The report of the Market Misconduct Tribunal into dealings in the shares of ABC Communciations (Holdings) Limited on and between 31 March 2008 to 2 May 2008

Part I : A report pursuant to section 252(3)(a) and (b) of the Securities and Futures Ordinance, Cap 571

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Abbreviations

ABC	ABC Communications (Holdings) Limited
Asian Gold Dragon	Asian Gold Dragon Limited
Blue Mountain	Blue Mountain Hong Kong Group Limited
China Water	China Water Industry Group Limited
Easygold	Easygold Investments Limited
First Shanghai	First Shanghai Securities Limited
FS	Financial Secretary
HCBC Communications	HCBC Communications (International) Limited
Jinan Hong Quan Water	Jianan Hong Quan Water Supply Limited
Mega Mount	Mega Mount Group Limited
Mr Allan Ip	Mr Ip Wing Lun, Allan
Mr Andy Cheung	Mr Cheung Chi Shing, Andy
Mr Charlie Ng	Mr Ng Cham Sum, Charlie
Mr Daniel Kwong	Mr Kwong Hon Cheung, Daniel
Mr Lawrence Chan	Mr Chan Chun Kau, Lawrence
Mr Simon Tsang	Mr Tsang Kwok Wai, Simon
Mr Vico Hui	Mr Hui Ho Luek, Vico
Mr Vincent Sze	Mr Sze Chun Ning, Vincent
Ms Stella Fung	Ms Fung Sau Hong, Stella
OIL	Offshore Incorporations Hong Kong Limited
President Securities	President Securities Hong Kong Limited
SFC	Securities and Futures Commission
Sky Fortune	Sky Fortune Consultants Limited
Smart Giant	Smart Giant Group Limited
The Ordinance	Securities and Futures Ordinance
Virtue Dragon	Virtue Dragon Investments Limited

CHAPTER 1

THE FINANCIAL SECRETARY'S NOTICE

1. The Tribunal was constituted in consequence of the Financial Secretary's ("FS") Notice dated 9 April 2010.

"IN THE MATTER OF THE
SECURITIES AND FUTURES ORDINANCE (CAP 571)
AND
IN THE MATTER OF THE LISTED SECURITIES OF
ABC COMMUNICATIONS (HOLDINGS) LIMITED
(Stock Code 0030)

NOTICE

to the Market Misconduct Tribunal pursuant to Section 252(2)
and Schedule 9 of the Securities and Futures Ordinance (Cap 571)

WHEREAS it appears to me that market misconduct within the meaning of Section 270 ("insider dealing") of Part XIII of the Securities and Futures Ordinance (Cap 571) has or may have taken place arising out of the dealings in the securities of ABC Communications (Holdings) Limited (Stock Code 0030)("ABC"), I hereby, pursuant to Section 252(2) and Schedule 9 of the Ordinance, require the Market Misconduct Tribunal to institute and conduct proceedings and determine –

(a) whether any market misconduct in the nature of insider dealing or otherwise has taken place;

(b) the identity of every person who has engaged in market misconduct found to have been perpetrated; and

(c) the amount of profit gained or loss avoided, if any, as a result of the market misconduct found to have been perpetrated.

Persons suspected to have engaged in market misconduct activities

(a) Vincent SZE Chun Ning ("Sze"), the Executive Director and Managing Director of China Water Industry Group Limited ("China Water") at the material time;

(b) WANG Chao, a director and the General Manager of Jinan Hong Quan Water Supply Limited at the material time; and

(c) GUO Aiwen ("Guo"), the Chairman of Jinan Hong Quan Water Supply Limited at the material time.

Particulars of suspected misconduct activities

1. In or about January 2008, 52.59% of the shares in ABC were owned by HCBC Communications (International) Limited ("HCBC"). HCBC was interested in selling those shares.

2. In September or October 2007, Andy Cheung Wai Shing ("Cheung") was told by Sze that he was seeking to buy a listed company. In January 2008, Cheung found out from a solicitor, Lawrence Chan ("Chan") of Messrs Stephenson, Harwood and Lo, Solicitors, that there was a listed company for sale, i.e. the majority shareholder wanted to dispose of his shares. Chan gave Cheung a written proposal for the sale but did not tell him the name of the company. Cheung informed Sze, who said he was interested and asked Cheung to negotiate the best price possible on his behalf.

3. Cheung was told by Sze in mid-January 2008 that the buyer of the company would be a person named "Mr Wang", who he understood to be Wang Chao.

4. At the end of February 2008, Chan told Cheung that the company for sale was ABC. Cheung informed Sze of this immediately.

5. The sale and purchase involved a mandatory general offer to the remaining shareholders under the SFC Takeovers Code.

6. Sze instructed Cheung that a BVI company should be acquired to hold the ABC shares to be purchased. As a result, a BVI company called Asian Gold Dragon Ltd ("AGD") was acquired from an accounting firm by Cheung on behalf of Sze in March 2008. The registered shareholders in AGD are Sze (85%) and a Mainland tour guide named, Lin Qun ("Lin") (15%). Lin took no active part in the affairs of AGD. The true beneficial shareholder and controller of AGD was Wang Chao.

7. Cheung continued to negotiate the sale price with Chan in March and April 2008.

8. On 15th April 2008, Sze, on behalf of AGD, met with financial advisors, President Securities (HK) Limited ("PS") and began to discuss the facilities to finance the ABC share purchase. By 25th April 2008, PS had sent to Cheung a third draft facility letter for funding of $90 million to complete the purchase and a second draft placing agreement.

9. On 21st April 2008, Partners Capital International Limited ("PC") was approached by PS to act as joint financial advisors to AGD for the purchase. Cheung met with PC staff to discuss the matter on 22nd April 2008.

10. On 22nd April 2008, Cheung sent PC figures by e-mail showing an estimated offer price for the ABC shares of $0.4075 per share and the special dividend as $0.5688 per share.

11. On 30th April 2008, Cheung e-mailed PC advanced drafts of the legal documents containing figures of the aggregate consideration and the price of $0.3992 per share for the ABC shares.

12. On 2nd May 2008, Cheung e-mailed PC the final draft of the engagement letter and the deal structure with revised numbers and a calculation including the offer price of $0.3992 per share and the special dividend at $0.5866 for the ABC shares.

13. No information appeared in the press or other media in March or up to 28th April 2008 about the sale of the ABC shares.

14. On 29th April 2008, ABC publicly announced that it was informed by its controlling shareholder HCBC that HCBC was in negotiation with an independent third party in respect of the sale of its controlling shareholding in ABC but that nothing had yet been agreed.

15. On 2nd May 2008, trading in ABC shares was suspended pending the release of price sensitive information. The shares remained suspended until 2nd June 2008.

16. On 2nd May 2008, on behalf of AGD, Sze arranged for a $20 million cashier's order from the Chiyu Bank to be paid to an escrow agent as a deposit for the purchase of the ABC shares. The proceeds of this cashier's order emanated from Wang Chao.

17. On 30th May 2008, ABC announced that AGD had entered into a share purchase agreement with HCBC by which AGD had unconditionally agreed to purchase HCBC's 52.59% shareholding in ABC at approximately $0.3992 per share with a special dividend of $0.5866 per share. This meant that ABC shareholders could sell their shares for a guaranteed price of 98.58 cents per share.

18. On 20th August 2008, the transfer of the ABC shares to AGD was completed after payment to HCBC of $78,014,865. The proceeds of this payment emanated from Wang Chao.

19. The price of ABC shares on the Stock Exchange of Hong Kong rose 32.3% from the closing price of $0.62 on 25th April 2008 to a closing price of $0.82 on 30th April 2008 with a significant increase in turnover. The total turnover rose from 326,000 shares on 25th April 2008 to 24,490,000 shares on 29th April 2008. When trading in ABC shares resumed on 2nd June 2008, the share price immediately rose to $1.00, an increase of 21.95%.

20. Between 31st March 2008 and 30th April 2008, 4,616,000 ABC shares were bought for $3,310,440 for the share trading account of Guo with

First Shanghai Securities Limited ("the Guo account"). The Guo account sold ABC shares on 2^{nd} June 2008 (200,000 @ $1.06) and on 3^{rd} June 2008 (600,000 @ between $0.99 and $1.01) after trading in ABC shares resumed. The Guo account continued selling the ABC shares on 31^{st} July 2008 (300,000 @ between $0.99 and $1.00) and on 1^{st} August 2008 (200,000 @ $1.00).

21. In order to fund the purchase of the ABC shares between 31^{st} March 2008 and 30^{th} April 2008, the Guo account sold only shares in China Water. Those shares were purchased in mid-2007 with the sum of $12,145,000 provided by Wang Chao through a company called Easygold Investments Limited.

22. During the period between 31^{st} March 2008 and 2^{nd} May 2008 ("the relevant period") Sze, Wang Chao and Guo came into possession, directly or indirectly, of specific non-public price sensitive information that AGD would announce and purchase the 52.59% HCBC shareholding in ABC and then make a general offer to shareholders of ABC, which would result in them being able to dispose of their ABC shares at a guaranteed price of 98.58 cents per share. When trading was suspended on 2^{nd} May 2008, the closing price of ABC shares had been $0.82.

23. Telephone records reveal that Sze's mobile phone contacted Wang Chao's mobile phone 23 times between 18^{th} March 2008 and 30^{th} April 2008. There were four such calls before 4.07 pm on 30^{th} April 2008, three of which lasted for more than 1.8 minutes.

24. During the relevant period :

(a) Sze, who was contemplating or had contemplated making, whether with or without another person, a take-over offer for the corporation ABC at a price of $0.3992 per share with a special dividend of $0.5866 per share and he knew that the information that the offer was contemplated was relevant information in relation to the corporation, directly or indirectly disclosed the information to Wang Chao, knowing or having reasonable cause to believe that Wang Chao would make use of the relevant information to deal in the listed securities of ABC and breached section 270(1)(d), Cap 571;

(b) Wang Chao, being a person who was contemplating or had contemplated making, whether with or without another person, a take-over offer for the corporation ABC at a price of $0.3992 per share with a special dividend of $0.5866 per share and who knew that the information that the offer was contemplated was relevant information in relation to the corporation, dealt in the listed securities of ABC through the Guo account otherwise than for the purpose of the take-over and breached section 270(1)(b)(i), Cap 571;

(c) Wang Chao, being a person who was contemplating or had contemplated making, whether with or without another person, a take-over offer for the corporation ABC at a price of $0.3992 per share with a special dividend of $0.5866 per share and who knew that the information that the offer was contemplated was relevant information in relation to the corporation, counseled or procured Guo to deal in the listed securities of ABC shares, otherwise than for the purpose of the take-over and breached section 270(1)(b)(ii), Cap 571;

(d) Guo, having received, directly or indirectly, from Wang Chao, a person whom he knew or had reasonable cause to believe was making or contemplating making a take-over offer for the corporation ABC at a price of $0.3992 per share with a special dividend of $0.5866 per share, information to that effect which he knew was relevant information in relation to the corporation, dealt in the listed securities of ABC and breached section 270(1)(f)(i), Cap 571.

Dated this 9th day of April 2010.

[Signed]
(John C. Tsang)
Financial Secretary".

CHAPTER 2

THE LAW

2. The Chairman has given the Tribunal the directions in law contained in this Chapter. All references elsewhere in the Report to statements of law are directions given by the Chairman to the Tribunal as a whole.

Insider dealing

3. Section 270(1) of the Securities and Futures Ordinance ("the Ordinance") provides that :

> "Insider dealing in relation to a listed corporation takes place –
>
> …
>
> (d) when a person who is contemplating …, whether with or without another person, a take-over offer for the corporation and who knows that the information that the offer is contemplated…is relevant information in relation to the corporation, discloses information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will make use of information for the purpose of dealing, or counselling or procuring another person to deal, in the listed securities of the corporation …;
>
> …
>
> (f) when a person having received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating … making a take-over offer for the corporation, information to that effect which he knows is relevant information in relation to the corporation -
>
> (i) deals in the listed securities of the corporation …".

Take-over offer

4. The phrase 'take-over offer' is defined in Schedule 1 - Part 1 of the Ordinance :

> "Take-over offer in relation to a corporation, means an offer made to all holders (or all holders other than the person making the offer and his nominees) of the shares in the corporation to acquire the shares or a specified proportion of them …".

which he knows is relevant information

5. Clearly, the test for knowledge, 'which he knows is relevant information', is a subjective one.

Relevant information

6. Section 245(2) of the Ordinance provides that :

> " 'relevant information' in relation to a corporation, mean specific information about -
>
> (a) the corporation;
>
> …
>
> (c) the listed securities of the corporation ... ,
>
> which is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but which would if it were generally known to them be likely to materially affect the price of the listed securities;".

Section 245(2) of the Ordinance provides that :

> " 'listed' means listed on a recognized stock market … ;
>
> 'securities' means -
>
> (a) Shares … issued by, a body, ... ;".

Dealing in listed securities

7. Section 249 provides that :

> "For the purposes of section 245(2) and Division 4, a person shall be

regarded as dealing in listed securities if, whether as agent or principal, he purchases … any listed securities.”.

Specific information

8. The Chairman acknowledges that in directing the Tribunal in respect of the term ‘specific information’ he has had regard to the directions given to a differently constituted Tribunal in *China Overseas Land and Investment Limited,* a report dated 8 July 2009.

9. The term ‘specific information’ is not defined in the legislation. However, the same term has been considered on a number of occasions by the Insider Dealing Tribunal in the context of an identically worded provision in section 8 of the Securities (Insider Dealing) Ordinance, Cap 395. In *Chinese Estates Holdings Limited,* a report dated 6 May 1999, the Tribunal said :

> “Specific information is information which possesses sufficient particularity to be capable of being identified, defined and unequivocally expressed.”.

10. A related footnote states : ‘See the *dicta* of the Singapore High Court in *Public Prosecutor v GCK Choudrie* (1981) 2 Co. Law 141’. There, the Court of Criminal Appeal of the High Court of Singapore said that the District Court judge was correct in ruling that knowledge of a financial crisis in a company is (page 78E) :

> “Specific information as it is capable of being pointed to, identified and unequivocally expressed.”.

11. That description resonated with the observations made in the judgment of a judge of the Supreme Court of New South Wales in *Ryan v Trigguboff* (1976)

1 NSWLR 588 at 596, to which the Court of Criminal Appeal referred, in which it was said of 'specific information' that :

> " … it must be capable of being pointed to and identified and must be capable of being expressed unequivocally.".

That court was construing the expression 'specific information' in the context of legislation in Australia dealing with insider dealing in section 75A of the Securities Industry Act, 1970. Of the nature of the information, the Court of Criminal Appeal said :

> "It is the kind of specific information anyone familiar with the market knows that can markedly affect the prices of the particular shares and can result in the suspension of the trading of the shares on the Stock Exchange.".

12. In *Chinney Alliance Group Limited*, a report of the Insider Dealing Tribunal dated 24 December 2004, reference was made with approval to both *Ryan v Trigguboff* and *Choudrie* and it was asserted of 'specific information' that (page 36) :

> "It is not necessary that all particulars or details of the transaction, event or matter be precisely known.".

13. In *Firstone International Holdings Limited*, a report of the Insider dealing Tribunal dated 2 April 2004, it was said of 'specific information' that :

> " … the fact that a transaction is merely contemplated or at a preliminary stage of negotiation does not mean information concerning those negotiations cannot be specific.".

That Tribunal circumscribed the ambit of that statement by going on to say that :

> " … vague hopes or wishful thinking that a transaction will occur or come to fruition does not amount to sufficient 'contemplation' or preliminary negotiation of that transaction …".

Having regard to the particular issue the subject of its enquiry, the Tribunal went on to state :

> " … the proposed placement whether described as under contemplation or at a preliminary stage of negotiation must, in our view, have more substance than merely being at the stage of a vague exchange of ideas or a 'fishing expedition'. Where negotiations or contacts have occurred, as in the present case, there must be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage where the parties have an intent to negotiate with a realistic view to achieving an identifiable goal.".

Information which would be 'likely to materially affect the price' of the shares

14. In the report of the Insider Dealing Tribunal in *Public International Investments Limited*, dated 5 August 1995, in addressing the issue of whether or not information was 'likely to affect the price' of the shares of a company (if known to those accustomed or likely to deal in those shares) the nature of the test was described as being (paragraph 19.4.2) :

> "The test is hypothetical in that on the date that the insider acts on inside information, he acts when the investing public, not in possession of the inside information, either does not act, or acts in response to other information or advice. The exercise in determining how the general investor would have behaved on that day, had he been in possession of that information, has necessarily to be an assessment. It is true that an examination of how those investors react once the information is stripped of its confidentiality and becomes public knowledge, will often provide the answer, although care must be taken to ascertain whether the investors' response is indeed attributable to the information released, or whether it is wholly or in part attributable to other events, or considerations.".

15. The report goes on to go to quote a passage of the judgment of Senior District Judge Foeanender, a judge of the Subordinate Court of Singapore, in *Public Prosecutor v Allan Ng Poh Meng* [1990] 1MLJ in which he was

concerned with the construction of the same phrase in the context of the Securities Industry Act 1985 (at page x) :

> "It may be that what is a material price increase in one case may not necessarily be a material price increase in another case. It all depends on the share and the circumstances obtaining at the time.
>
> However, the standard by which materiality is to be judged is whether the information on a particular share is such as would influence the ordinary reasonable investor in deciding whether or not to buy or whether or not to sell that share. A movement in price which would not influence such an investor, may be termed immaterial. Prices, after all, to a large extent are determined by what investors do. If generally available, it is the impact of the information on the ordinary reasonable investor, and thus on price, which has to be judged in and insider dealing case.".

Of the term 'materially', the report concluded (paragraph 19.4.5) :

> "We think that the word 'materially' speaks for itself - it is to be contrasted with 'slight', 'insignificant' and 'immaterial'.".

16. In the report of the Insider Dealing Tribunal in *The International City Holdings Limited,* dated 27 March 1986, the Tribunal observed of the requirement of materiality that the information (paragraph 2.6) :

> " ... be likely to bring about a <u>material</u> change in the price of those securities. Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of sufficient degree in any given circumstances to amount to a material change.".

Determinations of questions of law and fact

17. Section 24(c) of Schedule 9 of the Ordinance provides that :

> "every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the Chairman alone.".

A reasonable opportunity of being heard

18. Section 252 (6) of the Ordinance provides that the Tribunal :

> "shall not identify a person as having engaged in market misconduct pursuant subsection 3(b) without first giving the person a reasonable opportunity of being heard.".

The standard of proof

19. Section 252(7) of Ordinance provides that :

> " … the standard of proof required to determine any question or issue before the Tribunal shall be the standard of proof applicable to civil proceedings in a court of law.".

20. That standard is the balance of probabilities. In *Solicitor (24/7) v The Law Society of Hong Kong* [2008] 2 HKLRD 576 the Court of Final Appeal accepted, the correctness of the approach to the civil standard of proof expressed by Lord Nicholls of Birkenhead in *Re H & Others (Minors) (Sexual Abuse : Standard of Proof)* [1996] AC 563 at p 586 D-G :

> "The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.".

