level 33 of Two Pacific Place on 21st March 1992, one of our staff reported loss of one cartoon box packing number S6-003 which contained 1988 vouchers and cheque stuffs of Tomson (Hong Kong) Films Co. Ltd."*

25.83 It appears from this letter that within 3 days of the removal of the records, one box containing records about 4 years old was found to be missing, and reported. As it is unlikely that these records would be required for the normal day to day operations of Tomson Films, I assume that it was found to be missing by someone checking off a packing list. This assumption is supported by the reference to the packing number quoted in the letter. If this is true, it raises the question as to why the David Tong Company records were also not found to be missing, if indeed that was the case. Alternatively, if one box of records (out of many for one company) had been found missing, surely this would have led to a check of other records, and it would seem inconceivable, that it was not noticed, that all the records for David Tong Company were missing.

25.84 He said that he had not tried to reconstruct the records that were lost.

25.85 When I first served notice of my appointment as inspector over Tomson Pacific and WTCG on those companies, I noticed six large bags of shredded paper in one office. This was removed by the cleaners that day.

25.86 I asked Mr Spancer Lau if he was aware of the large quantity of shredded paper on the premises on that Tuesday, and he said:

*"There was shredded paper on the premises because you could see them all over the place when you walked by. "*

*"In one of the rooms within the company premises I saw all these shreds of documents. "*

25.87 He added, however, that he did not know when the shredding had been done and that it was not done under his instructions.

25.88 As discussed earlier, during the course of reconstructing David Tong Company's transactions during 1990, it became evident that Madam Hsu Jye had drawn almost all of its cheques.

25.89 I asked Madam Hsu Jye to explain the activities of David Tong Company and she said:

*"At first David Tong & Company was engaged in property dealing. Later on David Tong & Company acted as a service company for a listed company, that is to collect the cash for it. "*

25.90 I asked how she came to be a signatory on the bank accounts. She said:

*"David Tong himself did not stay in Hong Kong very often and he had very little opportunity to do business through his company, just as I mentioned. Well, the intention that I was asked to sign cheques was that I stayed in Hong Kong most of the time, but later on I used this account to deal with some cash swap business. "*

25.91 I understand "cash swaps" are the transfer of monies in and out of Taiwan through channels designed to circumvent the foreign exchange laws of that country.

25.92 Madam Hsu Jye said that she was not a paid officer of David Tong Company although it is evident to me that to administer the company, a substantial amount of time would have been required.

25.93 Madam Hsu Jye confirmed that Mr Spancer Lau had contacted her and told her that the records for Tomson Films and David Tong Company had been lost. Madam Hsu Jye said that at the time the records were lost she was not in Hong Kong. Likewise she said that she was not in Hong Kong at the time that I was appointed Inspector by the Financial Secretary, and was not in Hong Kong at the time the large quantity of documents were shredded. Madam Hsu Jye said that she did not know what the documents that were shredded were.

### **AUDITED ACCOUNTS**

25.94 The principal activities of David Tong Company are described in the audited accounts of the year ended 31 December 1990 as:

*"investment in properties and provision of consultancy service."*

25.95 There is no mention made of the primary function of David Tong Company which appears to be the processing of deposits from and payments to various individuals and foreign companies.

25.96 There appears to have been no examination by the auditors of the transactions through the various David Tong Company bank accounts that appear to have been grouped together in the accounts under the general heading of "Directors Loan Account".

25.97 Having seen the volume of transactions passing through the bank accounts of David Tong Company and the complexity of the transfers to many different accounts I do not believe that the accounts of David Tong Company for the years ended 31 December 1990 and 31 December 1991 present a true and fair view of its activities during the year.

25.98 Mr Luk Wing Hay, a partner of Louis K.M. Lai & Co, has told me that as the fee was not very high in relation to this particular account, his staff accepted the working papers presented by management. He said that it was the management of David Tong Company who asked him to accept the many transfers through the bank accounts as movements in the Directors Loan Account.

## **CONCLUSIONS**

25.99 David Tong Company appears to operate its bank accounts effectively as banker to many other accounts controlled by Madam Hsu Jye and Mr Hsu Sun. The lack of documents and accounting records in relation to David Tong Company has severely hampered my ability to analyse the substance of many of David Tong Company's transactions.

25.100 Examination of the ultimate destination of many of the significant sums passing through David Tong Company's bank accounts shows that the money was in many instances used to purchase large quantities of Tomson Pacific, Rivera and WTCG shares. At other times the money was used directly by Mr David Tong for his own benefit.

25.101 Of particular note in this respect were payments to, or on behalf of, Mr David Tong's personal companies, Gilded Gain and Tomson Films, and the payment to Mr Hsu Sun in December 1990 which Mr Hsu Sun then used to purchase 30,000,000 WTCG shares as the nominee of Mr David Tong.