21. In his judgment in the Court of Final Appeal in *Koon Wing Yee and Insider Dealing Tribunal* (2008) 11 HKCFAR 170, Sir Anthony Mason NPJ cited that acceptance with approval (see paragraph 89). That is the approach to the standard of proof that has been adopted by this Tribunal.

Circumstantial evidence and inferences

22. In his judgment in the Court of Final Appeal, with which all the other judges agreed, in *HKSAR v Lee Ming Tee* (2003) 6 HKCFAR 336 Sir Anthony Mason NPJ, having cited with approval the passage from the speech of Lord Nicholls quoted above, went on to address the proper approach to the drawing of inferences in circumstances of allegations of gross misconduct by senior officers of the SFC. Sir Anthony said :

> " … that conclusion was not to be reached by conjecture nor, as the respondent submitted, on a mere balance of probabilities. It was to be plainly established as a matter of inference from proved facts. It is not possible to state in definitive terms the nature of the evidence which the court will require in order to be satisfied, in a civil proceeding, that a serious allegation of this kind, is made out. It would not be right to say that the requisite standard prescribes that the inference of wrongdoing is the only inference that can be drawn (cf *Sweeney v Coote* [1907] AC 221 at 222, per Lord Loreburn) for that is the standard which applies according to the criminal standard of proof. In the particular circumstances, it was for the respondent to establish as a compelling inference that very senior officers of the SFC had deliberately and improperly terminated the investigation into Meocre Li's conduct for the ulterior purpose alleged, sufficient to overcome the inherent improbability that they would have done so (see *Aktieselskabet Dansk Skibsfinansiering v Brothers & Others* (2000) 3 HKCFAR 70 at pp. 91H, 96 G-I, per Lord Hoffmann).".

23. Excerpts from the passage quoted above in the judgment of Sir Anthony Mason NPJ were cited with approval in the judgment of Mr Justice Ribeiro PJ (see paragraph 187) in the Court of Final Appeal in *Nina Kung alias Nina TH Wang and Wang Din Shin* (2005) 8 HKCFAR 387. In his judgment, Lord Scott of Foscote NPJ observed, in the context of allegations that Mrs Wang

had procured the forgery and, in a conspiracy with another, was attempting to obtain probate as the will of a document she knew to have been forged, at paragraph 626 :

> "The probability of these allegations being true must be judged on the evidence adduced in the case. But it must also take account of propensity. If such an allegation is made against a person with a record of involvement in forgery or fraud, the strength of the other evidence necessary to satisfy the balance of probability test is obviously less than would otherwise be required. Evidence of propensity must go into the balance ... Evidence to a very high standard of cogency indeed is necessary before the court can be justified in finding either to be dishonestly involved in a conspiracy to promote a forged will.".

24. The Tribunal approached the drawing of inferences adverse to the Specified Persons with those considerations in mind.

Lies

25. Of the approach to the evidence of Mr Sze Chun Ning, Vincent ("Mr Vincent Sze") in the Tribunal and his statements outwith the Tribunal, the Tribunal has been directed that a lie in itself does not prove that the maker of the lie is culpable of the misconduct alleged against that person. People innocent of wrongdoing sometimes tell lies : perhaps, as a misguided reaction to a problem, or to postpone facing up to it or to attempt to deflect ill-founded suspicion, or to fortify their defence. Nevertheless, it may be a matter relevant to credibility.

Good character

26. Of Mr Vincent Sze's good character, the Chairman directed the Tribunal that a person of good character is less likely than otherwise might be the case to have committed the alleged misconduct and that good character supports his credibility in respect of both his evidence in the Tribunal and statements made by or at his direction outwith the Tribunal.

Separate consideration

27. The Chairman directed the Tribunal to consider the case for and against each of the Specified Persons separately.

Material received from or in respect of persons not subject to cross-examination

28. The Tribunal has received material from or in respect of persons who have not been available to be examined and cross-examined orally before the Tribunal. That, for example, is true of Mr Lin Qun and Mr Guo Ai Wen. The Chairman has directed the Tribunal to have regard to that fact in favour of Mr Vincent Sze in determining what weight, if any, to attach to such material and, in particular, in so doing to have regard to whether or not such material is or is not supported by other material received by the Tribunal.

Statements made outside the Tribunal inconsistent with oral testimony.

29. Statements made outside the Tribunal, inconsistent with the oral testimony of the maker in the proceedings before the Tribunal, are not evidence of the truth of the matters there asserted. Having had regard to whether or not, in true context, the assertion outwith the Tribunal is inconsistent in a material

particular with oral testimony and to any explanations proffered for that inconsistency the Tribunal may have regard to the inconsistency in respect of the credibility of the witness.

Expert evidence

30. The Tribunal has received evidence from Ms Fung Sau Hong, Stella ("Ms Stella Fung") as an expert, in particular as to whether or not if the information of the terms of the agreement in respect of the acquisition of ABC Communications (Holdings) Limited ("ABC") shares by Asian Gold Dragon Limited ("Asian Gold Dragon") and all relevant related matters, disclosed to the public in the Joint Announcement of 30 May 2008, was generally not known to persons who were accustomed or would be likely to deal in the listed securities of ABC but which, if generally known to them, would be likely to materially affect the price of those listed securities. Nevertheless, the Tribunal is entitled to accept or reject all or part of that evidence. It may come to its own conclusions on these matters based on all the evidence.

CHAPTER 3

THE MATERIAL RECEIVED BY THE TRIBUNAL

31. A summary of the material received by the Tribunal is set out in Appendix 1.

Dealings in the account in the name of Mr Guo Ai Wen with First Shanghai Securities

22 June 2007 : Account in the name of Mr Guo Ai Wen opened

32. An account in the name of Mr Guo Ai Wen ("Mr Guo") was opened with First Shanghai Securities Limited ("First Shanghai") on 22 June 2007. Mr Guo said in the record of interview conducted of him by the Securities and Futures Commission ("SFC") on 9 December 2008 that he had had signed the documentation in Jinan having received it from Mr Wang Chao, to whom he returned it. At Mr Wang Chao's suggestion he wrote the false description of his occupation as being the manager of Shenzhen Fang Ke Investment Company. In fact, Mr Guo Ai Wen was the Chairman of Jinan Hong Quan Water Supply Limited ("Jinan Hong Quan Water"), of which Mr Wang Chao was the General Manager.

The payment of monies to the credit of Mr Guo Ai Wen's account

33. Mr Zhong Wen Sheng, the Managing Director of China Water, said in his record of interview of 16 December 2008, that on the instructions of Mr Wang Chao he had been involved in the deposit of monies into the account of First Shanghai in July 2007. A cheque, dated 24 July 2007, in the sum of $10

million in favour of First Shanghai drawn on the account of Easygold Investments Limited ("Easygold") and signed by Mr Wang Chao was returned because of an issue in respect of the signature. He wrote the name Guo Ai Wen and his account number on the pay-in slip which had been used to deposit the monies. Subsequently, two other cheques drawn on the same account dated 26 July and 3 August 2007 and payable to First Shanghai in the sum of $10,000,000.00 and $2,145,000.00 respectively were deposited in the latter's bank account. The related pay-in slips bearing the name and account number of Mr Guo Ai Wen were faxed from a fax machine at China Water to the fax number of First Shanghai.

34. Mr Wang Xiaobo said in his record of interview with the SFC, dated 5 December 2008, that he had signed the two cheques as instructed by Mr Wang Chao. In China Water's 2006 Annual Report he was described as having been appointed the Deputy Chairman of the company on 5 December 2006. The Annual Report for 2007 noted that he had resigned from that position on 25 June 2007, but went on to describe him as the Deputy General Manager of the company.

Easygold

35. Ms Minnie Yau Ying Ying, an employee of Megateam Corporate Services Limited, a company providing secretarial services and operated by Mr Allan Ip, said that the BVI company Easygold had been acquired from Offshore Incorporations Hong Kong Limited ("OIL") on the instructions of Mr Wang Chao in March 2007. He had been introduced by Mr Hui Ho Leuk, Vico ("Mr

Vico Hui"). Soon after an account was opened in the name of Easygold with the Hang Seng Bank Limited. Mr Wang Chao was the sole signatory of the account at the outset. However, on 10 July 2007, on the instructions of Mr Wang Chao, Mr Wang Xiaobo was added as a signatory and it was provided that thereafter either one of the two signatories could operate the account.

36. Communications from the bank were sent to the address of Megateam Corporate Services Limited, following receipt of which they were either collected by Mr Wang Chao or delivered to China Water. Ms Maria Lam, the Financial Controller of China Water, said that on receipt of such documents at China Water she would hand over the documents unopened to Mr Zhong Wen Sheng. At the latter's request she maintained a file of such documentation of Easygold at China Water. The documentation included bank statements and blank remittance application forms, which had been pre-signed on the impression of the company chop of Easygold, copies of which were seized by the SFC in the exercise of a search warrant on the offices of China Water on 10 November 2008.

The purchase of China Water shares : 2 and 3 August 2007

37. For his part, in his record of interview Mr Guo Ai Wen confirmed that Mr Wang Chao had arranged for monies to be deposited to create a credit in his account for buying shares. Two parcels of China Water shares, 9 million and 2 million respectively, were purchased in the account in the name of Guo Ai Wen on 2 and 3 August 2007 at $1.10 per share. The deposit to the credit of the account of Mr Guo Ai Wen of the two cheques of $10 million and $2.145

million respectively are reflected in the statements of account. A small credit balance of a few thousand dollars was left over.

38. Mr Guo Ai Wen explained the acquisition of China Water shares in the account in his name as being related to a loan to Mr Wang Chao from Mr Su Li Xiang for $35 million for a term of two years, at 10% interest per annum, of which he was guarantor. He provided a document signed by those three parties dated 22 July 2007, which evidenced the agreement. The agreement provided that Mr Wang Chao was to transfer the shares of a publicly listed company in Hong Kong into Mr Guo Ai Wen's name. Those shares were to be used as security for repayment of the loan. For his services as guarantor of the loan, Mr Wang Chao was to pay Mr Guo Ai Wen 1% of the loan value. In default of repayment of the loan, it was provided that Mr Guo Ai Wen was liable for the shortfall of capital and interest. Finally, as the guarantor he was permitted to trade in the shares so deposited, but not to make disbursement of the proceeds to Mr Wang Chao.

Mr Su Li Xiang

39. In a record of interview, dated 2 April 2009, Mr Su Li Xiang confirmed that he had entered into an agreement dated 22 July 2007 to lend Mr Wang Chao $35 million, pursuant to which he had arranged for China Water to pay $33.2 million, the balance after the deduction of a handling fee due to Mr Su Li Xiang, to Mr Wang Chao. Those monies were due to him from his sale of Longwide Investment Limited to a subsidiary of China Water by an agreement dated 3 July 2007. A cheque drawn on the account of Johnny K K Leung & Co

dated 20 July 2007 in favour of Easygold in the sum of $33,244,530.00 was deposited into the savings account of Easygold on that date. On 17 July 2007 Johnny K K Leung & Co acknowledged to China Water receipt of their cheque in favour of Johnny K K Leung & Co in exactly the same amount. $33.2 million of those monies was transferred from the savings account to the current account of Easygold and used to fund the payments of $10 million and $2.145 million, made on 26 July and 3 August 2007 respectively, to the credit of the account in the name of Mr Guo Ai Wen with First Shanghai.

40. A supplementary agreement dated 2 August 2007 provided that Mr Wang Chao would transfer 11 million China Water shares, as security for the loan, to Mr Guo Ai Wen within 10 days. Mr Wang Chao chose the particular shares to be used as security.

Criminal convictions : Mr Su Li Xiang and Mr Wang Chao

41. On 25 December 2009, Mr Su Li Xiang was convicted by the Longhua District Court of Haikou Municipality in Hainan of helping Mr Hong Xing fabricate evidence during an investigation by the Public Security Bureau to the prejudice of that investigation and sentenced to 10 months imprisonment. As noted subsequently, Mr Wang Chao was convicted by the same court on 21 March 2011 of a criminal offence arising out of the same circumstances. In particular, that he and Mr Su Li Xiang had advanced forged documents to the authorities, including loan agreements, to assist Mr Hong Xing to interfere with that investigation in order that the latter might escape criminal liability.

The sale of China Water shares and the purchase of ABC shares

42. No activity whatsoever took place in the account in the name of Mr Guo Ai Wen at First Shanghai after the acquisition of 11 million China Water shares in early August 2007 until 25 March 2008, when the first of numerous sales of parcels of China Water shares began. By the end of trading on 30 April 2008 all the holding of China Water shares in the account in the name of Mr Guo Ai Wen had been sold off. [**Appendix 2**]

Purchase of ABC shares

43. The first parcel of ABC shares was acquired at $0.58 on 31 March 2008. In the period up to and including 30 April 2008, a total of 4,708,000 ABC shares was acquired in that account at an increasing price per share, so that the last purchase was made at $0.90 per share. The maximum balance of ABC shares held in the account of 4,696,000 shares was reached that day. The proceeds of the sale of China Water shares funded the acquisition of ABC shares.

44. On 28, 29 and 30 April 2008, 408,000, 782,000 and 1,440,000 ABC shares respectively were acquired in the account. The price at which the shares were acquired increased sharply over that three-day period. On 28 April, they were acquired at $0.64 and $0.66 per share. On 29 April 2008, ABC shares were acquired in the range of $0.75 - 0.89 per share, whereas on 30 April 2008 they were acquired in the range of $0.84 - 0.90 per share. Prior to trading resuming on 2 May 2008 trading in the shares of ABC was suspended. [**Appendix 3**]

Sale of ABC shares

45. On 29 April 2008, 12,000 ABC shares were sold at $0.82 per share and on 30 April 2008 a total of 80,000 ABC shares was sold at prices of $0.91 and $0.92 per share.

46. Mr Guo Ai Wen said that the sales of China Water shares had been made because the share price had fallen, so that there was a huge loss compared with the acquisition value. He had bought ABC shares because :

> "read from the website of First Shanghai that #0030 (ABC) was not bad and its turnover was increasing.".

However, that explanation was flatly contradicted by the statement of Mr Ching Ah Chye, the managing director of First Shanghai who, having reviewed the records of that company, stated that there was no information posted on the company's websites in respect of ABC in the period 1 March to 28 April 2008.

47. Mr Guo Ai Wen denied that before 30 April 2008 he had been given information that Asian Gold Dragon would acquire the shares of ABC. Similarly, no one had recommended that he buy those shares. He placed orders in respect of shares held in the account directly online. Mr Li Jun, the account executive of First Shanghai who handled the opening of Mr Guo Ai Wen's, confirmed that orders could be placed either by telephone to the Hong Kong office of the company or online. From inquiries that he had made, he understood that orders in this account were placed online

48. At the end of December 2008, the account in the name of Mr Guo Ai Wen held over 3.5 million ABC shares. However, in September 2009 the last small tranche of ABC shares, together with all other shares in that account, were sold. On 28 September 2009 all the monies in the account, namely $8,237,452.79 were transferred to an account in the name of Mr Wang Chao with First Shanghai.

The circumstances leading to the acquisition of a controlling interest in ABC by Asian Gold Dragon

Mr Chan Chun Kau, Lawrence ("Mr Lawrence Chan") and HCBC Communications (International) Limited ("HCBC Communications")

49. Mr Lawrence Chan has been employed by Stephenson Harwood & Lo since 1998. ABC and HCBC Communications had been clients of his firm since 1991. He began advising those companies in around 2000. Ms Anita Yu, the Financial Controller, and Ms Patricia Yeung were his principal contacts at HCBC Communications and ABC respectively. On 1 August 2007, HCBC Communications and ABC announced jointly that the proposed privatisation of ABC by way of a voluntary conditional general cash offer of $0.58 per share by Platinum Securities on behalf of HCBC Communications had lapsed.

50. In October 2007, Ms Anita Yu informed Mr Lawrence Chan of a proposal made by CIMB-GK Securities by which the majority shareholder of ABC would acquire all, or substantially all, of the assets of ABC and the shell of the listed Company would be disposed of to a third-party investor. Although discussions continued for the following several months the proposal did not

materialize. He understood that the majority shareholder, namely Mr George Ho, did not approve of the offer price and thought the deal too complex.

Mr Lawrence Chan and Mr Tsang Kwok Wai, Simon ("Mr Simon Tsang")

51. On 10 December 2007, acting on Ms Anita Yu's instructions to approach other potential investors on a 'no name' basis, Mr Lawrence Chan approached Mr Simon Tsang and informed him, without identifying the company, of the possible sale of a majority shareholding of a listed company. In late 2007, Mr Simon Tsang was in practice in his own name as a public accountant. Mr Lawrence Chan had known him since 2003, when he acted for the Finet Group in its IPO on the Hong Kong GEM Board, at which time Mr Simon Tsang was the Financial Controller and Company Secretary of the company. Mr Simon Tsang introduced him to a Mr Lui as a potential buyer. However, nothing came of that introduction. Mr Lawrence Chan continued to discuss revised proposals made by CIMB with Ms Anita Yu in December 2007 and January 2008.

Mr Simon Tsang, Mr CheungChi Shing, Andy ("Mr Andy Cheung") and Mr Vincent Sze

52. In his quest for a potential buyer sought by Mr Lawrence Chan, Mr Simon Tsang raised the matter with Mr Andy Cheung. The latter was a qualified accountant who, after having worked with both Deloitte and Coopers & Lybrand, had begun working for private commercial firms in 2001. At the material time, he was the Company Secretary and qualified accountant of Hon Po Group, a publicly listed company. He said that in the autumn of 2007 Mr

Vincent Sze, a friend whom he had come to know the previous year, had indicated to him that he wanted to find a publicly listed company for acquisition. He passed on the information to Mr Vincent Sze of the possibility of acquiring a publicly listed company and was instructed by him to proceed to negotiate the acquisition.

53. When Mr Andy Cheung indicated to Mr Simon Tsang that he knew of a potential buyer, Mr Simon Tsang passed on the information to Mr Lawrence Chan. In his turn, having passed on that information to Ms Anita Yu, Mr Lawrence Chan was instructed to seek of the buyer 'proof of funds' and information as to identity.

25 January 2008 e-mail : 'proof of funds' - 8 November 2007 DBS 'Certificate of Balance' and information as to the buyer

54. As a result, having passed on that request to Mr Simon Tsang, on 25 January 2008 Mr Lawrence Chan received an e-mail from Mr Simon Tsang to which was attached a 'Certificate of Balance' issued by DBS certifying a balance as at 8 November 2007 of over $200 million and a description of the buyer. Mr Simon Tsang said that he had been provided with that information, at his request, by Mr Andy Cheung. In his turn, Mr Andy Cheung said that he had been provided with the 'Certificate of Balance' by Mr Vincent Sze and that he had compiled the description of the buyer from information given to him by Mr Vincent Sze. He understood the buyer described as Mr Wang, to be Mr Wang Chao, to whom he had been introduced by Mr Vincent Sze in December 2007 in Shenzhen.

55. The name of the account holder in the ‘Certificate of Balance’ was redacted in part, leaving only the words “ … Investment Ltd”. The description of the buyer read :

> “The buyer is a group of Chinese businessman headed by Mr Wang. The group has many operational projects in Mainland China with different industries. The projects include :
> -water supply companies in major PRC cities;
> -sewage treatment plants;
> -water supply pipeline networks; as well as
> -a ferrous minerals mine which has a substantial reserve of iron, copper, vanadium and gold in North-western China.
> Most of the above projects are currently making profit. It is the intention of the buyer to inject all the above project to the target company.”.

China Water - Super Sino

56. There is no dispute as to the identity of the account holder, albeit re-dacted in the Certificate given to Mr Lawrence Chan, namely Super Sino Investment Limited (“Super Sino”), a wholly-owned subsidiary of China Water. China Water is a Cayman Islands Company listed in Hong Kong with its Head Office in the Shun Tak Centre, Hong Kong. Mr Zhong Wen Sheng testified that at the material time he was the Managing Director of China Water and Mr Vincent Sze the Deputy Managing Director. The certificate had been obtained after each of them, as authorised signatures, had made a request on behalf of Super Sino of DBS Bank Hong Kong Limited for five copies of confirmation of all its bank balances as at 8 November 2007, in preparation for the prospect of corporate acquisitions by China Water. He did not know of the use of a redacted version of the certificate by Mr Vincent Sze in connection with negotiations to acquire ABC shares. No approval had been given by the board

of directors of China Water for such use of the certificates or of the deposits themselves.

28 January 2008 meeting

57. Mr Lawrence Chan said that he did not know the person described as ‘Mr Wang’, but a lunch meeting was arranged with the potential buyer’s representative on 28 January 2008. At that lunch meeting, Mr Simon Tsang introduced Mr Andy Cheung to Mr Lawrence Chan as that representative. Mr Lawrence Chan had known Mr Andy Cheung since mid-2007 following an introduction by Mr Simon Tsang.

Proposed structure

58. From information provided by Mr Lawrence Chan a spreadsheet was prepared by Mr Simon Tsang setting out the nub of the ‘Proposed Structure’, which he forwarded to Mr Andy Cheung. The major shareholder was described as holding 60% of the shares of company. The net asset value of the company was stated to be $320 million and the premium attached to its listed status, $180 million. It was proposed that the major shareholder buy back assets of the company to a total of $237.5 million and that a dividend of $267.5 million be declared.

Mr Simon Tsang’s Engagement letter

29 January 2008

59. Having reported those developments to Ms Anita Yu, on her instructions, on 29 January 2008 Mr Lawrence Chan drafted a skeleton

engagement letter for Mr Simon Tsang's company, TC Consultancy Limited, to be engaged by the controlling shareholder of ABC to identify a potential buyer of that shareholding. The engagement letter provided for a 'Referral Commission', payable :

> " … in the event that the company's controlling interest is successfully acquired by the potential buyer introduced by the representative … within [6] months from the date of this letter.".

Mr Lawrence Chan said that he left the negotiation of the commercial terms to Mr Simon Tsang and Ms Anita Yu. For his part, Mr Lawrence Chan sent re-drafts of the engagement letter by e-mail to Ms Anita Yu in the following several weeks. An engagement letter dated 19 February 2008 was signed by Mr Simon Tsang on behalf his company, TC Consultancy Limited, and HCBC Communications.

'Update fund proof' : Hang Seng Bank Limited - 28 January 2008

60. Also, on 29 January 2008 Mr Lawrence Chan received an e-mail from Mr Simon Tsang to which was attached an 'updated fund proof' and 'the best information available to us' of the potential buyer. Mr Lawrence Chan said that he believed that he had sought an update of that information from Mr Simon Tsang as a result of a request from Ms Anita Yu, given that the information as to proof of funds provided on 25 January 2008 was already several months out of date. The updated proof of funds was a letter dated 28 January 2008 on the letterhead of Hang Seng Bank Limited. Once again, the identity of the account holder was redacted. It was asserted that the unidentified account holder held a credit balance of :

> "low nine figures in Hong Kong Dollars at present.".

61. Of the potential buyer it was asserted on the basis of the best information available:

> " … the potential investor is Wang Chao from PRC. Potential projects controlled by him including but not limited to the below :
>
> 1) Urban water supply projects [shareholding more than 50.1%] : Henan, Anhui, Shandong, Heilongjiang, Hubei, Guangxi, Jiangsu, Xinjian,
>
>   Sewage treatment projects: Henan, Anhui, Shandong, Heilongjiang, Hubei, Guangxi, Jiangsu, Xinjian,
>
>   Other water related projects.
>
> 2) Other natural resource projects."

62. For his part, Mr Simon Tsang said that he had received the updated proof of funds and the more detailed information about the buyer from Mr Andy Cheung as a result of his request for provision of that information. Mr Vincent Sze testified that he had been given the fund proof by Mr Wang Chao and, in his turn, he had passed it to Mr Andy Cheung.

63. There is no dispute that the provenance of the redacted fund proof supplied by Hang Seng Bank Limited was that bank, acting at the request of Mr Allan Ip, by letter dated 18 January 2008, in respect of an account in the name of his firm of accountants, Allan Ip & Co. On that date $229,999,990.00 had been credited to that account on instructions of and by arrangement with Mr Vico Hui, a client of Mr Allan Ip. At Mr Vico Hui's request Mr Allan Ip had obtained the fund proof to whom he gave the document dated 28 January 2008. He

understood that it was to be used as proof of funds for a prospective investment project.

64. The monies paid into the account of Allan Ip & Co on 18 January 2008 were remitted by Johnny K K Leung & Co on the instructions of Mega Mount Group Limited ("Mega Mount") and represented payment by China Water for its acquisition of a 35% stake in Jinan Hong Quan Water (a PRC entity) owned by Blue Mountain Hong Kong Group Limited ("Blue Mountain"), a Hong Kong company, which Mr Allan Ip had acquired on 27 March 2007 on instructions of Mr Vico Hui. On that date, the sole issued share of Blue Mountain was transferred from Mr Allan Ip to Mega Mount, a BVI company, of which Mr Allan Ip and Ms Wang Li were the only shareholders.

65. For his part, Mr Vico Hui said that he had instructed Mr Allan Ip that the fund proof be obtained, as a result of a request by Mr Wang Chao for such a document for its use in an investment project, the details of which he was unaware. The fund proof document was given to Mr Wang Chao.

66. On the instructions of Ms Anita Yu on 30 January 2008, Mr Lawrence Chan drafted a 'Discussion Memorandum' to facilitate further negotiation of the deal. It described the business of the listed company as being divided into two parts :

(i) A - a business holding listed and unlisted securities; and

(ii) B - a revenue and profit generating business.

The majority shareholder was willing to buy back business A, at a modest discount to net asset value and enter into a joint venture, in which the majority shareholder would take 49%, in respect of business B it was claimed that the listed company was valued at '... net asset value plus at least $178M premium.'.

Provision of a forfeitable deposit by the purchaser

67. On 4 February 2008, Mr Simon Tsang responded in the affirmative to Mr Lawrence Chan's request that the buyer confirm that he was willing to reimburse the seller of the majority shares the costs and expenses in drafting necessary legal documentation required for the deal if it were to collapse. On that date, on Ms Anita Yu's instructions, Lawrence Chan drafted a letter dated 15 February 2008 from the buyer to Stephenson Harwood & Lo stating that it enclosed a cheque for $500,000.00 in favour of the latter. In the days that followed Mr Lawrence Chan had further discussions on the deal structure and terms with Mr Simon Tsang.

68. On 14 February 2008, on being informed by Mr Simon Tsang that the buyer was in the process of preparing a cheque in the sum of $500,000.00, Ms Anita Yu instructed Mr Lawrence Chan that once the buyer was in a position to hand over the cheque a meeting should be arranged with the representative of the buyer at which the identity of the seller could be disclosed.

69. On 15 and 18 February 2008, Mr Lawrence Chan had discussions with Mr Simon Tsang and Mr Andy Cheung respectively in respect of the progress of the preparation of the cheque by the buyer. On Mr Lawrence Chan's report to

Ms Anita Yu of Mr Andy Cheung's confirmation on 19 February 2008 that the cheque had been prepared, Ms Anita Yu gave him instructions that the buyer's representative and beneficial owners must sign a non-disclosure agreement. As a result, Mr Lawrence Chan circulated a draft headed 'Confidentiality Undertaking'.

19 February 2008

(a) engagement letter - Simon Tsang : HCBC Conmmunications

70. As noted earlier, an engagement letter dated 19 February 2008 was signed by Mr Simon Tsang, on behalf of his company, and HCBC Communications. It provided for a referral commission of 1.9% of the 'transaction value' to TC Consultancy Limited for its introduction of a buyer who went on to acquire a HCBC Communications' shareholding in ABC. The 'transaction value' was defined as the existing net value of the company.

(b) Meeting at the offices of Stephenson Harwood & Lo : Mr Lawrence, Chan, Mr Vincent Sze and Mr Andy Cheung

(i) Confidentiality Undertaking

71. Also, on 19 February 2008 Mr Lawrence Chan met Mr Vincent Sze and Mr Andy Cheung at the offices of Stephenson Harwood & Lo. He was given copies of the 'Confidentiality Undertaking' signed by each of them before he disclosed the identity of the company in which the seller was prepared to sell the majority stake by its name, ABC and stock code. Also, he was given the 'Confidentiality Undertaking' apparently signed in the name of Mr Wang Chao. However, Mr Lawrence Chan said that at the request of Mr Vincent Sze and Mr

Andy Cheung that the document be returned to them, and having received the approval on Ms Anita Yu to do so, he returned the document to them. At a much later date, he was supplied with a 'Confidentiality Undertaking' signed by Mr Lin Qun.

(ii) Virtue Dragon Investments Limited ("Virtue Dragon")

72. Mr Lawrence Chan was told that the buyer was a consortium led by Mr Vincent Sze and Mr Lin Qun and that Virtue Dragon was to be used as the corporate vehicle to purchase the shares.

(iii) Easygold cheque for $500,000.00

73. Mr Lawrence Chan was given a cheque by Mr Andy Cheung, dated 19 February 2008, drawn on the account of Easygold Investments Ltd in favour of Stephenson Harwood & Lo in the sum of $500,000.00 and a related letter bearing the same date from Virtue Dragon signed by Mr Vincent Sze. Also, Mr Vincent Sze gave him another letter signed on behalf of Virtue Dragon which set out the basis on which the cheque of $500,000.00 had been given to Stephenson Harwood & Lo, namely in respect of legal fees and in particular :

> " … in consideration of you continuing to negotiate with us in good faith, we hereby agree to pay HK $500,000 (the "Sum") as liquidated damages in compensation of the fees incurred and to be incurred by you and the company and the negotiating process.
>
> If a binding agreement is not signed as to the subject matter of the negotiations on or before 30 April 2008 (except where the failure to reach a binding agreement is as a result of wilful delay, fault or omission of either you or the Company) you are entitled to forfeit and retain the Sum absolutely.".

(iv) Mr Lin Qun

74. Mr Lawrence Chan was provided with details of Mr Lin Qun's curriculum vitae. Mr Lin was described as having been born in 1963 in Rushan City, Shangdong province, a member of the Chinese Communist Party, the holder of the degree of Master of Business Administration and an employee of Jinan City Water Supply Group from 1984 to 2006 :

"1984.11 - 1987.04	Sales Division
1987.04 - 1991.08	Secretary of Manager's office
1991.11 - 2005.05	Deputy officer of office
2006.12 - present	Chairman of the Board of Directors of Virtue Dragon Investments Company Limited".

75. In the due diligence review prepared in December 2007 by Shine Wing on the instructions of China Water, in respect of the acquisition by Smart Giant Group Limited ("Smart Giant") of Blue Mountain's interest in Jinan Hong Quan Water, in its review of the key employees of Jinan Hong Quan Water, Mr Lin Qun was described as the manager of the General Affairs Department.

Ongoing negotiations

76. Immediately after the meeting, on the instructions of Ms Anita Yu, Mr Lawrence Chan began to draft legal documentation upon which the parties were to negotiate. In the days that followed, Mr Lawrence Chan updated Mr Simon Tsang on the progress of matters.

Mr Lawrence Chan : Mr Andy Cheung

77. On 28 February 2008, Mr Lawrence Chan sent by e-mail a copy of a draft re-structuring plan to Mr Andy Cheung. On 4 March 2008, he sent a copy of the draft Sale and Purchase agreement to Mr Andy Cheung, in which the buyer was still described as being Virtue Dragon. On 11 March 2008, he sent a draft of the proposed Asset Buyback agreement. On 20 March 2008, Mr Andy Cheung sent a revised version of the 'Proposed Structure' to Mr Lawrence Chan. The majority shareholder was now described as holding 52.59% of the shares of the company. The net asset value of the company was said to be $304 million; the premium attached to the status of the company as a listed company was said to be $178 million and the special dividend proposed was stated to be $277.3 million.

78. On 28th March 2008, agreement was reached between Mr Andy Cheung and Mr Lawrence Chan that the latter would prepare a Chinese translation of the Sale and Purchase agreement for the listed shares on the basis that the buyer would bear the cost of $50,000.00. On the following day Mr Lawrence Chan sent Mr Andy Cheung revised drafts of 'all documents'. On numerous occasions in the second half of March 2008 Mr Lawrence Chan discussed the terms of the buyer's offer separately with Mr Andy Cheung and then Mr Simon Tsang.

79. On 2 April 2008, Ms Anita Yu of HCBC Communications sent a copy of a draft of the Joint Announcement, in which Asian Gold Dragon was named in place of Virtue Dragon for the first time. On the same day, she asked Mr

Andy Cheung, subject to the signing of the Escrow Agreement, to arrange for the buyer to prepare a cashier's order for $24 million in favour of Stephenson Harwood & Lo.

80. On 2 April 2008, Mr Lawrence Chan sent a draft of the Joint Announcement to Mr Andy Cheung. He agreed that it did not contain details of the price to be paid for the shares. That matter was dealt with in the oral negotiations. Throughout, the price was in the range of $180 million. Thereafter, sometimes on a daily basis and on other occasions every several days continuing until 28 April 2008, he held discussions with Mr Andy Cheung on the draft agreements, namely the sale and purchase, at the disposal and other agreements that were later rejected by the SFC. On 22 April 2008, they met at the offices of Stephenson Harwood & Lo to discuss the agreements.

Mr Andy Cheung : Mr Vincent Sze

81. Mr Andy Cheung said that throughout the process of negotiation he passed on all information to Mr Vincent Sze. Rather than pass on the document to him, he gave him an oral explanation of the status of negotiations. From the outset, he had told Mr Vincent Sze of the proposed structure : it would involve an asset buyback by HCBC Communications, distribution of the sales proceeds and surplus cash by way of a special dividend, followed by the acquisition of ABC shares from HCBC Communications on an ex-dividend basis and the making of an unconditional general offer to all shareholders pursuant to the Takeover Code. Throughout the negotiations the structure of the proposed deal did not change and his negotiation with the vendor was

concentrated on the amount of the effective premium. The size of the special dividend was not a matter of concern to Asian Gold Dragon.

Asian Gold Dragon

82. Mr Andy Cheung said that at the end of March 2008 he had suggested to Mr Vincent Sze and that the shareholding of ABC be acquired through a BVI company. As a result, Asian Gold Dragon was acquired from Green Leaf Accountancy and Secretarial Services Limited. Mr Vincent Sze paid Green Leaf's invoice dated 3 April 2008 of $6,000.00, receipt of which payment was acknowledged on the same date. Asian Gold Dragon was incorporated on 14 March 2008, on which date 85 shares were allotted to Mr Vincent Sze and 15 shares to Mr Lin Qun. Each of them was appointed a director of that company on the same date.

President Securities Hong Kong Limited ("President Securities")

83. On 15 April 2008, at Mr Andy Cheung's request he and Mr Vincent Sze met Mr Annio Kwong of President Securities to commence discussions about the latter providing facilities for a prospective General Offer for the shares of a publicly listed company. On 18 April 2008, at a meeting attended by those three persons together with Mr Victor Ma, the general manager of President Securities, and Mr Lin Qun, Asian Gold Dragon was identified as the party seeking the facility. On 7 May 2008, by an agreement signed by Mr Victor Ma, on behalf of President Securities and by Mr Vincent Sze and Mr Lin Qun on behalf or Asian Gold Dragon, President Securities extended a loan facility of up to $90 million to Asian Gold Dragon.

Partners Capital International Limited ("Partners Capital")

84. On 22 April 2008, following a referral the previous day by Mr Annio Kwong of Asian Gold Dragon to Partners Capital, negotiations began between Mr Alan Fung on behalf of Partners Capital and Mr Andy Cheung on behalf of Asian Gold Dragon for Partners Capital to act as Financial Adviser to Asian Gold Dragon in their prospective acquisition of HCBC Communications' holding of ABC shares and a consequential general offer.

85. At the end of March and continuing every day or two in April until 28 April 2008, Mr Lawrence Chan discussed with Ms Anita Yu and Mr Simon Tsang accounting issues that arose from internal restructuring of ABC.

29 April 2008 : ABC Announcement

86. On 29 April 2008, Mr Lawrence Chan was informed by Ms Anita Yu that the Stock Exchange of Hong Kong had made inquiries of the company in respect of the price movement and exceptional turnover of ABC shares. On that day over 24 million shares were traded, against a background over the previous two months in which the daily turnover of shares had not surpassed one million other than on three previous occasions. Also, the closing price of the shares rose 18.84% from the previous close on 28 April 2008. As a result, after the market closed ABC issued an announcement on 29 April 2008 in which it noted the increase in price and trading volume of its shares and stated :

> "The Board was informed by HCBC Communications (International) Limited, the controlling shareholder of the company being interested in 245,523,600 Shares representing approximately 52.59% of the total issued share capital of the Company, that it is in negotiation with an independent

> third party in respect of a possible sale and purchase of its controlling shareholding of the Company. However, the terms of the sale and purchase have yet to be finalised and it is uncertain as to whether negotiation will lead to a binding agreement.”.

87. On the same day Mr Lawrence Chan was informed by Mr Andy Cheung and Mr Vincent Sze that the terms of the agreements were not finalised as yet and that the cashier order for the initial deposit of $20 million was not ready as yet.

30 April 2008

88. On 30 April 2008, Mr Lawrence Chan circulated final drafts to various parties, including Mr Andy Cheung, of all documents in preparation for the signing process. After the close of trading in the stock market that day Mr Vincent Sze and Mr Lin Qun signed the Sale and Purchase agreement on behalf of Asian Gold Dragon. Mr Vincent Sze gave Mr Lawrence Chan a cheque dated 30 April 2008 drawn on his personal account in favour of Stephenson Harwood & Lo in the sum of $20 million. Although Mr George Ho had already signed the Sale and Purchase agreement on behalf of HCBC Communications (International) Limited as a vendor for HCBC Enterprises Limited (as guarantor), possession of the document was retained by Mr Lawrence Chan pending payment by cashier’s order or telegraphic transfer on 2 May 2008 by the buyer in exchange for the personal cheque of Mr Vincent Sze which, it was agreed, was not to be presented in the meantime.