25.102 I am critical of Madam Hsu Jye's and Mr Spancer Lau's evidence in relation to the disappearance of the records of David Tong Company. I do not believe that the records were lost by the removal company.

25.103 In addition, I am critical of Madam Hsu Jye's apparent unwillingness to disclose to me the circumstances of the transactions passing through the David Tong Company accounts.

25.104 I am critical of the auditors who do not seem to have made their own independent inquiry into the affairs of David Tong Company and as such I do not accept that the accounts, as presented, disclose a true and fair view.

**LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

## CHAPTER 26

### SHARE PRICE SUPPORT OPERATIONS

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## 26 INTRODUCTION

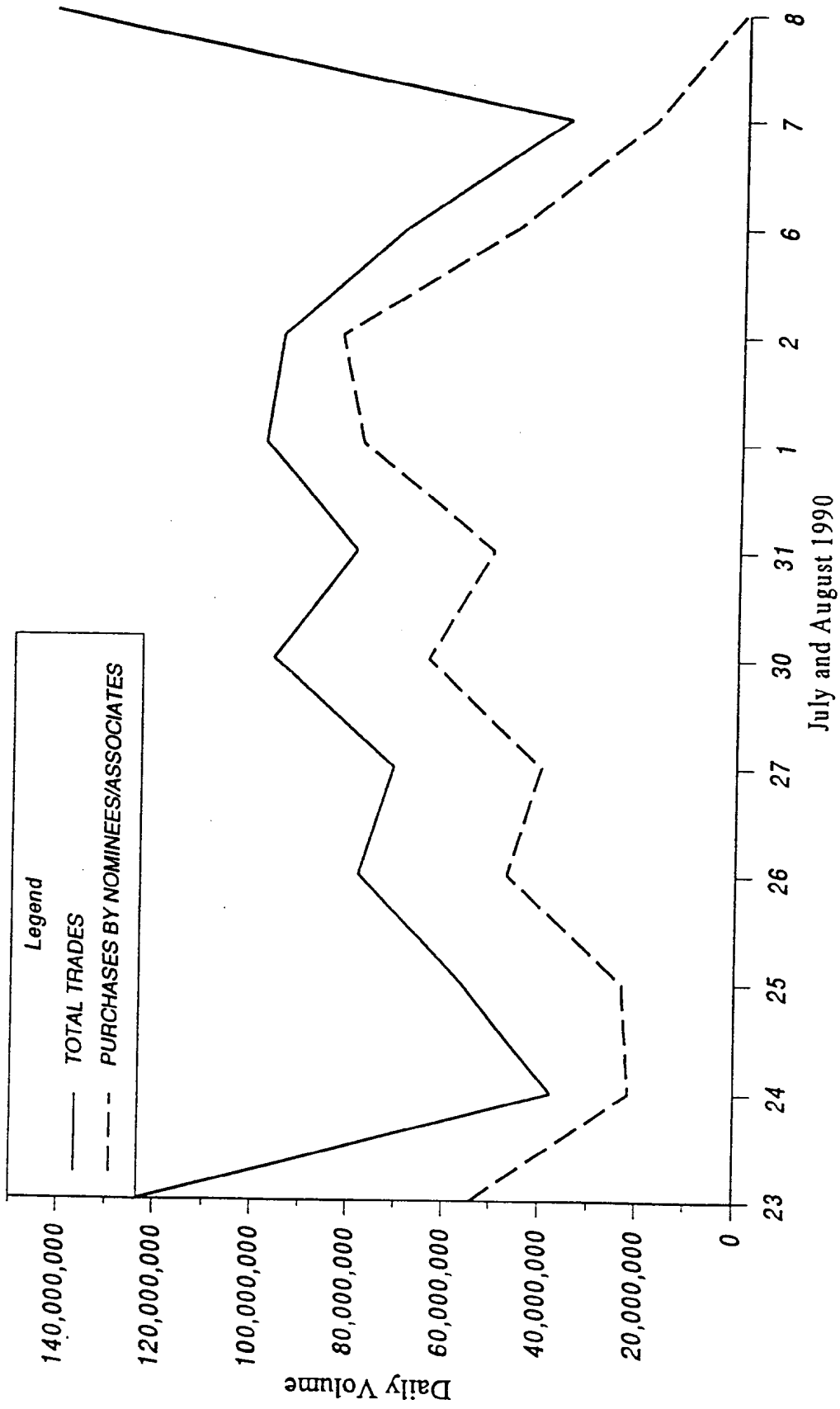
- 26.1 During my investigation I became aware of substantial trading in WTTCG shares around the time of the WTTCG share placement in July 1990 (as discussed in Chapters 5 and 6 of this report). Some heavy trading of Tomson Pacific and Rivera shares was also noted. I believe many of those share transactions were orchestrated by Mr David Tong, Mr Jackson Chang and/or Mr George Tan and were conducted with a view to raising or maintaining the price of WTTCG shares.
- 26.2 One reason for this could have been to give those places in the WTTCG placement, who had been offered "compensation" arrangements to induce them to take up the placement (as discussed in Chapter 6), an opportunity to sell their shares at a profit.
- 26.3 The total volume of WTTCG shares traded on the Stock Exchange between 23 July 1990 and 8 August 1990 was 984,675,100 of which 532,412,000 of the purchases and 535,246,000 of the sales were accounted for by nominees or associates of Mr David Tong, Mr Jackson Chang or Mr George Tan. The purchases represented 54.07% of the total trading volume and obviously played an important part in supporting the share price of WTTCG. The trading by these nominees or associates during this period are listed below:

<b>Name</b>	<b>Purchases</b>	<b>Sales</b>
Huang Wen Hui	29,558,000	8,010,000
Wong Man Ling	-	-
Chang Yueh Chun	-	-
Grand Ocean	118,200,000	-
Hauxton	-	116,500,000
Roy Loffill	5,254,000	33,960,000

Tan Yakobus Suryopranoto	42,838,000	-
Ng Kin Wah	38,134,000	7,634,000
Richard Ting	10,000,000	-
Peter Lim	5,000,000	-
Martin Yim	5,200,000	-
Loo Kwee Huay	107,646,000	76,430,000
Madam Loo's Syndicate	35,726,000	141,520,000
Abraham Adiasa	9,250,000	37,794,000
Trina Adiasa	11,670,000	8,000,000
PT Minerindo	14,930,000	37,436,000
Soelamah	5,010,000	21,600,000
Alex Soesilo	8,212,000	13,394,000
Chan Tai Tak	17,956,000	7,458,000
Chu Kai Ying	17,322,000	2,510,000
Tang Ang Chiu	4,654,000	5,000,000
Yu Sau Tin	14,052,000	-
Teng Tan Jong	31,800,000	18,000,000
<b>Total</b>	<b>532,412,000</b>	<b>535,246,000</b>

26.4 The significance of this trading is shown on the graph below:

WTCCG Shares Traded on the Hong Kong Stock Exchange  
 between 23 July 1990 and 8 August 1990



## THE PARTICIPANTS

### Mr Huang Wen Hui

- 26.5 Mr Huang Wen Hui is alleged to be a friend of Mr Hsu Sun. As discussed in Chapter 6, he acted as a nominee in the purchase of Killenny Limited, which held 44,850,000 WTCG placement shares. I have not been able to interview him.
- 26.6 Mr Huang Wen Hui purchased a total of 44,466,000 WTCG shares from various brokers in small lots during the period 11 July 1990 to 10 August 1990 of which 29,558,000 were purchased and 8,010,000 sold during the period 23 July 1990 to 8 August 1990.
- 26.7 Mr Huang Wen Hui purchased 17,500,000 of these shares from Madam Loo Kwee Huay and her associate Mr Chung. Madam Loo Kwee Huay and her syndicate are discussed in Chapters 9 and 10 and in this chapter.
- 26.8 Mr Huang Wen Hui's share purchases were found to have been financed from bank accounts in the name of:
- Mr Tung Ming Hsun and/or Madam Chiang Pei Ling and/or Madam Tsai Yueh Er
  - Mr Hsu Sun
  - Mr Danny Koo
  - South View Properties Limited
  - Madam Hsieh Hui Ching and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei
- 26.9 Madam Hsu Jye or Mr Hsu Sun are signatories on all the above bank accounts.

- 26.10 I have been unable to contact Mr Huang Wen Hui, however, the account opening form with DMT Securities shows that the account could be operated by Mr Hsu Sun, Madam Hsu Jye or Mr Huang Wen Hui singly.
- 26.11 The contact address for Mr Huang Wen Hui at DMT Securities was Madam Hsu Jye and Mr Hsu Sun's home address. Madam Hsu Jye has stated that *"he has no address in Hong Kong so our address was used."*
- 26.12 I consider that it is likely that the WTCG transactions in the name of Mr Huang Wen Hui were made on behalf of Mr David Tong, and that instructions and payments (from the various third party bank accounts) were initiated by either Mr Hsu Sun or Madam Hsu Jye.

Madam Wong Man Ling

- 26.13 Madam Wong Man Ling is a friend of Mr Hsu Sun and Madam Hsu Jye. As discussed in Chapter 6, she acted as a nominee in the purchase of Killenny Limited and Commercial Success Limited, each of which held 44,850,000 WTCG placement shares.
- 26.14 During the period 1 January, 1990 to 31 December, 1992 a total of 6,488,000 WTCG shares were purchased by Madam Wong Man Ling through Smith New Court Far East Limited ("Smith New Court"); of which 5,704,000 shares were acquired during the period from 28 June to 19 July 1990. She did not trade in any WTCG shares during the period from 23 July 1990 to 8 August 1990.
- 26.15 Madam Wong Man Ling also purchased 6,740,000 Tomson Pacific shares and 7,906,000 Rivera shares from various brokers in small lots between 2 July 1990 and 6 March 1991.