2 May 2008 : suspension in the trading of ABC shares

89. Trading in shares of ABC was suspended on the Stock Exchange of Hong Kong prior to commencement of trading at 9:30 a.m. on 2 May 2008 'pending the release of an announcement concerning the possible sale of 52.59%' of the shares of the company by the controlling shareholder and a possible general cash offer. On the same day Mr Lawrence Chan was presented with a cashier's cheque in the sum of $20 million, in consequence of which he returned Mr Vincent Sze's cheque and handed over the executed Sale and Purchase agreement.

The transfer of monies into the account of Mr Vincent Sze

90. In early May 2008 a total of $121,971,869.00 was transferred from the account in the name of Mr Wang Xiaobo with Chiyu Banking Corporation Ltd to an account in the name of Mr Vincent Sze with the same bank :

- 2 May 2008 - $20 million;
- 7 May 2008 - $24.4 million; and
- 9 May 2008 - $77,514,865.00.

Mr Wang Xiaobo's account at Chiyu Banking Corporation Ltd

91. A bank account in the name of Mr Wang Xiaobo was opened at Chiyu Banking Corporation Ltd in 2006. In his record of interview, he said that very often Mr Wang Chao would deposit monies into the account and then give him instructions as to the disbursement of the monies. On 17 March 2008, $60 million was transferred to that account from Easygold, the net balance of which was negligible prior to that deposit. On and between 5 and 7 May 2008, over

$61 million was deposited into the account by 23 separate transactions. The largest single payment, $10 million, was a cheque drawn on the account of Easygold dated 7 May 2008. The balance of about $51 million were deposits made by remittance agents in Hong Kong acting on instructions of remittance agents in the Mainland.

President Securities

92. As noted earlier, in April 2008, Mr Annio Kwong, the Responsible Officer of the Corporate Finance Department of President Securities, was approached by Mr Andy Cheung, who sought financing for a potential general offer for the shares of a publicly listed company. They had not met previously. On 15 April 2008, a meeting took place between them attended by Mr Vincent Sze. At a meeting on 17 April 2008, the three of them were joined by Mr Lin Qun. At a further meeting between them, also attended by Mr Victor Ma of President Securities, on 18 April 2008 ABC was identified as the potential target of the acquisition.

7 May 2007 : President Securities facility agreement

93. By an agreement dated 7 May 2007, President Securities agreed to provide a facility of up to $90 million to Asian Gold Dragon to fund the anticipated mandatory general offer required of Asian Gold Dragon for all ABC shares. The agreement required the provision of security by Asian Gold Dragon of a deposit of not less than $20 million, inter alia before the drawdown of the facility, and a pledge of the approximately 245 million ABC shares to be acquired from HCBC Communications upon completion of the Sale and

Purchase agreement. Also, it provided for an 'arrangement fee' to be paid to President Securities of $4.2 million, payment of which was to be made at the time of the agreement into an account of Ha & Ho as the 'Escrow Agent'.

(i) 7 May 2008 - $20 million to President Securities

94. Payment of the deposit of $20 million to President Securities was made by a cheque dated 7 May 2008 drawn on the account of Mr Vincent Sze with Chiyu Banking Corporation Ltd and credited to the account of President Securities the following day. In the event, Asian Gold Dragon drew down only about $58 million under the facility granted by President Securities.

(ii) 7 May 2008 - $4.2 million to Ha & Ho

95. Payment of the 'arrangement fee' was made by cheque dated 7 May 2008 drawn on the account of Mr Vincent Sze with Chiyu Banking Corporation Ltd and credited to the account of Ha & Ho.

Information provided to Partners Capital : offer price and special dividend

96. Following the introduction of Mr Andy Cheung by Mr Annio Kwong to Partners Capital Mr Alan Fung of the latter met Mr Andy Cheung on 22 April 2008 and on 6 June 2008 became joint Financial Advisers to Asian Gold Dragon in respect of their acquisition of ABC. However, as early as 22 April 2008 Mr Andy Cheung informed Mr Alan Fung that the estimated offer price to be made was $0.4075 per share with a special dividend of $0.5688 per share.

97. A payment of $400,000.00 to Partners Capital was made by a cheque dated 9 May 2008 drawn on the account of Mr Vincent Sze with Chiyu Banking Corporation Ltd. Payments to Partners Capital of the same amount were made by the same method on other cheques dated 29 July and 8 September 2008.

30 May 2008 : Joint Announcement of 2 May 2008 agreement

98. On 30 May 2008, Asian Gold Dragon, HCBC Communications and ABC announced that by agreements dated 2 May 2008 Asian Gold Dragon had agreed to acquire from HCBC Communications its 52.59% interest in ABC for just over $98 million. Secondly, that ABC had agreed to dispose of its wholly-owned subsidiary ABC Global to HCBC Communications for $252.3 million, the two agreements to be completed simultaneously. Thirdly, that the funds received by ABC in consequence of the disposal of its subsidiary and surplus cash would be used to declare and pay a special dividend of just over $273 million, equivalent to about $0.5866 per share. Fourthly, that on completion of the first and second agreements Asian Gold Dragon would make an unconditional mandatory cash offer for all remaining shares at $0.3992 per share. Finally, then an application had been made to the Stock Exchange of Hong Kong to resume trading in ABC shares on 2 June 2008.

99. Asian Gold Dragon was described as being beneficially owned as to 85% by Mr Vincent Sze and as to 15% by Mr Lin Qun. The latter was described as holding a bachelor’s degree from China Statistics Cadre College and a MBA from the Open University of Hong Kong. He was said to have had ‘extensive experience in management, operation and project development in

large corporations in China' and to have held senior management positions in Baohai Group Joint Stock Limited Liability Corporation and Sanya Oriental Tourism Company Limited.

Payment of $78,014,865.00 to HCBC Communications : 20 August 2008

100. On instructions of Mr Vincent Sze on 20 August 2008 Chiyu Banking Corporation Ltd issued a cashier's order for the payment to HCBC Communications of the balance of the monies due under the agreement for the acquisition of its holdings in ABC of $78,014,865.00.

General offer

101. On 27 August 2008, Asian Gold Dragon made a 'general offer' to acquire all the shares of ABC and, as required under the facility agreement, deposited 245,523,600 ABC shares with President Securities. As a result, at the expiry of that offer on 17 September 2008, Asian Gold Dragon received acceptances in respect of 31.08% of the shares of ABC. In order to restore a holding of at the least 25% of the shares by the public, Asian Gold Dragon placed over 40 million ABC shares through President Securities on 22 October 2008.

Summary of the disbursement of the monies transferred from the account in the name of Mr Wang Xiaobo into the account of Mr Vincent Sze in May 2008

102. Disbursements from the account of Mr Vincent Sze :

(i) 2 May 2008 - $ 20 million cashier's order in favour of Stephenson Harwood & Lo;

(ii) 7 May 2008 - $20 million to President Securities;

(iii) 7 May 2008 - $4.2 million to Ha & Ho; and

(iv) 20 August 2008 - $78,014,865.00 cashier's order in favour of HCBC Communications.

RELEVANT AND RELATED MATTERS

Provenance of monies used by Mr Vincent Sze in the acquisition of ABC shares

103. It is readily apparent from a review of the 'fund flow' of monies from the account of Mr Wang Xiaobo into the account of Mr Vincent Sze that a significant part of those funds had their provenance in the proceeds of sale, $230 million, paid by China Water for the purchase by its subsidiary, Smart Giant, of Mega Mount's interest, through Blue Mountain, in Jinan Hong Quan Water. [**Appendix 4**] Although the monies were owed to Mega Mount, at the latters direction payment was made directly into the account of Allan Ip & Co with Hang Seng Bank Limited. The withdrawal of large sums of money from that account in cash, the transfer of the balance by multiple payments to a nominee account in the name of Mr Ng Cham Sum, Charlie ("Mr Charlie Ng") the subsequent transfer of $50 million to another nominee account in the name of Mr Kwong Hon Cheung, Daniel ("Mr Daniel Kwong") and the subsequent transfer in 4 discrete tranches to the account of Easygold, controlled by Mr Wang Chao, bears all the classic hallmarks of money-laundering.

104. The obvious relevance to these proceedings, is that Mr Vincent Sze, the Deputy Managing Director of China Water, was not only a signatory to the agreement dated 26 November 2007 between its wholly-owned subsidiary,

Smart Giant, and Mega Mount for the sale of its interest in Jinan Hong Quan Water but also a signatory on the cheque drawn on China Water by which payment was made to Allan Ip & Co. Moreover, a significant part of those monies were made available to him subsequently through bank accounts controlled by Mr Wang Chao to enable him to make various payments related to the cost of acquisition of ABC shares.

Jinan Hong Quan Water

105. Mr Vico Hui said that he had first become interested in investing in water supply projects on the Mainland following a fund raising visit to Hong Kong by the provincial government of Shandong in 2005. Having raised the fact of his interest with Mr Wang Chao, he was informed by the latter that he knew someone, later identified as Mr Guo Ai Wen, who worked for a company supplying water to Jinan City. Mr Wang Chao negotiated on his behalf. In late 2006/early 2007 Mr Wang Chao told him that another buyer, Chinese Water, had purchased the available shareholding in that company.

December 2006

106. The Articles of Association of Jinan Hong Quan Water are dated 8 December 2006. The company was incorporated on 11 December 2006. It was constituted by four joint-venture parties, three of whom were water supply companies in Jinan City and the fourth of which was a Hong Kong company, Chinese Water Industry Group Limited. The agreement called for the injection of physical assets by the three water companies and $47.71 million Hong Kong in cash from Chinese Water, in return for which Chinese Water was allotted 35%

of the share capital of Jinan Hong Quan Water. Mr Wang Chao signed as the legal representative of two of the water companies. Mr Li Hai Zhou signed on behalf of Chinese Water. **[Appendix 5]**

Directors

107. By a letter dated 28 November 2006, Mr Allan Ip and Mr Li Hai Zhou were appointed directors of Jinan Hong Quan Water by Chinese Water. By an appointment letter of the same date Mr Guo Ai Wen was appointed a director by one of the water companies, whereas Mr Wang Chao was appointed a director by another of the water companies by letter dated 11 December 2006.

Chinese Water Industry Group Limited

108. Chinese Water Industry Group Limited was incorporated under another name in Hong Kong in March 2004. On 5 January 2005, its name was changed to that of Chinese Water Industry Group Limited. On 10 October 2006, all the issued shares in the company were transferred to Moral Swarm Group Limited. **[Appendix 5]**

Moral Swarm Group Limited

109. Moral Swarm Group Limited was incorporated in the British Virgin Islands in August 2006. On 29 September 2006, Moral Swarm was sold by Offshore Incorporations Homg Kong Limited to New Centuries Consulting Limited in Shenzhen. On 1 May 2008, Moral Swarm was struck off the BVI Registry for non-payment of annual fees.

110. Mr Allan Ip testified that at the request of Mr Vico Hui he had become his nominee shareholder in Moral Swarm and the Administrator of the company. As far as he could recall, that had happened in the middle of 2007. He understood Mr Vico Hui to be a beneficial owner of Moral Swarm. As he recalled, the other beneficial owner was a Mainlander, whose name he could not recall.

111. For his part, Mr Vico Hui said that it was at the request of Mr Wang Chao that he had approached Mr Allan Ip to act as a nominee shareholder and administrator of Moral Swarm. That was before the agreement between Blue Mountain and Chinese Water, dated 28 March 2007, for the sale of the latter's interest in Jinan Hong Quan Water. Because Mr Wang Chao did not want his name on any documents or even that it be known that he was connected with the company, he had not disclosed Mr Wang Chao's interest in Moral Swarm to Mr Allan Ip. Whilst he did not know if in fact Mr Wang Chao was the beneficial owner of Moral Swarm, he knew of no other persons connected with the company, until Mr Wang Chao introduced him to Mr Li Hai Zhou as a director of Chinese Water and with whom he was to negotiate the sale of the 35% interest in Jinan Hong Quan Water.

Blue Mountain's acquisition of Chinese Water's interest in Jinan Hong Quan Water : March 2007

112. Following the failure of his initial attempts to acquire an interest in the water industry in Jinan, Mr Vico Hui said that subsequently he was informed by Mr Wang Chao that the 35% holding in the company supplying water to Jinan

City was available for resale. Together with Mr Wang Chao, he met Mr Li Hai Zhou, a director of Chinese Water, three times and negotiated the purchase of the 35% shareholding of Jinan Hong Quan Water held by Chinese Water for $47.71 million. **[Appendix 5]**

Blue Mountain and Mega Mount

March 2007

113. On the instructions of his friend Mr Vico Hui, Mr Allan Ip arranged for the purchase of two shelf companies, Blue Mountain and Mega Mount, in March 2007. On 27 March 2007, Mr Allan Ip received the transfer of the single issued share of Blue Mountain, became its director and on the same date transferred the single share to Mega Mount, a BVI company, of which company Mr Alan Ip and Ms Wang Li were its directors, each holding one of the two issued shares. He said that Ms Wang Li had been introduced at a party by Mr Vico Hui.

114. For his part, Mr Vico Hui said that he was the beneficial owner of Blue Mountain and Mega Mount. The single share in Mega Mount that each of Mr Allan Ip and Ms Wang Li held in Mega Mount were held on trust for him. He had met Ms Wang Li through the introduction of Mr Wang Chao in about 2004.

Transfer of the 35% holding in Jinan Hong Quan Water from Chinese Water to Blue Mountain : 28 March 2007 agreement

115. An agreement dated 28 March 2007, provided for the transfer of the 35% shareholding in Jinan Hong Quan Water held by Chinese Water to Blue

Mountain for the payment of $47.71 million. Although the signature written in Chinese characters next to the chop impression of Blue Mountain on the agreement is in the name of Mr Allan Ip Wing Lun, he denied ever having seen or signed the document. Similarly, he said that he had never seen the document dated 1 April 2007 in which he was appointed as a director of Jinan Hong Quan Water by Blue Mountain. Further, he denied having seen or signing the document, apparently signed in his name, as a director of Jinan Hong Quan Water consenting to the transfer of Chinese Water's 35% holding in the company to Blue Mountain.

116. By contrast, Mr Allan Ip said that he had signed the agreement, dated 26 November 2007, by which Mega Mount sold its holding of 35% of the shares of Jinan Hong Quan Water, held through Blue Mountain, and the benefit of its loan of $47.7 million to Blue Mountain to Smart Giant, a wholly-owned subsidiary of China Water, for $230 million.

117. For his part, Mr Vico Hui said that he had explained to Mr Allan Ip that, if there was an urgent need for documents to be signed in the Mainland, he would arrange for his staff to sign on Mr Allan Ip's behalf. He might or might not have been informed of what had been done subsequently. He agreed that in that respect Mr Allan Ip was being treated as equivalent of a human chop.

118. Mr Vico Hui said that he arranged for payment of the $47.71 million to be made in its Renminbi equivalent in two cash payments made on his instructions by others to Mr Li Hai Zhou in the Mainland. A written receipt

acknowledging payment was made, which he said that he was unable to locate in order to produce to the Tribunal. Mr Wang Chao and Mr Guo Ai Wen remained as directors of Jinan Hong Quan Water, whilst Mr Allan Ip became a director, as his nominee.

26 November 2007 : the sale of Blue Mountain's interest in Jinan Hong Quan Water to Smart Giant

119. On behalf of Mega Mount, Mr Vico Hui negotiated the sale of Blue Mountain, including its shareholding in Jinan Hong Quan Water, for $230 million to Smart Giant, a wholly-owned subsidiary of China Water. He negotiated with Mr Zhong Wen Sheng, and no one else. At the outset, he had asked for a payment of $270 million. Mr Vincent Sze and Mr Wang Xiaobo were not involved in the negotiations with him. The Sale and Purchase agreement was dated 26 November 2007. Mr Allan Ip signed on behalf of Mega Mount and Mr Zhong Wen Sheng on behalf of Smart Giant.

Smart Giant : 26 November 2007

120. On 26 November 2007, the directors of China Water and its wholly-owned subsidiary Smart Giant, including, Mr Vincent Sze and Mr Zhong Wen Sheng, resolved to authorise the latter to sign and execute the agreement on behalf of Smart Giant with Mega Mount for the acquisition of Blue Mountain together with the debt it owed of $47.7 million to Mega Mount. Similarly, having considered a financial due diligence report on Blue Mountain, it was resolved to authorise Mr Zhong to approve payments due under the agreement

and their release to the vendor, Mega Mount on the completion of the acquisition. [**Appendix 5**]

‘*Earnest money*’

121. Mr Vico Hui accepted that in the period of about a month or so prior to the agreement of 26 November 2007 for the sale of Blue Mountain’s interest in Jinan Hong Quan Water to China Water at his request of Mr Zhong Wen Sheng he had received $35 million and $32 million, on 25 October and 23 November 2007 respectively, from China Water. These payments were ‘earnest money’, that is so that he would be able to produce a ‘fund proof’ if he found a suitable project to acquire in the Mainland of interest to China Water. He accepted that no project was forthcoming. Both arrangements provided that no interest was payable if the monies were returned to China Water within the 30-day period specified. Otherwise, interest was payable. Although the second payment of $32 million was not repaid within that period, and was repaid only on 31 January 2008, no interest payment was demanded by China Water. The two cheques drawn on the account of China Water by which payment was made to Mr Vico Hui were each signed by both Mr Zhong Wen Sheng and Mr Vincent Sze.

122. Although Mr Vico Hui acknowledged that he had a moral obligation not to use the monies other than as a fund proof, he said that he took the view that there was no such legal obligation. Initially, he said that he could not remember the use that had been made of those monies. However, when shown

the relevant banking documentation he accepted the use to which the monies had been put.

$35 million : 25 October 2007

123. The $35 million payment of 25 October 2007 was immediately disbursed on that date by a payment of $20 million in favour of Kingston Finance Limited, for the credit of the account of Mr Carson Yeung and three cashier's orders of $5 million each in favour of Macau Casino Holdings Ltd. Mr Vico Hui described Mr Carson Yeung as his 'boss' in the company then called Grandtop International Holdings Limited, but which had changed its name subsequently to Birmingham International Holdings Limited. He explained that the payment of $20 million was one that he had made at the request of Mr Carson Yeung. However, even when he was shown documentation that evidenced the repayment of the whole $35 million by a CHATS payment dated 13 November 2007 from Grandtop International Holdings Limited, a company controlled by Mr Carson Yeung, Mr Vico Hui said that he could not remember why $15 million had been paid to Macau Casino Holdings Limited. He said that he had no idea of whether Mr Carson Yeung had casino interests, in particular in the casino called Greek Mythology. [**Appendices 6A and 6B]**

$32 million : 23 November 2007

124. Although Mr Vico Hui said that, the payment of $32 million to him on 23 November 2007 was a mere three days before the agreement of 26 November 2007 was signed between Smart Giant and Mega Mount, it was unconnected to

that transaction. He acknowledged that the bank documentation evidenced his disbursement of those monies in the five days after its receipt. Two of the payment accounted for most of the monies : $10 million to an account in the name of Zhou Ximei and $12.75 million to the newly opened account in the name of Zhou Qinzi. However, Mr Vico Hui did not recognise or remember those persons. He made these payments on someone else's instructions. It was possible that person was Mr Wang Chao. He could not remember. [**Appendix 7A**]

125. Ms Georgiana Chu, the company secretary of China Water, said that the failure to repay the $32 million by Mr Vico Hui when it became due was a matter of concern to her. Difficulties arose because China Water's year-end was 31 December 2007. She pressed Mr Zhong Wen Sheng and was told that payment was promised by Mr Vico Hui. However, payment was not forthcoming until 31 January 2008, after China Water had made payment of the $230 million due under the agreement of 26 November 2007.

126. Mr Vico Hui said that the monies for repayment of the $32 million had come from his 'nominees'. He acknowledged that he received all the cash withdrawals made from the accounts in the names of Mr Charlie Ng and Mr Allan Ip. He thought that the source of a deposit in cash into his savings account of $28,963,700.00 on 31 January 2008 was a cash withdrawal of $30 million from the account in the name of Mr Charlie Ng the previous day. Similarly, he thought that the deposit of $3,995,000.00 in cash into his current account on 1 February 2008 also came from his 'nominees'. He denied that the

breaking up of a round sum of money into a different very specific amount of money was to conceal the flow of funds. He acknowledged that there had been a withdrawal in cash from the account of Allan Ip & Co on 31 January 2008 of $2 million. However, he could not remember whether the $230 million payment by China Water was the source of the monies used to repay the $32 million to China Water. [**Appendix 7B]**

Payment of $230 million by China Water for the purchase of a holding of 35% of the shares of Jinan Hong Quan Water

(i) initial payments

127. The agreement provided for the appointment of Johnny K K Leung & Co as agents of the vendor, Mega Mount. Receipt of cheques in the sums of $50 million and $180 million drawn, on the account of China Water dated 26 November 2007 and 1 December 2007 in favour of Johnny K K Leung & Co was acknowledged by the latter in receipt stated 26 November and 1 December 2007 respectively.

Mega Mounts' bank account

128. An application, dated 4 December 2007, was made to open an account in the name of Mega Mount with Hang Seng Bank Limited. Mr Allan Ip testified that he had signed that the application form as a director of Mega Mount, as had Ms Wang Li. Mr Zhong Wen Sheng were stipulated to be the sole signatory of the account. That was done on the instructions of Mr Vico Hui, who had told them that China Water was concerned about control over monies in the account. He did not know who had that concern or why. As he

recalled, he was asked to do that after the Sale and Purchase agreement between Smart Giant and Mega Mount had been signed on 26 November 2007. The documentation contained copies of the identity cards and passport of Mr Zhong Wen Sheng and Ms Wang Li, together with Mr Allan Ip's identity card, all of which bear the chop 'ID/PASSPORT SEEN'. Mr Vico Hui possessed the company chop and cheque book.

129. On 24 December 2007, the authorised signatory to the account was changed from Mr Zhong Wen Sheng to Ms Wang Li solely. That was done on the instructions of Mr Vico Hui.

130. Although Johnny K K Leung & Co had made payment of the $50 million initial payment, less deduction of their fees, to Mega Mount and had deposited a cheque for the monies due to Mega Mount from the $180 million payment, less their fees, into the account of that amount, on instructions of Mr Allan Ip the latter transaction was stopped on 14 December 2007. Eventually, the whole transaction was unwound by repayment by way of a cheque dated 15 January 2008 drawn on the account of Mega Mount in favour of Johnny K K Leung & Co in the sum of $50 million.

24 December 2007 : board meetings of China Water and Smart Giant

131. Minutes of the board meetings of China Water and Smart Giant dated 24 December 2007 noted that completion of the agreement of 26 November 2007 was subject to various conditions. Documents tabled at the meeting included a Financial Due Diligence report in respect of Blue Mountain as at 30

September 2007, prepared by Shine Wing, and an asset valuation report in respect of Blue Mountain for the same date prepared by Asset Appraisal Ltd. It was resolved that, subject to compliance with the outstanding condition, that Mr Zhong Wen Sheng be authorised to release the payments due to the vendor. Completion was to take place on 18 January 2008.

(ii) Subsequent payments

132. Then, on 18 January 2008 on the instructions of Mr Allan Ip, in turn acting on instructions from Mr Vico Hui, payment was made of the whole amount of $230 million, less $10,000.00 in respect of fees, by Johnny K K Leung & Co to the account of Allan Ip & Co.

Disbursement of the $230 million payment made to the account of Allan Ip & Co on 18 January 2008

Mr Allan Ip

133. Mr Allan Ip said that he had disbursed the $230 million received into his account on 18 January 2008 at the direction of Mr Vico Hui. None of these instruction were in writing, which is extraordinary for a Certified Public Accountant. **[Appendix 4]**

(i) On 18 January 2008 he had made a payment of $4.27 million to Easygold Investments Ltd, a BVI company that he had acquired earlier on the instructions of Mr Wang Chao.

(ii) On five separate occasions on and between 18 January and 5 February 2008 he withdrew a total of $42 million in cash, which he handed over to Mr Vico Hui.

(iii) In approximately the same time period he transferred a total of $183 million in five separate transactions to the account of Mr Charlie Ng.

Mr Charlie Ng

134. Mr Charlie Ng, the manager of the solicitors firm Littlewoods, was a colleague of Mr Vico Hui when the two of them worked for another solicitors firm, Alick Au and Massie & Co, in 1986. They had become and are good friends. In about January 2008, at the request of Mr Vico Hui and to assist him in the concerns that he had about prospective divorce proceedings and, more particularly, that his wife would come to know of his assets he agreed to receive monies into his account and disperse them at the direction of Mr Vico Hui.

135. In the period 21 January to 5 February 2008 Mr Charlie Ng received $183 million in total into the bank account in his name with Standard Chartered Bank and dispersed those monies at the direction of Mr Vico Hui. He gave Mr Vico Hui all the related monies that he withdrew from his account in cash. **[Appendix 4]**

(i) On 5 February 2008, he transferred $30 million to the account of Easygold Investments Ltd.

(ii) On 13 February 2008, he deposited a cheque drawn in the sum of $50 million into the account of Daniel Kwong Hon Cheung.

Loans to Mr Wang Chao

136. For his part, Mr Vico Hui explained that the monies transferred at his direction into the account of Easygold Investments Ltd, namely $4.27 million from the account of Allan Ip & Co on 18 January 2008 and $30 million from the account of Mr Charlie Ng on 13 February 2008, were loans to Mr Wang Chao. Similarly, the $50 million transferred into the account of Mr Daniel Kwong on 13 February 2008 was a payment made at the direction of Mr Wang Chao and a loan to him. He claimed that those loans were repaid by Mr Wang Chao, although he had no documentary evidence to support the contention.

Payments from the account in the name of Mr Daniel Kwong to Easygold : February 2008

137. By four cheques drawn on the account of Mr Daniel Kwong on and between 15 and 25 February 2008 in favour of Easygold a total of $49,949,999.80 was paid into the latter's account. The four sums of money were:

- $23,871,527.80
- $8,680,555.60
- $13,020833.40
- $4,377,083.00

Mr Daniel Kwong

138. Mr Daniel Kwong said that he had received the deposit of $50 million into his account by prior arrangement with his friend of some years, Mr Vico Hui. He was told that it was not convenient for Mr Vico Hui to handle money

matters himself. Subsequently, he drew and signed four cheques in favour of Easygold on four separate occasions on the instructions of Mr Vico Hui. He understood from Mr Vico Hui that Mr Wang Chao, to whom he had been introduced by Mr Vico Hui, was the beneficiary of those payments. He said that he had given the balance of $50,000.00, left after the payments had been made, in cash to Mr Vico Hui.

139. For his part, Mr Vico Hui said that Mr Daniel Kwong was not a friend. After he had arranged the deposit of $50 million into the account of Mr Daniel Kwong at the request of Mr Wang Chao he played no further part. In particular, he did not give instructions to Mr Daniel Kwong to make the four payments to Easygold. Furthermore, he did not receive the balance of the monies, namely $50,000.00, in cash from Mr Daniel Kwong

17 March 2008 : transfer of $60 million from Easygold to Mr Wang Xiaobo

140. The net balance of monies in the accounts of Easygold with Hang Seng Bank Limited as at 31 January 2008 was just over $91,000.00. However, following the deposit of slightly less than $30 million from the account of Mr Charlie Ng on 5 February 2008 and the four payments totalling about $49.95 million from the account of Mr Daniel Kwong in the 10-day period beginning 15 February 2008 the net balance in the account rose to about $80 million towards the end of February 2008. On 17 March 2008, $60 million of those monies were transferred to the account of Mr Wang Xiaobo. **[Appendix 4]**

Payments from the account in the name of Mr Daniel Kwong to Easygold : March 2008

141. By a cheque dated 31 March 2008 drawn on the account of Mr Daniel Kwong in favour of Easygold $9,890,000.00 was deposited into Easygold's account with the Hang Seng Bank Limited on 1 April 2008, creating an overall balance in that account of just over $10,250,000.00. The provenance of those monies was a transfer of $10 million on 28 March 2008 from the account of Mr Vico Hui with Chiyu Banking Corporation Ltd. In turn, that payment was made possible by the deposit into the account of Mr Vico Hui that same day of $30 million from the account of i-Merchants, a newly acquired subsidiary of China Water. Without any further deposits of monies into the Easygold account, by a cheque drawn on that account dated 7 May 2008 in favour of Mr Wang Xaiobo, $10 million was deposited in the latter's account with Chiyu Banking Corporation Ltd. **[Appendix 4]**

142. For his part, Mr Vico Hui said that, although he could not remember the transaction, he thought this was another loan to Mr Wang Chao. Certainly, it would not have been a loan to Mr Daniel Kwong. The deposit of $30 million from the account of i-Merchants was either a loan or another tranche of 'earnest money'. In either case, the arrangements would have been made for him by Mr Zhong Wen Sheng.

Monies deposited/transferred from the account of Mr Wang Xiaobo into the account of Mr Vincent Sze with Chiyu Banking Corporation Ltd and their use, together with monies from Easygold, in respect of the costs of acquisition of ABC

(i) Deposits

143. In the period 2 - 9 May 2008 the account of Mr Vincent Sze received $121,914,865.00 from the account of Mr Wang Xiaobo.

(ii) Disbursements

144. Thereafter, disbursements were made of those monies, including :

- on 2 May 2008, by debit to his account Mr Vincent Sze purchased a cashier's order from Chiyu Banking Corporation Ltd in favour of Stephenson Harwood & Lo in the sum of $20 million;
- by a cheque dated 7 May 2008 drawn on his account with Chiyu Banking Corporation Ltd Mr Vincent Sze paid President Securities $20 million;
- by a cheque dated 7 May 2008, drawn on his account with Chiyu Banking Corporation Ltd Mr Vincent Sze paid Ha and Ho $4.2 million; and
- on 20 August 2008, by debit to his account Mr Vincent Sze purchased a cashier's order from Chiyu Banking Corporation Ltd in favour of HCBC Communications (International) Limited in the sum of $78,014,865.00.

[**Appendix 8**]

Earlier, on 19 February 2008, Mr Vincent Sze gave Mr Lawrence Chan a cheque in the sum of $500,000.00 drawn on the account of Easygold in favour of Stephenson Harwood & Lo.

Mr Vincent Sze Chun Ning

145. Mr Vincent Sze was born in Hong Kong in 1965 but received part of his secondary education in Canada. In 1986, he returned to Hong Kong and worked first in the plastics industry and then in 2000 in Original Equipment Manufacturing. In June 2006, through the introduction of an old friend Mr Vincent Luk, he became the Deputy Managing Director of China Water. However, in November 2006 Mr Vincent Luk resigned from China Water. The Managing Director was Mr Zhong Wen Sheng. Mr Zhong introduced him to Mr Wang Chao. The two of them became friends. Mr Wang Chao was the General Manager of Jinan Hong Quan Water. In March 2007, he came to know Mr Lin Qun on a business trip to Jinan, when the latter made the visiting arrangements for him. They too became friends.

Proof of funds : DBS 'Certificate of Balance'

146. In October 2007, Mr Zhong Wen Sheng asked him to identify a shell company listed on the Stock Exchange of Hong Kong or GEM as a target for acquisition. As a result, in November 2007 he asked for a proof of funds and received a 'Certificate of Balance' issued by DBS in respect of Super Sino, a subsidiary company of China Water. He redacted the document, obscuring the name Super Sino, and passed it over to Mr Andy Cheung, whose assistance he had sought in identifying a suitable shell company for acquisition.

Smart Giant's acquisition of Blue Mountain's interest in Jinan Hong Quan Water.

147. Mr Vincent Sze said that he had played a role in the acquisition by Smart Giant of Blue Mountain's interest in Jinan Hong Quan Water. At Mr Zhong Wen Sheng's request he had visited Jinan to make a site visit in September/October 2007. Whilst there, he met Mr Wang Chao, but not Mr Vico Hui. Mr Wang Chao told him that the vendor was Mega Mount and Mr Allan Ip. He did not ask Mr Zhong Wen Sheng who acted for the vendor. Although he had seen Mr Vico Hui in meetings with Mr Zhong Wen Sheng and Mr Chang Kin Man at the offices of China Water having 'closed-door meetings', he had not asked them if they were discussing a deal. All that Mr Zhong told him was that he was planning to acquire Jinan. Mr Wang Chao had never told him that Mr Vico Hui was behind the sale of Blue Mountain's interests in Jinan Hong Quan Water to Smart Giant.

The advances to Mr Vico Hui by China Water of $35 million and $32 million on 25 October and 23 November 2007

148. Mr Vincent Sze accepted that he had approved the two resolutions of the board of directors of China Water of 25 October and 23 November 2007 by which authorisation was given to affect the advances to Mr Vico Hui of $35 million and $32 million respectively by way of 'earnest money'. He and Mr Zhong Wen Sheng were the two signatories of China Water on each of the two cheques. On each of the occasions he had learnt of the proposed advance from

Mr Zhong Wen Sheng two or three days beforehand. He was told that the advance was for Mr Vico Hui to go and look for ‘big projects’ for China Water.

Mr Vincent Sze’s concerns

149. On the first occasion he had been surprised at the proposal and had questioned Mr Zhong Wen Sheng as to why the advance was so large, if there was to be any security and as to how repayment was to be secured. He complained that there was no documentation available relating to any potential project. He received no replies from Mr Zhong. However, after a few days Mr Zhong told him that the security to be obtained was about 100 million shares in Grandtop and that Mr Chang Kin Man was to be responsible to ‘chase’ Mr Vico Hui for repayment. He checked the website of the Hong Kong Stock Exchange and was satisfied that the shares had not been pledged to be used in margin financing.

150. Mr Vincent Sze said that he had then raised issues of regulatory compliance with Ms Georgiana Chu in respect of the proposed transaction : was a special shareholders meeting required? Did the size of the advance require disclosure? Was an announcement needed? Was the advance a loan and, if so, did the company require a moneylender’s licence? Her responses allayed his concerns : there was no need to have a special general meeting because the advance was ‘earnest money’ and below a certain percentage of the assets of the company. There was no need to inform the Stock Exchange because the security was the ‘company kit’ of Premier Rise, a BVI company.

151. Ms Georgiana Chu had confirmed to Mr Harris in cross-examination that Mr Vincent Sze did not speak to her at all about the provision of 'earnest money', that being dealt with exclusively by Mr Zhong Wen Sheng. However, when recalled to give further evidence she said of the issues of the need for a special shareholders meeting, an announcement, the need for a moneylenders licence and the power in China Water to make a loan that, whilst she could not recall, there was a chance that Mr Vincent Sze had raised those matters with her.

152. Mr Vincent Sze accepted that the minutes of the meeting of 25 October 2007 did not detail any of his expressions of concern. That was because those concerns had been allayed prior to the meeting. The Promissory note tabled and accepted at the board meeting stated that Mr Vico Hui promised to pay the holder of the note or to the order of China Water $35 million within 30 days from the date of the note. Further, Mr Vico Hui agreed 'to pledge all the issued shares of *Premier Rise Investments* beneficially owned by me as security for the above borrowing'. He asserted that he guaranteed that the 96 million shares of Grandtop International Holdings Limited had not been pledged to third parties.

153. Mr Vincent Sze accepted that the cheque drawn on China Water's account in favour of Mr Vico Hui for $35 million was dated 24 October 2007 and that the deposit slip showed that it had been deposited into the latter's account prior to the time of the board meeting, namely 5 p.m. on 25 October 2007. As noted earlier, Mr Vico Hui made repayment to China Water of the $35 million by a cheque dated 13 November 2007.

154. Of the advance of $32 million made to Mr Vico Hui by China Water on 23 November 2007, Mr Vincent Sze said that he had been told by Mr Zhong Wen Sheng that the need for this advance was that Mr Vico Hui required 'more time to acquire 'MOU's, letters of intent, or other documents relating to projects'. The related promissory note was in similar terms, save that the guarantee given by Mr Vico Hui, in respect of the Grandtop International Holdings Limited shares, was of 114,975,000 shares. In particular, it provided that the :

> " ... promissory note shall be non-interest-bearing if payment is made on schedule. If default in payment occurs, interest shall be calculated according to the Hong Kong Interbank Offered Rate starting from the date of the loan.".

155. Mr Vincent Sze accepted that, in respect of both cheque payments, he had confirmed the authority to the bank to make the payments when inquiries were made of him by China Water's bank. Although he was one of the authorised signatories, and in fact had signed both cheques together with Mr Zhong Wen Sheng, he said that he felt it strange that the bank had made those inquiries.

Lack of security

156. Mr Vincent Sze said that he had inspected the security, namely the company seals and share certificates of Premier Rise Investments Ltd. There were no Grandtop International Holdings Limited share certificates. He accepted that, in consequence, there was no real security. He had been prepared to accede to the advance of the monies because Mr Zhong Wen Sheng was pushing the matter and because the locations of the potential project

mentioned to him by Mr Zhong were attractive. Initially, Mr Vincent Sze agreed with the suggestion that Mr Zhong had told him that the one-month advance of money to Mr Vico Hui was necessary to keep him friendly because he was doing a big deal with him. Then, he said that it was possible that had been mentioned to him.

Default in repayment of the advance of $32 million

157. Mr Vincent Sze said that he was aware of the fact that Mr Vico Hui had defaulted in his agreement to repay the $32 million, i.e.) within the 30 day period. Mr Zhong Wen Sheng had told him that Mr Vico Hui should be given more time, 'because he was close enough to get some detail, some information, some documents.' He accepted that no demand was made for an interest payment from Mr Vico Hui as provided by the promissory note. No potential projects were brought forward by Mr Vico Hui.

158. Mr Vincent Sze said that he was unaware of how Mr Vico Hui had disbursed the advances of $35 million and $32 million. He did not even know to what use the money was to have been put. If he had known the use to which the money was actually put there would have been a 'fight'.