- 26.16 Madam Wong Man Ling has denied knowledge of these share purchases. A former account executive of Smith New Court has stated that although the account was opened by her, Mr Hsu Sun could operate the account and the share purchases were made on his instructions. The address given to Smith New Court for this account was care of Mr Wong Wai, a nephew of Mr Jackson Chang, and an employee of Tomson Pacific.
- 26.17 I am not able to determine who provided the funds for Madam Wong Man Ling's purchases. Preliminary matching of the cheque numbers show that some of the monies might have come from the following accounts with Security Pacific Asian Bank Limited ("SPAB").
- Account number 2520249-01 in the name of Madam Hsieh Hui Ching and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei; or
  - Account number 2520222-01 in the name of Mr Tung Ming Hsun and/or Madam Chiang Pei Ling and/or Madam Tsai Yueh Er; or
  - Account number 2520117-01 in the name of Mr Danny Koo.
- 26.18 Madam Hsu Jye is a signatory on all these bank accounts but I have been unable to gain access to the account records.
- 26.19 South View Properties Limited ("South View") paid \$885,324 towards the Tomson Pacific share purchases. Mr Hsu Sun is a sole signatory on South View's bank account, also held at SPAB.
- 26.20 I believe that the WTCG, Tomson Pacific and Rivera share transactions in the name of Madam Wong Man Ling were initiated by Mr Hsu Sun, and that payment was made through the bank accounts of third parties.

26.21 I suspect that these transactions were made on behalf of Mr David Tong or Mr Jackson Chang.

Madam Chang Yueh Chun

26.22 Madam Chang Yueh Chun is allegedly a director of South View although I have not been able to contact her. South View is discussed in Chapter 21.

26.23 Madam Chang Yueh Chun purchased 22,876,000 WTCG shares and sold 26,404,000 WTCG shares from June 1990 to December 1990. Of the total amount, 15,966,000 shares were purchased between 4 June 1990 and 17 July 1990. During the period 23 July 1990 to 8 August 1990, she did not trade in any WTCG shares.

26.24 I have found that Madam Chang Yueh Chun's share purchases were financed from the bank accounts of:

- Madam Hsieh Hui Chung and/or Madam Chang Yueh Chun and/or Madam Shih Hsiao Kuei
- Mr Danny Koo
- Mr Tung Ming Hsun and/or Madam Chiang Pei Ling and/or Madam Tsai Yueh Er
- Mr Huang Wen Hui
- Grand Ocean

26.25 The cheques issued from Madam Chang Yueh Chun's margin account at DMT Securities were drawn in her favour.

26.26 The account opening form with DMT Securities shows that Madam Chang Yueh Chun's account can be operated by Madam Hsu Jye, Mr Hsu Sun or her singly. The opening form purports to show Madam Chang Yueh Chun's signature although DMT Securities did not have any other documents which would verify this signature.

- 26.27 Madam Chang Yueh Chun allegedly acknowledged receipt of the stock drawn. However, I am unable to confirm whether she was in fact in Hong Kong at the time as I understand she was ordinarily resident in Taiwan.
- 26.28 Madam Chang Yueh Chun also purchased 34,098,000 and sold 27,780,000 Tomson Pacific shares between 1 June 1990 and 31 August 1990 and purchased 5,250,000 Rivera shares in the same period. Of the Tomson Pacific shares sold by Madam Chang Yueh Chun, 10,500,000 were purchased by Shine Trip Limited (which was a wholly owned subsidiary of Rivera) and 4,500,000 were purchased by Mr Huang Wen Hui.
- 26.29 I am not convinced that Madam Chang Yuen Chun actually signed the account opening form at DMT Securities, or acknowledged receipt of stock drawn.
- 26.30 I consider it likely that Madam Hsu Jye and Mr Hsu Sun operated Madam Chang Yuen Chun's account on the instructions of Mr David Tong.

#### Grand Ocean

- 26.31 Grand Ocean is a Liberian company allegedly controlled by Madam Hsu Jye and her brother, Mr Hsu Bin.
- 26.32 Grand Ocean purchased large quantities of WTCG, Tomson Pacific and Rivera shares through DMT Securities and Chintung. Full details of the activities of Grand Ocean are discussed in Chapter 22 where it is concluded that Grand Ocean was frequently used by Mr Jackson Chang and Mr David Tong for Mr David Tong's benefit.
- 26.33 From the 118,200,000 WTCG shares purchased in August 1990, Grand Ocean provided the 116,500,000 WTCG shares that were sold by Hauxton to a subsidiary of Great Eagle in the Tian Teck share swap discussed at Chapter 9. Grand Ocean purchased 95,000,000 of these shares from Madam Loo's Syndicate, and 10,000,000 from Mr Ng Wing Yu and Mr Luk Chun Nam who operated through the 12/F Cash Client account at Cheung On, and 10,000,000 from Madam Trina Adiasa, Mr Abraham Adiasa and Madam Soelamah.