26 November 2007 : board meeting of China Water

159. Mr Vincent Sze accepted that he had acted as the Chairman of the meeting of the board of directors of China Water on 26 November 2007 at the request of Mr Zhong Wen Sheng and, as a result, had signed the minutes in that capacity. In addition to the directors who were present other directors

participated by use of teleconferencing. He said that the consensus amongst the directors was that they were happy with the proposed acquisition of Blue Mountain's interest in Jinan Hong Quan Water, it being China Water's first municipal sized project in the Mainland. Also, he and Mr Zhong, as directors of Smart Giant, approved that acquisition. Further, Mr Vincent Sze accepted that he and Mr Zhong signed cheques drawn on the account of China Water for $50 million and $180 million, dated 26 November and 1 December 2007 respectively. He was not sure when he had signed the cheques.

160. A copy of the cheque dated 1 December 2007 was marked as 'Received' on that date by the office of the solicitors Johnny K K Leung. Of the fact that whilst that copy of the cheque bore the date, payee's name and the amount of money in figures but not in words, Mr Vincent Sze said he had noticed the omission and asked Ms Maria Lam to remedy it immediately. He accepted the proceeding as he had done was a risk. However, he said that he had no recollection that these matters were being done in a rush.

14 December 2007

161. Mr Vincent Sze said that on 14 December 2007, Ms Georgiana Chu had informed him that Mr Zhong Wen Sheng had authorised the release of the cheque for $180 million drawn on the account of China Water in favour of Mega Mount but added that the conditions set out in the sale and purchase agreement of 26 November 2007 had not been fulfilled as yet. The two of them approached Mr Zhong together and Ms Georgiana Chu informed him that not all

the documentation was in place, in particular the valuation. As a result, payment of the cheque was stopped.

24 December 2007 : board meetings of China Water and Smart Giant

162. Mr Vincent Sze said that he had signed the minutes of the board meetings of China Water and Smart Giant dated 24 December 2007 only after his return from his honeymoon on or after 2 January 2008. It is to be noted that completion of the agreement of 26 November 2007 was fixed for 18 January 2008.

Target : listed company for acquisition

163. In January 2008, Mr Andy Cheung informed him that he had identified a suitable company for acquisition in which more than 51% of the shareholding was available for sale, with the consequence that a general offer would be required to be made to all shareholders. He was told that the premium for acquisition of the publicly listed company was $180 million. Although he was Deputy Managing Director of China Water, Mr Vincent Sze said that he was interested in pursuing the acquisition for himself with the assistance of partners. As a result, he discussed the proposed acquisition with Mr Wang Chao, who expressed interest. He provided orally to Mr Andy Cheung the biographical details of Mr Wang Chao some of which were attached to the e-mail sent by Mr Simon Tsang to Mr Lawrence Chan on 25 January 2008, in which Mr Wang was described by that name only. However, he had not told Mr Andy Cheung that the buyer was a 'group of Chinese businessmen' headed by Mr Wang. He accepted that the evidence of Mr Andy Cheung in that respect had not been

challenged in cross-examination. He had deliberately excluded any reference to himself.

Fund proof : Hang Seng Bank Limited, 28 January 2008

164. Mr Vincent Sze said that the ‘fund proof’ issued by Hang Seng Bank Limited, dated 28 January 2008, attached to an e-mail dated 29 January 2008 sent to Mr Lawrence Chan by Mr Simon Tsang was given to him by Mr Wang Chao at his request for such a ‘fund proof’. Mr Wang Chao said that the monies were his. Mr Vincent Sze said that he did not know that those monies were the proceeds paid by China Water to Allan Ip & Co for the acquisition of Blue Mountain’s interest in Jinan Hong Quan Water.

Lin Qun

165. Although Mr Wang Chao had initially expressed interest in joining a partnership to acquire control of the publicly listed company, in late January/early February his interest waned. Nevertheless, he offered to support the acquisition by providing a loan. In those circumstances, as a contingency, Mr Sze approached Mr Lin Qun who expressed interest in proceeding with the acquisition. They had first met in March 2007 when Mr Lin Qun acted as his tour guide in Jinan, whilst he was in the city for a three-day training course in the water industry. They met again when Mr Vincent Sze went on a similar visit to Jinan in about May 2007. On that occasion they spent the evening in a karaoke establishment. In about July/August he met Mr Lin Qun when he visited Shenzhen and Mr Vincent Sze showed him around. Finally, they met again once in September/October 2007 when Mr Vincent Sze conducted a site

visit in connection with the potential purchase of an interest in Jinan Hong Quan Water and subsequently in a 'roadshow' in which fund managers accompanied Mr Vincent Sze on a visit to Jinan in early 2008.

166. Of Mr Lin Qun's qualities, Mr Vincent Sze said that he was a talkative gentleman who knew a lot of people and that he had spoken to him about potential projects on the Mainland. However, he had never followed any of them up. He regarded as an important quality the fact that a person was able to introduce potential projects to ABC. Nevertheless, he did not even introduce Mr Lin Qun to Mr Wang Chao, let alone tell him that he was to be his partner in the acquisition of ABC.

Steps taken to acquire the target company

19 February 2008

(i) $500,000.00 cheque

167. Mr Vincent Sze met Mr Lawrence Chan for the first time at the offices of Stephenson Harwood & Lo on 19 February 2008. The purpose of the meeting was for the vendor's representatives to identify the public company, whose shares were available for sale, and for the potential buyer to provide a cheque of $500,000.00, forfeitable if agreement was not reached. In advance of that meeting, he met Mr Wang Chao in an outlet of Starbucks at Shun Tak Centre. In the days immediately preceding 19 February 2008 he had told Mr Wang Chao that such a cheque was required. At their meeting in Starbucks, Mr Wang Chao handed him a signed but otherwise blank cheque drawn on the

account of Easygold and signed by Mr Wang Xiaobo. He gave the cheque to Mr Andy Cheung who in turn passed it to Mr Lawrence Chan at the meeting.

(ii) 'Non-Disclosure Agreements' - Mr Wang Chao, Mr Andy Cheung, Mr Vincent Sze and Virtue Dragon.

168. In advance of the meeting Mr Andy Cheung had been provided with a 'Non-Disclosure Agreement' in which the purchasers undertook not to disclose the identity of the publicly listed company after it had been identified to them. Prior to the meeting he had obtained Mr Wang Chao's signature on such a document. However, it was only at the meeting that it was determined to use Virtue Dragon as the corporate vehicle to make the acquisition. He had obtained the name in a text message from Mr Lin Qun in the Mainland in response to his request by telephone for such a company to be identified. However, Mr Vincent Sze then went on to contradict that evidence, by saying that the name Virtue Dragon had been obtained before 19 February 2008.

169. Although the Non-Disclosure Agreement signed by Mr Wang Chao was handed over to Mr Lawrence Chan at the meeting, on his initiative it was retrieved once Mr Lawrence Chan was informed that Mr Wang Chao was no longer the buyer. On his understanding that Mr Lin Qun owned Virtue Dragon, he had signed on behalf of that company on the Non-Disclosure Agreement. Subsequently, he faxed a copy of a Non-Disclosure Agreement to Mr Lin Qun, which he passed on to Mr Lawrence Chan when it was returned to him bearing Mr Lin Qun's signature. When it was discovered subsequently that Mr Lin

Qun did not own Virtue Dragon after all, he instructed Mr Andy Cheung to purchase Asian Gold Dragon, which was used as the buyer instead.

Background of Virtue Dragon

170. Virtue Dragon Investments Limited was a BVI company that was incorporated on 5 July 2006. For non-payment of fees it was struck off the BVI Registry on 1 May 2008. On 3 August 2006, it was sold to Sky Fortune Consultants Limited ("Sky Fortune"), the invoice being directed to Mr Vincent Luk. Mr Vincent Sze and Mr Vincent Luk were directors and shareholders of Sky Fortune. Mr Vincent Sze became a shareholder on 20 December 2005 and signed as a director on 2 June 2007. However, he denied any knowledge of the existence of Virtue Dragon prior to learning its name in connection with Mr Lin Qun.

171. It is to be noted that payment for the acquisition of Virtue Dragon was made together with payment for other company acquisitions, including Smart Giant, Marvel Bonus and Attore Investments Limited, as described in a statement of account on the fax transmission heading of China Ace Investments Ltd dated 15 January 2007, a subsidiary of China Water. Mr Vincent Luk's name appears as the 'Client reference' for all those companies. Of course, as noted earlier Smart Giant became a wholly owned subsidiary of China Water.

Asian Gold Dragon : Lin Qun's interest

172. Mr Vincent Sze accepted that, having been allotted 15% of the Asian Gold Dragon shares in March 2008, in due course Mr Lin Qun in effect held

15% of the ABC shares that were acquired by Asian Gold Dragon, although he was not a party to or guarantor of the loans that were made by Mr Wang Chao and Mr Jiang Qing Xin to Mr Vincent Sze. Similarly, in his personal capacity he had no liability to President Securities for the facilities that they had granted to Asian Gold Dragon.

173. Mr Vincent Sze accepted as accurate the assertion made by Mr Lin Qun in a telephone conversation on 17 February 2009 with Mr Chan Tak Ching, a senior manager of the SFC, that Mr Lin Qun had never injected any money into Asian Gold Dragon. However, he took issue with Mr Lin Qun's assertion that he was a mere nominee. For his part, Mr Lin told Mr Chan Tak Ching that :

> "he had no involvement or knowledge in the acquisition of ABC Communications or the daily business of Asian Gold Dragon.".

174. In a telephone conversation, initiated by Mr Chan Tak Ching of the SFC, on 28 June 2010, Mr Lin Qun said :

> " … that he had nothing to do with the acquisition of ABC. He was requested by Sze Chun Ning ("Sze") to be the director and shareholder of Asian Gold Dragon Limited ("AGD"). He has no knowledge about the operation of the company-AGD. He only came to Hong Kong to sign a document in a lawyer's office. Sze is his friend and he just helped him out of friendship. He further stated that he had never given any money or received any money from Sze. He is just a shadow director and shareholder of AGD.".

Negotiations for the acquisition of ABC

175. Following the meeting with Mr Lawrence Chan, Mr Vincent Sze left the details of the ongoing negotiations with the vendor to Mr Andy Cheung. In

mid-April 2008, at Mr Andy Cheung's suggestion and introduction, he began discussions with Mr Annio Kwong of President Securities to obtain facilities to enable Asian Gold Dragon to make a General Offer to the shareholders of ABC. By late April 2008, he understood that negotiations were at an advanced stage but not complete as yet. On 29 April 2008, Mr Andy Cheung advised him to be ready to sign the Sale and Purchase Agreement the following day and to be in a position to make a deposit of $20 million.

30 April 2008 : Agreement

176. Having made arrangements for Mr Lin Qun to travel to Shenzhen, Mr Vincent Sze met him there and escorted him to Hong Kong on 30 April 2008. Subsequently, they signed the Sale and Purchase Agreement and Mr Vincent Sze handed over his personal cheque for the sum of $20 million. He was not given a copy of the signed agreement at that stage, it being agreed that Mr Sze's personal cheque would be replaced with a cashier's order on 2 May 2008 and the agreement completed and exchanged.

Loans to Mr Vincent Sze

177. In the late March/early April, he had ongoing negotiations with Mr Wang Chao and Mr Jiang Qing Xin in respect of loans to be obtained from them to finance the acquisition of ABC shares. He had known Mr Jiang since 1999-2000, when he was working in the Original Equipment Manufacturing business. During that period he repeatedly refused Mr Wang Chao's request to be informed of the identity of the target company.

Loan of $46 million from Mr Wang Chao : 1 May 2008

178. By an agreement dated 2 May 2008, although signed by the parties on 1 May 2008, Mr Wang Chao agreed to lend Mr Vincent Sze $46 million for a term of 18 months at 1.5% interest per month and a handling fee of $1.6 million payable to Mr Wang Chao. Repayment of principal and interest was fixed for 1 November 2009. There was no provision for any security whatsoever.

179. Mr Vincent Sze had travelled to Shenzhen to meet Mr Wang Chao to finalise the grant of the loan on 30 April 2008. He had discussed the prospective loan with Mr Wang Chao six or seven times in the period 19 February - 2 May 2008. On this occasion, at Mr Wang Chao's request he disclosed the identity of the target company as being ABC. He felt safe in doing so, since he knew that trading in the shares of ABC would be suspended at the commencement of trading on 2 May 2008.

Receipt and disbursement of the loan monies

(i) 2 May 2008 : $20 million

180. On 2 May 2008, he accompanied Mr Wang Chao to Chiyu Banking Corporation Ltd, where the latter arranged for $20 million to be transferred to the account of Mr Vincent Sze. However, Mr Vincent Sze said that he was unaware that the monies were transferred from an account in the name of Mr Wang Xiaobo in the same bank. Similarly, he was unaware that a substantial part of the monies had their origin in the payment on 18 January 2008 of $230 million to the account of Allan Ip & Co by China Water. For his part, he

arranged for a cashier's order in favour of Stephenson Harwood & Lo to be drawn in the sum of $20 million and debited to his account.

(ii) 7 May 2008 : $24.4 million

181. On 7 May 2008, $24.4 million, the balance of the monies due under the loan, was transferred to his account at Chiyu Banking Corporation Ltd from Mr Wang Xiaobo's account. Again, he was unaware that a substantial part of the monies had their origin in the payment on 18 January 2008 of $230 million to the account of Allan Ip & Co by China Water. On the same date, he drew cheques in favour of President Securities and Ha & Ho in the sum of $20 million and $4.2 million respectively. The former payment was collateral required by President Securities and the latter an arrangement fee for that facility.

Loan of 47 million RMB from Mr Jiang Qing Xin : 3 May 2008

182. On 3 May 2008, Mr Vincent Sze signed an agreement for the loan of 47 million RMB from Mr Jiang Qing Xin for a two-year term at 1.25% interest per month. The interest payable annually was stipulated to be 7,050,000 RMB. There was no requirement whatsoever for the provision of security for the loan.

183. Mr Vincent Sze said that he had known Mr Jiang Qing Xin since the 1990s when he dealt in the trading of futures in metals from Shenzhen. In 2006 he had lent him a total of about $4 million when Mr Jiang was in financial difficulty. Subsequently those monies had been repaid. There were no written records evidencing the making of the loan, nor any provision for interest.

Similarly, there was no documentation to support Mr Vincent Sze's contention that the loans had been repaid by Mr Jiang.

184. The negotiations with Mr Jiang Qing Xin were short and all that he was told was that the money was required for a major acquisition. He did not inform him that the acquisition involved a controlling interest in the shareholding of a publicly listed company in Hong Kong. He was prevented from doing so, so he said, by the Non-disclosure Agreement of 19 February 2008.

185. For his part, Mr Jiang Qingxin arranged for the Hong Kong equivalent of 47 million RMB, namely $52 million, to be deposited into the account of Mr Wang Xiaobo with Chiyu Banking Corporation Ltd. Partly to give Mr Wang Chao confidence in his ability to raise the funds required for the acquisition, Mr Vincent Sze asked that the monies be deposited into an account nominated by Mr Wang Chao. The latter provided the details of Mr Wang Xiaobo's account. Those monies were deposited into that account in multiple deposits of differing amounts of money on 5 and 6 May 2008.

186. Of the fact that he had suggested that an account to be nominated by Mr Wang Chao was to be used for the receipt of the monies that constituted the loan from Mr Jiang Qing Xin, rather than that they be deposited into his own account, Mr Vincent Sze said that he did not wish his own bank account to be associated with remittances through the 'underground banking' system.

Loan of $28 million from Mr Wang Chao : 7 May 2008

187. By an agreement dated 7 May 2008, Mr Wang Chao agreed to lend $28 million for a term of 12 months at 2% interest per month to Mr Vincent Sze. As security for the loan, Mr Vincent Sze was required to pledge his 85% shareholding in Asian Gold Dragon. A handling fee of $1 million was payable to Mr Wang Chao. Mr Vincent Sze said that he had become aware of the need for a further loan, from Mr Wang Chao or a third person, following the meeting of 19 February 2008, on learning of the need for a general offer. In late April, he learned the President Securities would require cash collateral of $20 million be provided in respect of the $90 million facility granted to Asian Gold Dragon in respect of the prospective general offer. However, he did not raise the need to borrow those funds with Mr Wang Chao until about 6 May 2008, that is the day before the loan agreement in respect of $28 million.

188. Of the fact that the second loan agreement with Mr Wang Chao required the provision of security by Mr Vincent Sze of his shareholding in Asian Gold Dragon, but not Mr Lin Qun's shareholding, Mr Vincent Sze rejected the suggestion that that was because the latter held the shares in his name for Mr Wang Chao in any event.

Receipt of the loan monies

189. On 9 May 2008, $77,514,865.00 was transferred from Mr Wang Xiaobo's account with Chiyu Banking Corporation Ltd to Mr Vincent Sze's account with the same bank. Mr Wang Xiaobo had accompanied him to the bank to make the transfer. That amount of money was made up of the entire

loan from Mr Jiang Qingxin and $25.5 million of the $28 million loan from Mr Wang Chao. In respect of the latter tranche, he was unaware that a substantial part of the monies had their origin in the payment on 18 January 2008 of $230 million to the account of Allan Ip & Co by China Water.

190. On 11 June 2008, $1.5 million in cash was deposited into Mr Vincent Sze's account, which money was the balance due under the loan less the handling fee. Mr Vincent Sze said that he had spoken to Mr Wang Xiaobo, not Mr Wang Chao, about the initial shortfall in the payment of the monies due under the $28 million loan agreement. He had been told simply that it would be given to him later. Subsequently, the latter had come into his office at China Water and presented him with a bag containing $1.5 million in cash, made up of different denominations.

Repayment of monies by Mr Wang Chao to Mr Vincent Sze

191. Mr Vincent Sze said that in the period July to September 2008 Mr Wang Chao had made repayment to him in four tranches of a total outstanding loan of $4,080,000.00 that he had made to Mr Wang Chao in 2007:

(i) 18 July 2008 - $600,000.00;

(ii) 31 July 2008 - $1.5 million;

(iii) 8 September 2008 - $480,000.00; and in

(iv) 25 September 2008 - $1.5 million.

Provenance and disbursement of those monies

Payments through the account in the name of Ms Qu Min Hui

192. Mr Vincent Sze accepted that the $1.5 million payment of 25 September 2008 was a cheque drawn on the account of Mr Wang Xiaobo, which monies funded a payment drawn on his own account to President Securities in the same amount on 29 September 2008. Mr Wang Chao was the ultimate provenance of a substantial part of those monies by way of a cheque dated 2 July 2008 in the sum of $5.21 million in favour of Ms Qu Min Hui drawn on First Shanghai and debited to his account with First Shanghai. On the same date, as an authorised signature of the account of Ms Wang Li Na with First Shanghai, Mr Wang Chao directed the payment of $3.5 million, debited to that account, in favour of Ms Qu Min Hui. In turn, payments of $1.5 million and $6 million were made from the account of Ms Qu Min Hui to the account of Mr Wang Xiaobo on 14 July and 18 September 2008 respectively. By a cheque dated 31 July 2008 drawn on the account of Ms Qu Min Hui $1.5 million was deposited into the account of Mr Vincent Sze.

193. Similarly, the $1.5 million in cash received from Mr Wang Xiaobo and deposited into his account on 11 June 2008 was the provenance of the payment of $700,000.00 made by a cheque drawn on his account to President Securities dated 16 July 2008.