- 26.34 In addition to the 118,200,00 WTCG shares referred to above Grand Ocean purchased 33,716,000 WTCG shares and sold 5,000,000 such shares during the period from 2 May 1990 to 17 May 1990.
- 26.35 Grand Ocean bought 50,908,000 Tomson Pacific shares during the period 4 May 1990 to 1 June 1990.

#### Hauxton

- 26.36 As discussed in Chapter 6, Hauxton was incorporated in Liberia in March 1990.
- 26.37 Although allegedly owned by and controlled by three Taiwanese, Madam Chiang Pei Ling, Madam Hsieh Hui Ching and Madam Shih Hsiao Kuei, I believe that Hauxton was controlled by Mr David Tong, through Madam Hsu Jye who was a sole signatory to its bank accounts. This is further discussed in Chapter 6.
- 26.38 As part of the Tian Teck transaction, Hauxton sold 116,500,000 shares to a subsidiary of Great Eagle on 8 August 1990.
- 26.39 The 116,500,000 WTCG shares delivered to Great Eagle were provided by Grand Ocean, and the full amount of the proceeds due to Hauxton on the sale, were paid to Chintung against the margin account of Grand Ocean, to allow for the delivery.

#### Mr Roy Loffill

- 26.40 Mr Roy Loffill is discussed in Chapters 8, 9 and 10.
- 26.41 During the period from 23 July 1990 to 8 August 1990, Mr Roy Loffill purchased a total of 5,254,000 WTCG shares through Wader Investments Limited ("Wader Investments"), Smith New Court, Sun Hung Kai, Mok Ying Kie, Agincourt Securities and Ban Hin Securities. He sold through these brokers, a total of 33,960,000 WTCG shares, of which 17,400,000 were sold through Sun Hung Kai.

26.42 Mr Roy Loffill, through his solicitor, has claimed that *"he is totally unaware"* of the WTCG share transactions. He also stated that he *"has not dealt with WTCG shares during the period 1 June 1990 to 1 December 1990"*.

26.43 I have been able to determine that funds from the 12/F Cash Client account were used for certain of Mr Roy Loffill's share purchases.

26.44 I have concluded in Chapter 10 that it is likely that Mr George Tan directed, or had a part to play in, the trading of WTCG shares by Mr Roy Loffill.

Mr Tan Yakobus Suryopranoto

26.45 Between the 23 July 1990 and 18 January 1991, Mr Tan Yakobus Suryopranoto purchased 46,468,000 WTCG shares and sold 6,894,000 of which 42,838,000 were purchased during the period from 23 July 1990 to 8 August 1990. No shares were sold during this period.

<u>Period</u>	<u>No. of shares purchased</u>	<u>No. of shares sold</u>	<u>Broker</u>
25/7/90 - 18/01/91	28,614,000	6,894,000	Smith New Court
24/7/90 - 27/7/90	10,408,000	-	Sun Hung Kai
23/7/90 - 27/7/90	7,446,000	-	Mok Ying Kie
Total	<u>46,468,000</u>	<u>6,894,000</u>	

26.46 Smith New Court's account opening form shows that Mr Tan Yakobus Suryopranoto gave instructions for his own account, but according to Smith New Court's WTCG share summary, Mr Ng Kin Wah gave the order for these transactions.

26.47 Funds from the 12/F Cash Client account were used to settle Mr Tan Yakobus Suryopranoto's share purchases at Sun Hung Kai.

- 26.48 I could not contact Mr Tan Yakobus Suryopranoto at the Hong Kong address given by Smith New Court. My letter dated 8 September 1993 to an address in Indonesia given to me by a firm of solicitors who, whilst not representing Mr Tan Yakobus Suryopranoto, claimed to know his address, has not been replied to.
- 26.49 I have concluded that the trading in WTCG shares attributed to Mr Tan Yakobus Suryopranoto is likely to have been directed by Mr George Tan as some of the shares purchased were funded by the 12/F Cash Client account at Cheung On. In further support of this I believe Mr Ng Kin Wah, an associate of Mr George Tan, gave instructions to purchase and sell shares on Mr Tan Yakobus Suryopranoto's account to Smith New Court.
- 26.50 As discussed in Chapter 9, Mr Ng Kin Wah also purchased 7,750,000 Tian Teck shares on behalf of Mr Tan Yakobus Suryopranoto.

Mr Ng Kin Wah

- 26.51 Mr Ng Kin Wah was employed during 1990 by Widelines which I believe was controlled by Mr George Tan. Mr Ng Kin Wah is discussed in detail in Chapter 10.

26.52 Between 23 July 1990 and 8 August 1990 Mr Ng Kin Wah purchased 38,134,000 WTCG shares and sold 7,634,000.

<u>Period</u>	<u>No. of shares purchased</u>	<u>No. of shares sold</u>	<u>Broker</u>
23/7/90 - 8/8/90	2,560,000	0	CEF Securities
23/7/90 - 8/8/90	17,210,000	0	Mok Ying Kie
23/7/90 - 8/8/90	4,000,000	0	Smith New Court
23/7/90 - 9/8/90	13,432,000	6,100,000	Sun Hung Kai
23/7/90 - 8/8/90	100,000	1,514,000	Wader Investments
25/7/90 - 2/8/90	190,000	20,000	Agincourt Securities
31/7/90 - 10/8/90	220,000	0	Triple A & Co
1/8/90	772,000	0	Chintung
Total	<u>38,484,000</u>	<u>7,634,000</u>	

26.53 The account opening forms of the brokers show that Mr Ng Kin Wah operated the accounts. The purchases were funded partially from the 12/F Cash Client account.

26.54 Sun Hung Kai have advised me that the following purchases of WTCG shares were settled by a Wing Hang Bank cheque for \$34,604,349.65 on 10 August 1990.

<u>Trade Date</u>	<u>Name of Client</u>	<u>No. of WTCG shares</u>	<u>Net Amount</u>
			\$
9/8/90	Ng Kin Wah	20,000	47,788.93
9/8/90	Ng Kin Wah	100,000	241,452.00
9/8/90	Ng Kin Wah	200,000	487,934.25
8/8/90	Ng Kin Wah	50,000	124,499.47
8/8/90	Ng Kin Wah	100,000	251,512.50
31/7/90	Peter Lim	2,500,000	6,287,812.50
1/8/90	Richard Ting	10,000,000	27,163,350.00
	Total	<u>12,970,000</u>	<u>\$34,604,349.65</u>

26.55 I have located a payment by Cheung On of \$34,604,349.65 by a cheque dated 10 August 1990 drawn on its Wing Hang Bank account and charged to the 12/F Cash Client account. I have concluded that this cheque was the cheque received by Sun Hung Kai to settle share purchases on the accounts of Mr Ng Kin Wah, Mr Peter Lim and Mr Richard Ting.

26.56 As discussed in Chapter 9, Mr Ng Kin Wah also purchased 2,494,000 Tian Teck shares through three separate brokers.

26.57 I have concluded in Chapter 10 that the purchases by Mr Ng Kin Wah were likely to have been made at the direction of Mr George Tan.

#### Mr Richard Ting

26.58 Mr Richard Ting purchased 10,000,000 WTCG shares on 1 August 1990 through Sun Hung Kai from Mr Roy Loffill. The net amount for the shares was \$27,163,350, which was settled by the \$34,604,349.65 Wing Hang Bank cheque drawn on the 12/F Cash Client account referred to above.

26.59 I have not been able to locate Mr Richard Ting, however, given the use of the 12/F Cash Client account, I have concluded that the purchase of the 10,000,000 WTCG shares was likely to have been at the direction of Mr George Tan.

Mr Peter Lim

26.60 On 25 July 1990, Mr Peter Lim purchased 2,500,000 WTCG shares through Sun Hung Kai. The shares were sold by Mr Roy Loffill, who also used Sun Hung Kai as broker.

26.61 Mr Peter Lim purchased a further 2,500,000 WTCG shares on 31 July 1990 through Sun Hung Kai. The shares were sold by Mr Ng Kin Wah, who also used Sun Hung Kai as broker.

26.62 In similar circumstances to the purchases by Mr Richard Ting above, the funds for settlement of these purchases were provided through the 12/F Cash Client account. As with Mr Richard Ting, I have not been able to locate Mr Peter Lim.

26.63 I believe the purchase of the 5,000,000 WTCG shares was likely to have been at the direction of Mr George Tan.

Mr Martin Yim

26.64 Mr Martin Yim purchased 5,200,000 WTCG shares through Sun Hung Kai. This purchase was settled by a cheque which was issued to Mr Roy Loffill, for the settlement of shares he sold through Wader Investments.

26.65 I have not been able to locate Mr Martin Yim, however, given Mr Roy Loffill's involvement I have concluded that it is probable that the purchase of these WTCG shares was at the direction of Mr George Tan.

Madam Teng Tan Jong

- 26.66 I understand that Madam Teng Tan Jong is the niece of Mr Jackson Chang.
- 26.67 Madam Teng Tan Jong purchased 31,800,000 WTCG shares and sold 18,000,000 between 23 July 1990 and 3 August 1990, through Chintung.
- 26.68 Through her solicitor, Madam Teng Tan Jong advised that she was not aware of the purchases as she had given full authority to a Mr Cheung Leung Piu to conduct share purchases for her in Hong Kong. Mr Cheung Leung Piu is married to a sister of Mr Jackson Chang. I understand that Mr Cheung Leung Piu lives in China and I have not been able to speak with him.
- 26.69 I have concluded that it is likely that these WTCG transactions were directed by Mr Jackson Chang.