194. It is to be noted that the ‘repayment’ of $600,000.00 on 18 July 2008 was funded by withdrawal from a Fixed Deposit in the account of Mr Vincent Sze, which had been created following the deposit of $77,514,865.00 from the

account of Mr Wang Xiaobo on 9 May 2008. By a cheque, dated 23 July 2008, $500,000.00 of those monies was paid to President Securities. By a cheque, dated 8 September 2008, drawn on the account of Mr Wang Xiaobo, $480,000.00 was deposited in to Mr Vincent Sze's account. On the same day $400,000.00 of those monies was paid to Partners Capital. [**Appendix 9**]

The costs of the General Offer

195. The acceptance by minority shareholders of the mandatory general offer made by Asian Gold Dragon incurred costs in its account with President Securities of over $59 million. As required under the facility agreement, Asian Gold Dragon deposited over 245 million ABC shares with President Securities as collateral on 27 August 2008.

Repayment of monies due to Mr Wang Chao from Mr Vincent Sze

(i) Repayment of the $500,000.00 deposit made on 19 February 2008 by the cheque drawn on the account of Easygold

196. Mr Vincent Sze said that a deposit to his account on 21 May 2008 of $499,990.00 represented repayment of the deposit made on 19 February 2008 by the cheque drawn on the account Easygold. He said that he had made repayment to Mr Wang Chao at his direction in cash in two tranches : $150,000.00 and $350,000.00, on respectively 16 and 24 June 2008. He pointed to withdrawals from his savings account of those sums of money on those dates as supporting that contention.

(ii) Repayment of the $46 million and $28 million loans, plus interest

197. Mr Vincent Sze said that by a letter, dated 10 May 2009, Mr Wang Chao demanded repayment of $90.25 million, said to be in the principal amount of the two loans, namely $46 million and $28 million, and interest due thereunder. By letter dated 31 May 2009, Mr Wang Chao demanded payment of the monies due to him, in the equivalent amount in RMB, to be made to a bank account with Ping An Bank in the name of Shenzhen National Security Police Equipment Supplies Company Limited.

198. By a placing agreement dated 26 May 2009 Asian Gold Dragon agreed to sell 93,376,000 ABC shares to Rising Step Holdings Limited at $0.9775 per share. On 8 June 2009, Mr Vincent Sze caused Asian Gold Dragon to transfer those shares to Rising Step. As requested by Mr Vincent Sze, Rising Step made payment of the monies paid for the purchase of those shares to the account of Shenzhen National Security Police Equipment Supplies Company Limited with Ping An Bank on and between 11 and 15 June 2009. By a receipt dated 18 June 2009, Mr Wang Chao acknowledged payment of 80,504,580 RMB being 'loan principal and interest'.

Repayment of monies due to President Securities

199. The total cost of Asian Gold Dragon's mandatory General Offer as debited to their account with President Securities was over $59 million. Mr Vincent Sze said that a cheque drawn on his personal account for $1.5 million was the first of the repayments made for their liability. On 22 October 2008, over 40 million ABC shares obtained in the General Offer were placed by

President Securities on Asian Gold Dragon's behalf, yielding over $42.5 million in proceeds, and thereby restoring public ownership of at least 25% of the issued share capital of ABC. On 23 December 2008, on Mr Vincent Sze's instructions, Sunsing Co transferred by multiple payments a total of $23.9 million to President Securities to reduce the indebtedness of Asian Gold Dragon. Those monies were a loan obtained from that company by Mr Vincent Sze. Finally, President Securities were authorised to use the collateral of $20 million deposited in May 2008 to settle all the remaining indebtedness of Asian Gold Dragon to President Securities.

Non-repayment of monies due to Mr Jiang Qing Xin

200. Mr Vincent Sze testified that none of the principal or interest due under the loan agreement with Mr Jiang Qingxin, all of which was long overdue, had been repaid notwithstanding his request for payment. He had telephone conversations with Mr Jiang and he had travelled to Shanxi province to meet him. He had explained to him that the situation was very grave and that after he had handled the matters with which he was now engaged he would repay him the money. His first contact with him about the issue of repayment had been at about the time of the commencement of these proceedings, namely the middle of 2010. He had last been in contact with him within the last 1½ months, namely in June 2011. However, he had not asked Mr Jiang to provide him with proof of the provenance of the monies lent to him nor had he invited him to make himself available to this Tribunal. He was not permitted to talk to others about these proceedings.

Expert evidence

Ms Stella Fung

201. The Tribunal received the evidence of Ms Stella Fung as that of an expert witness. She is a director of the Enforcement Division of the SFC, which organisation she joined in 2000, and a Chartered Financial Analyst charterholder. She has been a member of the Association for Investment Management and Research and of the Hong Kong Securities Institute since 1998 and 1999 respectively. She holds a Master's Degree of Science in Finance awarded by the Chinese University of Hong Kong. Prior to joining the SFC she worked for four years as a fund manager, having worked earlier for five years as an economic/equity research analyst for various brokerage firms in Hong Kong. Her evidence has been received as that of an expert in other proceedings before the Insider Dealing Tribunal and the Market Misconduct Tribunal.

'Relevant information'

202. She was asked to express an opinion as to whether or not the information contained in either or both of two announcements made by ABC constituted 'relevant information' prior to the announcement of the information to the public. Those announcements were the ones made on 29 April and 30 May 2008. To put the information contained in those announcements in context she had regard to information available to the public, in particular in announcements of ABC and in newspapers.

Background of ABC

203. Ms Stella Fung noted that in 2008 ABC was principally engaged in the business of providing financial information services, wireless applications development, securities trading system licensing, property and investment holding. The controlling shareholder of ABC was HCBC Communications, which owned 52.59% of ABC's issued share capital. HCBC Enterprises Limited, which controlled 100% of the voting rights of HCBC, was also interested in 4.24% of ABC share capital. Mr George Ho, the Chairman of ABC, indirectly controlled 85% of the voting rights of HCBC Enterprises Limited.

Proposed privatization - April 2007

204. On 16 April 2007, HCBC Enterprises Limited announced the proposed privatisation of ABC by way of voluntary conditional general cash offer at $0.58 per share, which represented a premium of 19.59% over the last closing price of $0.485 on 30 March 2007, which was the last trading day prior to the suspension of trading in the shares. The offer price represented a premium of 24.2% over the average closing price of the 10 trading days prior to 30 March 2007. On the other hand, it was a discount of approximately 6.75% to the unaudited consolidated net asset value per share of approximately $0.622 as at 30 September 2006.

205. At that time, HCBC Enterprises Limited and its concert parties held 61.43% of the issued share capital of ABC. The offer was conditional on the offeror, which included HCBC Communications and Mr George Ho, receiving

at least 90% acceptances from the holders of the disinterested shares, in which event it was intended to acquire the remaining shares by way of compulsion and to withdraw the listing of the company from the Stock Exchange.

Documents provided to ABC's shareholders

206. On 11 June 2007, the 'Offer' document was dispatched to shareholders, following which further information was provided by a document, dated 18 July 2007, which included letters from the Board of ABC, the Independent Board Committee and OSK Asia Capital Limited, independent Financial Adviser to the Independent Board Committee. An appendix to the document addressed in detail the topic of 'Financial Information relating to the Company'. The audited net asset value for the year ended 31 March 2007 was stated to be $0.681 per share. On 1 August 2007, the condition of acceptance by at least 90% of the shareholders not having been met, the offer lapsed.

December 2007 : ABC's interim report

207. The interim report for 2007-2008 of ABC, dated 13 December 2007, announced an unaudited profit for the six-month period up to 30 September 2007 of $3,258,050.00. As at that date the unaudited net asset value of the shares of the company was $0.651 per share. It had cash on hand equivalent to $0.132 per share.

29 April 2008 Announcement

208. After the market closed on 29 April 2008, ABC announced :

> "The Board was informed by HCBC Communications (International) Ltd, the controlling shareholder of the Company being interested in 245,523,600

> shares representing approximately 52.59% of total issued share capital company, that it is in negotiation with an independent third party in respect of a possible sale and purchase of its controlling shareholding of the Company. However, the terms of the sale and purchase have yet to be finalised and is as uncertain as to whether the negotiation will lead to a binding agreement.”.

Trading in ABC shares

209. Ms Stella Fung noted that ABC was not an actively traded stock. In the period 3 March to 25 April 2008, the average daily turnover was 248,432 shares or $144,165.00 only, whilst the closing share price moved in a range of $0.50 to $0.62. On 28 April 2008, the share price suddenly surged 11.3% to close at $0.69 with increased turnover of over 1.7 million shares. On 29 April 2008, the share price surged another 18.8% to close at $0.82 with a heavy turnover of 24.5 million shares and $20.6 million in value. [**Appendix 10**]

30 May 2008 Announcement

(i) Acquisition of ABC shares at $0.3992 per share

210. In a Joint Announcement, of Asian Gold Dragon and ABC on 30 May 2008 it was announced that on 2 May 2008 Asian Gold Dragon had entered into a Sale and Purchase Agreement with HCBC Communications pursuant to which Asian Gold Dragon conditionally agreed to acquire, and HCBC Communications conditionally agreed to dispose of 52.59% of the issued share capital of ABC at an aggregate cash consideration of $98,014,865.00, which was equivalent to approximately $0.3992 per share.

(ii) Disposal Agreement : special dividend of $0.5866 per ABC share

211. Also, it was announced that on the same date, ABC had entered into a Disposal Agreement to dispose of the entire issued share capital of ABC Global Limited to HCBC Enterprises Limited at an aggregate cash consideration of $252,300,000.00, completion of which was to take place simultaneously with the share purchase agreement. Further, it was stated that ABC would apply the proceeds under the Disposal Agreement and surplus cash of the company for a special dividend to be made to all existing shareholders, which in total amounted to $273,868,476.00 and which was equivalent to approximately $0.5866 per share in cash.

Public information

212. Ms Stella Fung said that prior to the publication of the 29 April 2008 announcement she was unable to find any newspaper article in the database of Wisesearch that mentioned a possible change in controlling shareholder of ABC. There was no newspaper article about ABC after the company had announced its 2008 interim results on 13 December 2007. Furthermore, a search of both Thomson Research and Bloomberg produced no results for any such research report from brokerage houses about ABC during the relevant time.

29 April 2008 Announcement

213. Ms Stella Fung said that rule 26 of the Takeover Code was relevant to the 29 April 2008 ABC announcement, that HCBC Communications was negotiating with an independent third party in respect of a possible sale of its 52.59% of the shares of the ABC. Rule 26 provides that when a purchaser

acquires 30% or more of the voting rights of the company from its existing controlling shareholder it is required to make a general offer to all other shareholders. The offer must be at a price not less than the highest price paid by the offeror, or any person acting in concert with it, within six months prior to the announcement. Ms Stella Fung said that it followed that if such a purchaser agreed to buy the controlling interest in ABC from HCBC Communications at a price higher than the prevailing market price, the minority shareholders of ABC would also benefit from the transaction, as they could also sell their shares to the purchaser at the same price during the offer period.

Control of a company

214. Ms Stella Fung said that control of a company confers value. Shareholders holding a controlling interest can determine the nature of the business, select the management, decide the amount of distributions and so on. A potential buyer may determine to pay a premium for such a controlling interest. A 'control premium' is the amount above the preannouncement share price and acquiror pays for the controlling interest in the target company. However, depending on the circumstances of the seller or other factors it is not always the case that the buyer is required to pay a control premium.

215. In her opinion, a person who possessed the mere and knowledge of a possible change in controlling shareholder of ABC, without knowledge of the transaction price or the background of the acquirer, might not be sure if the reaction of the market to the information would affect the price of ABC positively or negatively. As a result, it was her opinion that knowledge of the

information contained in the 29 April 2008 announcement by ABC, although not generally known, would not lead to the conclusion that it would necessarily lead to a material change in its share price when it became known to the investing public. Accordingly, in her opinion it did not constitute 'relevant information'.

The 30 May 2008 Announcement

216. Of the information contained in the 30 May 2008 announcement, Ms Stella Fung noted that in agreeing to buy 52.59% of the shares of ABC held by HCBC Communications at $0.3992 per share Asian Gold Dragon was required to make a general offer to minority shareholders at the same price. Also, all shareholders would benefit from the proposed special dividend of $0.5866 per share. The total benefit to be received by shareholders, if they accepted the offer, was the sum of those two amounts of money, namely $ 0.9858 per share.

Public information

217. Ms Stella Fung noted that, having searched through Wisenews in the period 1 January to 30 April 2008, there were no newspaper articles mentioning the possible offer price or the distribution of a special dividend. In consequence, it was her opinion that the information in that respect contained in the 30 May 2008 announcement was not generally known to the investing public before trading in the shares of ABC were suspended on 2 May 2008.

The benefit of the offer to shareholders

218. Ms Stella Fung noted that the total benefit to shareholders of the offer price for each share and the special dividend amounted to a premium of 20.2%

over the closing price on the last day on which ABC shares had been traded, namely 30 April 2008. In particular, $0.9858 per ABC share represented the guaranteed price at which minority shareholders could sell their shares. In her opinion, anyone in possession of that information would expect the price of ABC shares to increase to close to that level when such information was made public. In fact, upon release of the information, ABC shares were immediately re-rated upwards to close at $1.00 on 2 June 2008. That represented a 22% increase on the pre-suspension closing price.

Conclusion

219. In the result, Ms Stella Fung was of the opinion that the information contained in the 30 May 2008 announcement constituted 'relevant information' that was not generally known before publication, but which would lead to a significant upward re-rating of the share price when such information was released to the investing public.

Profit gained

220. At the request of the Tribunal, Ms Stella Fung expressed her opinion as to the profit made in respect of ABC shares in the account in the name of Mr Guo Ai Wen with First Shanghai. In doing so, she applied the following methodology, on the basis that all ABC shares held in that account were bought after the acquisition of relevant information :

(i) if sales were before publication of that relevant information, the actual realised profit;

(ii) if sales were after publication of that relevant information but before it had been fully digested by the market so that the price had been re-rated, at the actual profit realized; and

(iii) if there were no sales after the market price of ABC shares had been re-rated, as in (ii), on the basis of a 'notional profit' calculated on the difference between the purchase price of the shares and the value of those shares as measured by the re-rated price of ABC shares for a reasonable period after public dissemination of the relevant information.

As to (iii) : the period of re-rating

221. Ms Stella Fung said that Hong Kong was regarded as a mature market in which investors usually react quickly to any information that may have an effect on the share price. She noted that on the day that trading in ABC shares resumed, 2 June 2008, the share price increased to close up 22% at $1.00 per share, with a turnover of 47.4 million shares ($51.56 million) compared with a daily average turnover of 2.2 million shares ($1.8 million) in April 2008. On 3 June 2008, the closing price of ABC shares was 1% lower, at $0.99 per share with a substantially reduced turnover of 11.1 million shares ($11.1 million). On the 4 June 2008, the share price edged down another 1% to close at $0.98 per share, whilst turnover increased slightly to 13 million shares ($13.3 million).

222. Having noted that the announcement published on 30 May 2008 had been widely reported in newspapers on 31 May and 2 June 2008, it was Ms Stella Fung's opinion that the market had absorbed and digested that information

before trading resumed on 2 June 2008. In consequence, she determined that it was appropriate to take the average traded price of ABC shares traded on 2 June 2008, namely $1.0868 per share, as the re-rated trading price after full dissemination of the relevant information.

Purchase of ABC shares in the account in the name of Mr Guo Ai Wen

223. On and between 31 March and 30 April 2008 4,708,000 ABC shares were purchased in the account in the name of Mr Guo Ai Wen at an average cost of $0.7234 per share.

Sale of ABC shares in the account in the name of Mr Guo Ai Wen

224. 12,000 and 80,000 ABC shares held in the account in the name of Mr Guo Ai Wen were sold on 29 and 30 April 2008 respectively, for a total of $82,576.00 or an average selling price of $0.8977 per share. On 2 June 2008, 200,000 shares were sold in that account at $1.06 per share. Accordingly, at the close of business on to June 2008 the account held 4,416,000 ABC shares.

Profit

225. Ms Stella Fung calculated that the actual and notional profit made in respect of the ABC shares held in the account was:

(i) *actual profit*

the actual profit made by the sale of 292,000 ABC shares was $123,809.00;

(ii) *notional profit*

the notional profit was calculated to be $1,546,146.00.

Accordingly, in her opinion of the total profit made was $1,669,955.00.

CHAPTER 4

A CONSIDERATION OF THE MATERIAL RECEIVED BY THE TRIBUNAL

Section 252(6) of the Ordinance : a reasonable opportunity of being heard

(i) Mr Wang Chao : detained in custody in Hainan

226. The Tribunal received a record of interview conducted of Mr Wang Chao by Mr Chan Tak Ching on 20 July 2010. The interview was conducted in the Number 1 Detention Centre of the Haikou Public Security Bureau in Haikou City, Hainan where Mr Wang Chao was detained in custody pending trial. As Mr Wang Chao accepted in his record of interview, and as Mr Chan Tak Ching asserted in his statutory declaration dated 27 July 2010, a considerable body of documentation relevant to these proceedings were served upon Mr Wang Chao on that date. In particular, included in the documentation was :

- a copy of the Financial Secretary's Notice dated 9 April 2010;
- a Summary of Facts and a list of prospective witnesses dated 27 April 2010;
- a Notice issued by the Tribunal to Mr Wang Chao dated 11 June 2010 pursuant to section 253(1)(b) of the Ordinance, requiring him to attend the proceedings and give evidence;
- lists of documentary exhibits and seven box files of documentary material, including records of interviews, statements and correspondence from and on behalf of witnesses, whether or not they would be called to give oral evidence, together with documentary exhibits.

227. In his record of interview, Mr Wang Chao asserted :

> "I am willing to cooperate in this hearing investigation, or (I) may retain Hong Kong lawyers to represent me. But since I am now involved in the Hainan criminal case, I am unable to attend. Neither can I retain a lawyer. I hope that I can attend this hearing in time upon the conclusion of the Hainan case.".

At the specific request of Mr Chan Tak Ching, Mr Wang Chao provided an address in the Jinan City, Shandong Province and telephone numbers to facilitate future communication.

228. Throughout the proceedings, until 20 July 2011, the Presenting Officer caused copies of the documentation received by the Tribunal to be sent to Mr Wang Chao at Number 1 Detention Centre of the Haikou Public Security Bureau.

12 April 2011 : Mr Wang Chao's release from custody

229. On 20 July 2011, the Tribunal was informed by the Presenting Officer, that Mr Chan Tak Ching had been in contact on 19 July 2011 by telephone with the Public Security Bureau in Hainan in relation to Mr Wang Chao's current status. He was advised that Mr Wang Chao had been released from custody on 12 April 2011. At Mr Chan Tak Ching's request, he was supplied by e-mail with a copy of the judgment of the Hai Kou Shi People's Court of 21 March 2011 in respect of Mr Wang Chao. It stated that, having been convicted of aiding and abetting forgery to assist Mr Hung Xing, a person under investigation, Mr Wang Chao was sentenced to 11 months imprisonment. The forged

documents included loan agreement, contracts and payment notices. The period of his incarceration was stated to be from 13 May 2010 to 12 April 2011.