Madam Loo's Syndicate

- 26.70 Madam Loo Kwee Huay is a Singaporean. She allegedly purchased 113,370,000 WTCG shares and sold 76,430,000 through Ban Hin Securities during the period from 23 July 1990 to 16 August 1990. 107,646,000 of these WTCG shares were purchased and 76,430,000 were sold during the period from 23 July 1990 to 8 August 1990.
- 26.71 Funds from the 12/F Cash Client account were used to settle some of Madam Loo Kwee Huay's share purchases.
- 26.72 Mr Ong Ban Chye, the former principal of Ban Hin Securities, informed me that Madam Loo Kwee Huay had not traded through his firm since September 1990. He could not provide me with the current contact address of Madam Loo Kwee Huay.

26.73 As discussed in Chapters 9 and 10, Madam Loo Kwee Huay was alleged to be the head of a syndicate of traders who included Mr W S Ng, Mr Leung, Mr Lai, Mr Tsang, Mr Cheng and Mr Tong. Members of the syndicate sold 95,000,000 WTCG shares to Grand Ocean which were used by Hauxton to settle the Tian Teck transaction. Madam Loo Kwee Huay is also shown to have sold 10,000,000 WTCG shares to Mr Huang Wen Hui.

26.74 Transactions in WTCG shares through Ban Hin Securities attributed to Madam Loo's Syndicate during the period 23 July 1990 and 8 August 1990 were as follows:

<b>Name</b>	<b>No. of Shares Purchased</b>	<b>No. of Shares Sold</b>
Chan, CK	2,000,000	-
Chan, KW	2,000,000	-
Chan, WK	2,000,000	-
Cheng	-	220,000
Cheung, CW	1,500,000	-
Cheung	-	16,500,000
Chung	-	12,000,000
Hui	-	2,000,000
Lai	7,224,000	51,000,000
Leung	106,000	10,000,000
Loo Kwee Huay	107,646,000	76,430,000
Ng, WS	-	10,000,000
Tong	20,404,000	5,000,000
Tsang	492,000	12,000,000



Tsui	-	4,500,000
Wu	-	18,300,000
<b>TOTAL</b>	<b>143,372,000</b>	<b>217,950,000</b>

26.75 Between 26 July 1990 and 7 August 1990 there was significant trading in WTCG shares between members of Madam Loo's Syndicate and other associates or nominees.

<b>Date</b>	<b>Buyer</b>	<b>No. of shares</b>	<b>Seller</b>	<b>No. of shares</b>
26/7/90	Loo Kwee Huay	9,000,000	Mr Cheung	9,000,000
26/7/90	Loo Kwee Huay	5,000,000	Mr Wu	5,000,000
27/7/90	Loo Kwee Huay	4,500,000	Mr Tsui	4,500,000
27/7/90	Huang Wen Hui	2,500,000	Mr Chung	2,000,000
30/7/90	Huang Wen Hui	10,000,000	Loo Kwee Huay	10,200,000
31/7/90	Mr Tong	20,000,000	Mr Lai	20,000,000
31/7/90	Mr Hsu Sun	5,000,000	Mr Chung	5,000,000
1/8/90	Huang Wen Hui	5,000,000	Loo Kwee Huay	5,000,000
7/8/90	Loo Kwee Huay	2,000,000	Abraham Adiasa	2,000,000

26.76 As noted in Chapter 10, Madam Loo Kwee Huay's solicitor's have made the following submission on her behalf:

*"We are instructed that Mr Ong Ban Chye is a friend of our client's husband. She has not purchased any of the shares in question through Mr Ong nor authorised him to transact any such shares on her behalf.*

*Our client does not know the persons named in your report and she has no dealings with them at all in the alleged share transactions. "*

26.77 I believe that the transactions in the names of Madam Loo and her syndicate were likely to have been directed by Mr George Tan.

Mr Abraham Adiasa, Madam Trina Adiasa, P T Minerindo, Mr Alex Soesilo and Madam Soelamah

26.78 The transactions of these persons are of note as Mr Abraham Adiasa, Madam Trina Adiasa and Madam Soelamah sold 10,000,000 WTCG shares to Grand Ocean which were used in the Tian Teck transactions.

26.79 I understand these four persons are Indonesians and PT Minerindo is an Indonesian company. Mr Abraham Adiasa, Madam Trina Adiasa, PT Minerindo and Madam Soelamah all had substantial transactions in WTCG shares through Wader Investments during the period from 23 July 1990 to 8 August 1990:

<b>Name</b>	<b>No. of shares Purchased</b>	<b>No. of shares Sold</b>
Mr Abraham Adiasa	9,250,000	37,794,000
Madam Trina Adiasa	11,670,000	8,000,000
P T Minerindo	14,930,000	37,436,000
Madam Soelamah	5,010,000	21,600,000
Mr Alex Soesilo	8,212,000	13,394,000
<b>Total</b>	<b>49,072,000</b>	<b>118,224,000</b>

- 26.80 I understand that P T Minerindo is a company controlled by Mr Abraham Adiasa, who also introduced Mr Alex Soesilo to Wader Investments.
- 26.81 Included in the 37,436,000 WTCCG shares sold on 23 July 1990 by P T Minerindo were 25,000,000 that were "crossed" by Wader Investments. The buyers of these shares were Madam Trina Adiasa (10,000,000), Madam Soelamah (5,000,000), Mr Alex Soesilo (5,000,000) and Abraham Adiasa (5,000,000).
- 26.82 Also on 23 July 1990, Madam Trina Adiasa and Madam Soelamah each sold 6,000,000 WTCCG shares; 2,000,000 of these shares were bought by Mr Ng Kin Wah.
- 26.83 On 25 July 1990, Mr Abraham Adiasa sold 2,000,000 WTCCG shares to Mr Alex Soesilo and on 7 August 1990, PT Minerindo sold 10,000,000 WTCCG shares to Mr Abraham Adiasa. These transactions were "crossed" by Wader Investments.
- 26.84 I am unsure as to who directed these transactions, but consider that as Grand Ocean purchased 10,000,000 of the WTCCG shares, it is likely that Mr Jackson Chang was involved.

Mr Chan Tai Tak and Mr Chu Kai Ying

- 26.85 Mr Chan Tai Tak purchased 17,956,000 WTCG shares and sold 7,458,000 between 23 July 1990 and 8 August 1990 through Koo & Co.
- 26.86 Mr Chu Kai Ying purchased 17,322,000 WTCG shares and sold 2,510,000 during the same period, also through Koo & Co.
- 26.87 The address for both of these people was shown as c/o Widelines Investments Limited ("Widelines") (a company discussed at length in Chapter 10 and closely associated with Mr George Tan), and part of their shares purchases were funded by the 12/F Cash Client account.
- 26.88 Mr Chan Tai Tak also purchased 1,100,000 Tian Teck shares and sold 2,000,000 at this time.
- 26.89 In view of the fact that part of the purchases were funded through the 12/F Cash Client account, and as the contact address was that of Widelines, I believe that the purchases of WTCG shares were directed by Mr George Tan.

Mr Tang Ang Chiu

- 26.90 I have been unable to locate Mr Tang Ang Chiu who purchased 4,654,000 WTCG shares and sold 5,000,000 between 23 July 1990 and 8 August 1990 through Koo & Co.
- 26.91 Part of Mr Tang Ang Chiu's share purchases were funded by the 12/F Cash Client account.
- 26.92 Accordingly, I have concluded that these transactions were directed by Mr George Tan.

Mr Yu Sau Tin

- 26.93 I have been unable to locate Mr Yu Sau Tin who purchased 14,052,000 WTCG shares between 23 July 1990 and 8 August 1990. I did not locate any sales made by him.
- 26.94 Part of Mr Yu Sau Tin's share purchases were funded by the 12/F Cash Client account.
- 26.95 Again, I have concluded that these purchases were directed by Mr George Tan.

**CONCLUSIONS**

- 26.96 I became aware of the substantial transactions in WTCG, Tomson Pacific and Rivera shares during the course of my investigation, and made such enquiries as my limited powers enabled me. I have no doubt that further investigation would lead to the discovery of more material.
- 26.97 It is clear from my preliminary review that most of these transactions were designed to increase the price of, and give the impression of a strong market for, WTCG shares. This would also give places of WTCG shares in the placement, who had been given "compensation" arrangements an opportunity to sell their shares at a profit.
- 26.98 It is also likely that the resultant prices (which would be higher than if the market was left to determine its true level) would enable greater borrowing on margin accounts.
- 26.99 Although Mr David Tong has denied knowledge of this share trading, it is clear that his sister in law, Madam Hsu Jye, and his brother in law, Mr Hsu Sun were involved, and as a consequence, I find it difficult to believe that Mr David Tong was also not involved.

26.100 This chapter shows links between the sharetrading directed by Mr Jackson Chang with that of Mr George Tan. In particular I note that Grand Ocean (controlled by Mr David Tong and Mr Jackson Chang) purchased 95,000,000 WTTCG shares from Madam Loo's Syndicate (which I believe was a nominee for Mr George Tan). I concluded in Chapter 9, which covers the Tian Teck share transaction, that the swap of WTTCG shares for Tian Teck shares was arranged to "mop" up WTTCG shares acquired during share manipulation operations.

26.101 I have concluded in most cases that the transactions were initiated by, and for the benefit of, Messrs David Tong, Jackson Chang and George Tan.

### **LEGAL AND REGULATORY MATTERS**

"(Sections not to be disclosed)"

This report of 26 Chapters and its appendices is signed by me  
this 27th day of May 1994.

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, sweeping horizontal line that tapers to the right.

John Robert Lees

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