230. At the request of the Tribunal, following its receipt of information that Mr Wang Chao had been released from custody, attempts have been made to make contact with Mr Wang Chao at the address and telephone numbers that he provided to Mr Chan Tak Ching.

231. Given that Mr Wang Chao stated in terms in his record of interview of 20 July 2010 that he was willing to cooperate with these proceedings, but that he was unable to attend or instruct a lawyer to act on his behalf because of the criminal proceedings brought against him in Hainan, we are satisfied that, at least until his release from custody on 12 April 2011 he was not in a position to comply with the notice issued by the Tribunal to return to attend and participate in these proceedings and give oral evidence. We do not have sufficient information to determine whether or not Mr Wang Chao was in a position to instruct lawyers to act on his behalf in these proceedings in his absence. Clearly, the obvious logistical difficulties would have been a considerable barrier to taking that course. By a statement dated 17 August 2011 Dr Richard Chow of the SFC informed the Tribunal that representatives of the China State Regulatory Commission informed him by telephone on 15 August 2011 that contact had been made with a person who claimed to be Mr Wang Chao's brother at his residential address in Jinan City and that they had been informed that Mr Wang Chao was sick and recuperating in Xinjiang.

232. Whilst we are satisfied that, from the ongoing receipt of copies of the material received by the Tribunal during these proceedings, Mr Wang Chao would have been aware at the date of his release that these proceedings were still under way we have limited information as to Mr Wang Chao's current whereabouts or status.

233. In all the circumstances, we are satisfied that, from circumstances beyond the control of the Tribunal Mr Wang Chao was not afforded " ... a reasonable opportunity to be heard", as required by section 252(6) of the Ordinance. Accordingly, in consequence the Tribunal is precluded from identifying him, pursuant to section 252(3)(b) of the Ordinance, as a person who has engaged in market misconduct.

(ii) Mr Guo Ai Wen

234. As noted earlier, Mr Guo Ai Wen was interviewed at some length on 9 December 2008 by an officer of the SFC in respect of the matters that are the subject of the Financial Secretary's Notice and these proceedings. In his statutory declaration, dated 27 July 2010, Mr Chan Tak Ching described a telephone conversation that he initiated with Mr Guo Ai Wen on 16 July 2010. The latter confirmed that he had received documentation sent to him in relation to the proceedings before this Tribunal. However, Mr Guo Ai Wen said that he would not attend these proceedings, which were to commence on 29 July 2010 nor would he engage a legal representative to represent him. He had explained matters in his record of interview and had nothing to add.

235. In the result, we are satisfied that Mr Guo Ai Wen has been given ‘a reasonable opportunity of being heard’ in these proceedings. Accordingly, it is open to the Tribunal, if appropriate, to identify him pursuant to section 252(3)(b) of the Ordinance as a person who has engaged in market misconduct.

Mr Wang Chao’s role in the opening and operation of the account in the name of Mr Guo Ai Wen at First Shanghai

236. We accept that the account in the name of Mr Guo Ai Wen at First Shanghai was opened at the behest of Mr Wang Chao. There is no dispute that the description of Mr Guo Ai Wen’s occupation, namely as being the manager of Shenzhen Fang Ke Investment Company, was false. Clearly, Mr Wang Chao directed the two payments of a total of $12,145,000.00 be paid into that account from Easygold on 26 July and 3 August 2007. Mr Wang Chao controlled Easygold.

237. There is no dispute that Mr Wang Chao directed the acquisition of China Water shares to approximately that sum of money in the account in the name of Mr Guo Ai Wen on 2 and 3 August 2007. Those monies came from China Water via the account of Johnny K K Leung & Co. The explanation advanced by Mr Su Li Xiang that the shares were held in that account in his name as security against a loan of $35 million that he made to Mr Wang Chao is bizarre. The so-called ‘security’ was acquired with about one third of the loan monies themselves. The significance of that arrangement was that the shares acquired by Mr Wang Chao were held, not in an account in his name, but in that of a third-party. Furthermore, it was nowhere apparent on the ‘loan’

documentation that the provenance of the monies so advanced was China Water itself. Our deep scepticism as to the validity of the underlying transaction of a loan to Mr Wang Chao is fortified in light of the conviction in Hainan of both Mr Wang Chao and Mr Su Li Xiang in respect of the use of false documentation, including loan document, to mislead the authorities.

The sale of China Water shares and the purchase of ABC shares

238. Following the acquisition of China Water shares by Mr Wang Chao in the account in the name of Mr Guo Ai Wen on 2 and 3 August 2007 no activity took place until 25 March 2008 when the first of the sales of tranches of China Water shares began. The first purchase of ABC shares took place on 31 March 2008 and was funded by the proceeds of sale of China Water shares. The pattern of the sale of China Water shares and the purchase of ABC shares in that account continued until 5 May 2008. [Appendices 2 and 3]

239. In approaching a consideration of Mr Guo Ai Wen's explanation that he had determined to buy ABC shares in the account in his name with First Shanghai and had done so online we have regard to the fact that he has not participated in these proceedings or been subjected to oral examination. On the other hand, we note his admission that in opening that account he had provided a false description of his occupation. Moreover, that he had done so at the behest of Mr Wang Chao. We reject as wholly untrue, his explanation that he had done so because he had read some positive news in respect of ABC on the First Shanghai website. There was no such information published on that website. Also, of relevance is the fact that Mr Guo Ai Wen admitted to the SFC that he

did not trade in shares in the Mainland. Why would he decide to do so in Hong Kong? Why would he decide to do so eight months after the ABC shares had lain untouched in the account? Mr Guo Ai Wen lied to both First Shanghai and the SFC. His lie to the SFC in his record of interview was made against the positive assertion and understanding :

> "The contents of this statement is true and correct to the best of my knowledge and belief. I understand that I may be prosecuted if I have intentionally made any statement that is false or that I do not believe to be true.".

240. On any view, the ABC shares held in the account in the name of Mr Guo Ai Wen belonged to Mr Wang Chao. It is to be noted that when the final tranche of ABC shares was sold in September 2009 the accumulated total of monies in that account was transferred to Mr Wang Chao's account with First Shanghai.

Conclusion as to Mr Guo Ai Wen

241. In the result, we are sure that, whether or not he did so online directly or indirectly through Mr Guo Ai Wen, the orders to sell the China Water shares in the account in the name of Mr Guo Ai Wen and to buy ABC shares came from Mr Wang Chao. Throughout, he controlled that account. We are satisfied that Mr Guo Ai Wen's role was merely that of a nominee, concealing the fact that the beneficial owner of the shares was Mr Wang Chao. In those circumstances, even if the ABC shares were bought as a result of orders placed by Mr Guo Ai Wen, albeit at the direction of Mr Wang Chao, there was no need for the latter to give him the relevant information in relation to ABC. There was no evidence that he did so.

Was the information in the Joint Announcement of 30 May 2008 relevant information?

(i) Was it specific?

242. We accept the opinion of Ms Stella Fung that the information contained in the Joint Announcement of ABC and Asian Gold Dragon dated 30 May 2008 contained relevant information, in particular specific information. The specific information was the fact of an agreement between the companies for the latter to acquire from HCBC Communications it's 52.59% holding of shares in ABC at the equivalent of $0.3992 per share, together with the related announcement that ABC would declare a special dividend of $273,868,476.00, the equivalent of $0.5866 per ABC share. Further, as required under the Takeovers Code, Asian Gold Dragon would make a mandatory unconditional offer to acquire all ABC shares at the same price as agreed with HCBC Communications. The sum of those two amounts of money, namely $0.9858 represented the guaranteed price at which shareholders could sell their shares. We accept her opinion that those possessed of that information prior to its publication would expect the price of ABC shares to increase to close to that level where that information was released to the public.

(ii) Was it not generally known to the public?

243. There is no dispute that in the period of five months up to the date of the Joint Announcement on 30 May 2008 there was no mention in any newspaper article of the possible offer, the offer price or the distribution of a special dividend.

244. We reject the submission made on behalf of Mr Vincent Sze, but not put to Ms Stella Fung, that from information available to the market an informed investor would be able to work out the value of ABC and therefore that a reasonable offer price for each shares was about $1.00 per share. It was submitted that from the attempted privatisation in the period April to August 2007 it was apparent that HCBC Communications intended to sell its interest. The unaudited net asset value of ABC as at 30 September 2007 was known from the interim report of ABC published on 13 December 2007. The proposal made by CIMB to HCBC Communications on behalf of its clients in October 2007 and March 2008 gave valuations that were close to that accepted between Asian Gold Dragon and HCBC Communications.

245. We accept Ms Stella Fung's opinion that the share price offer and the distribution of a special dividend was not generally known to those persons who were accustomed or would be likely to deal in the shares of ABC. Crucially, those accustomed or likely to deal in ABC shares did not know, as did Mr Vincent Sze in March 2008, that there was a substantial commercial reality to the negotiations underway between Asian Gold Dragon and HCBC Communications.

(iii) Likely to materially affect the price of ABC shares?

246. We accept Ms Stella Fung's evidence that knowledge in those persons who were accustomed or would be likely to deal in the shares of ABC of the share price offer and the special dividend distribution would materially affect the

price of ABC shares and that they would be re-rated upwards, close to the total benefit that would be available to shareholders, namely $0.9858 per share.

Did Mr Vincent Sze possess 'relevant information' in respect of ABC at the end of March and throughout April 2008?

247. In addressing the issue of whether or not Mr Vincent Sze was possessed of that relevant information in the period from the end of March and throughout April 2008, regard must be had, in particular, to the nature of the information of which he was possessed.

248. We accept Mr Andy Cheung's evidence that throughout the negotiations that he conducted on behalf of Mr Vincent Sze for the acquisition of a controlling shareholding in ABC that he passed on to Mr Vincent Sze all information of the details and status of those negotiations. In particular, that at the outset Mr Vincent Sze had been told of the proposed structure of the deal, namely that it would involve an asset buyback by HCBC Communications, distribution of the sales proceeds and surplus cash by way of a special dividend, followed by the acquisition of ABC shares on an ex-dividend basis. Throughout the negotiations the premium placed on the status of ABC as a listed company remained close to $180 million. Similarly, the overall quantum of the special dividend did not vary much. In the proposed structure dated 20 March 2008 that Mr Andy Cheung sent to Mr Lawrence Chan the special dividend was described as being $277.3 million. In the Joint Announcement of 30 May 2008 it was stipulated to be $273,868,476.00.

249. The Tribunal is mindful of the Chairman's direction that to constitute specific information it is not required that all particulars or details of the transaction be known precisely. However, matters must have moved beyond vague hopes or wishful thinking and have reached the stage where there is a substantial commercial reality to negotiations, which must have reached a stage where the parties have an intent to achieve an identifiable goal. In that regard, it has paid close attention to the chronology of events as negotiations developed.

250. The payment of $500,000.00 on 19 February 2008 to Stephenson Harwood & Lo on a cheque drawn on Easygold represented a forfeitable deposit. The deposit was to be forfeited if agreement was not reached between the parties by 30 April 2008. Although Mr Lawrence Chan was told on 19 February 2008 that the corporate vehicle to be used in the acquisition was Virtue Dragon, it is to be noted that on 14 March 2008 Asian Gold Dragon was incorporated and 85 shares allotted to Mr Vincent Sze and 15 shares to Mr Lin Qun. On 28 March 2008, agreement was reached between Mr Andy Cheung and Mr Lawrence Chan that the buyer's side would bear the cost of $50,000.00 of a Chinese translation of the Sale and Purchase Agreement of the listed shares. On 2 April 2008, Ms Anita Yu of HCBC Communications asked Mr Andy Cheung to arrange for the buyer to prepare a cashier's order of $24 million in favour of Stephenson Harwood & Lo to be deposited in an escrow account.

251. It is to be noted that even on Mr Vincent Sze's account he was negotiating with Mr Wang Chao and Mr Jiang Qing Xinfor loans in late March/early April. He said that he asked Mr Jiang for the loan in early April.

252. By the middle of March 2008, both parties were working towards their mutual goal and that there was a substantial commercial reality to their negotiations. The fact that on 28 March 2008 the buyer's side said that it was prepared to pay for the cost of translating the Sale and Purchase of the shares agreement into Chinese and that within several days Stephenson Harwood & Lo were asking for a cashier's order in the sum of $24 million is significantly indicative of evidence of the fact that both parties expected the deal to go through.

253. Accordingly, we are satisfied that at the end of March, in particular at the time of the first purchase of ABC shares in the account in the name Mr Guo Ai Wen on 31 March 2008, Mr Vincent Sze was in possession of the relevant information in respect of ABC.

Did Mr Vincent Sze know that the information that he was contemplating a takeover of ABC was 'relevant information' in relation to ABC?

254. It is to be noted that the 'Confidentiality undertaking in favour of HCBC Communications', that Mr Vincent Sze signed on 19 February 2008 and gave Mr Lawrence Chan, addressed specifically the confidential nature of the information to be provided to Mr Vincent Sze in relation to the 'company and the Proposal'. Of course, the proposal was the acquisition of HCBC Communications' controlling interest in ABC. In particular, Mr Vincent Sze acknowledged :

> "That some or all of the confidential information is or may be price sensitive information and that the use of such information may be regulated or prohibited by applicable legislation relating to 'insider dealing'. We

> hereby undertake not to use any confidential information for any unlawful purposes.”.

255. Of course, it is to be remembered that at the material time Mr Vincent Sze was the Deputy Managing director of China Water, a company listed on the Stock Exchange of Hong Kong and involved in a number of acquisitions. We are sure that he knew that he knew that the information he possessed in respect of the takeover of ABC was relevant information.

Did Mr Vincent Sze disclose that ‘relevant information’ to Mr Wang Chao?

Did Mr Wang Chao possess ‘relevant information’?

256. In addressing the question of whether Mr Vincent Sze disclosed the relevant information, which we are satisfied that he possessed at the end of March 2008, to Mr Wang Chao it is useful first to approach the matter from Mr Wang Chao’s position. The China Water shares acquired in the account in the name of Mr Guo Ai Wen with First Shanghai had remained there untouched for seven to eight months before they were sold in tranches and the monies used to purchase ABC shares. There is no doubt that Mr Wang Chao was the provenance of a substantial part of the monies used to acquire ABC shares for Asian Gold Dragon and to defray the related expenses of the acquisition and the making of the general offer by Asian Gold Dragon. Easygold, a company controlled by Mr Wang Chao was the immediate source of much of those monies, including the forfeitable deposit of $500,000.00 paid on 19 February 2008.

257. However, purchases of ABC shares for the account in the name of Mr Guo Ai Wen at the direction of Mr Wang Chao were not made until 31 March 2008. By that date, we are satisfied that relevant information was in existence. Although Mr Wang Chao has not had a reasonable opportunity of being heard by the Tribunal in these proceedings, so that the Tribunal cannot identify him pursuant to section 252(3)(b) as having engaged in market misconduct, *for purposes of considering the the case of Mr Vincent Sze only,* we are satisfied that the purchase of ABC shares in the account in the name of Mr Guo Ai Wen was ordered by Mr Wang Chao because he was possessed of the relevant information.

258. The issue to address next is whether Mr Vincent Sze disclosed that relevant information to Mr Wang Chao. Highly relevant to that issue is the relationship between the two men. The nature of the relationship is evidenced by both the surrounding circumstances and by events that are directly related to the funding of the takeover of ABC by Asian Gold Dragon.

Surrounding circumstances

259. There is no dispute that Mr Vincent Sze played a prominent role in the extraordinarily favourable treatment meted out to Mr Vico Hui by China Water. In his turn, Mr Vico Hui played a critical role in the flow of funding to Mr Wang Chao, through whom monies were made available to Mr Vincent Sze to fund the acquisition of a controlling interest in ABC and to defray related expenses.

260. We are satisfied that Mr Wang Chao, through Moral Swarm Group Limited, had an interest in Chinese Water. However, when Chinese Water's interest in Jinan Hong Quan Water was sold to Blue Mountain in March 2008, no profit was made by Moral Swarm. The purchase price of $47.7 million was the same as the investment said to have been made by Chinese Water in the joint-venture. It is to be noted that Mr Vico Hui was unable to substantiate in any way whatsoever his claim that he had caused payment of that money to be made to Chinese Water. Having claimed that the payments were made in cash he was unable to identify by whom the payments were made let alone produce anything that evidenced a withdrawal of monies to fund those payments. Similarly, he was unable to produce a receipt acknowledging payment by Chinese Water. However, as Mr Marash has pointed out, one consequence of the transfer of the interest in Jinan Hong Quan Water to Blue Mountain, was to remove any readily identifiable connection with that interest of Mr Wang Chao.

261. On the other hand, profit was made by Mega Mount when, on 26 November 2007, it agreed to sell and did sell its interest through Blue Mountain in Jinan Hong Quan Water for $230 million. We are sure that the subsequent flow of monies at the direction of Mr Vico Hui to the control of Mr Wang Chao is connected and related to those transactions. We are satisfied that Mr Wang Chao had an interest in the holding that, firstly Chinese Water and, secondly Blue Mountain had in Jinan Hong Quan Water. We reject Mr Vico Hui's evidence that the monies that he directed to Mr Wang Chao were 'loans'. He was unable to produce or point to any evidence that he supported that claim. We are satisfied that the payments were of monies due to Mr Wang Chao in

respect of his interest in Jinan Hong Quan Water. Also, we note that although Mr Vico Hui claimed that all the 'loans' had been repaid, he went on to say that had been in cash. Needless to say, he was unable to substantiate the claim with any documentation whatsoever.

262. The favourable treatment afforded to Mr Vico Hui by China Water, in which Mr Vincent Sze played a prominent role, includes the advances of $35 million and $32 million made to Mr Vico Hui in October and November 2007 on an effectively unsecured and interest-free basis. Even when he was in default of repayment in respect of the advance of $32 million by his failure to repay China Water shortly before Christmas 2007, no effective steps were taken to secure repayment. Needless to say, the monies were never used in any way for the benefit of China Water. They were used, and used immediately, at the direction of Mr Vico Hui to benefit others, including Mr Carson Yeung, whom Mr Vico Hui described as his 'boss'. It is to be noted that repayment of the second advance, namely of $32 million, was not only made late and without any interest payment whatsoever but also it was clearly made with monies that came from the payment of $230 million by China Water that were deposited into the account of Allan Ip & Co on 18 January 2008. [Appendix 6B]

263. At the same time, unusual steps were taken by China Water, again in which Mr Vincent Sze played a prominent role, to effect premature payment to Mega Mount at the direction of Mega Mount for the acquisition by Smart Giant of Blue Mountain. Clearly, the transaction was being rushed through, as evidenced by the fact that Mr Vincent Sze signed one of the payment cheques,

dated 1 December 2007 for $180 million, whilst the amount of money in words was missing from the cheque.

264. The Sale and Purchase Agreement between Smart Giant and Mega Mount, dated 26 November 2007, provided that completion was subject to certain conditions being satisfied. Those conditions included the purchaser performing a due diligence investigation and receiving an independent valuation report, certifying that Jinan Hong Quan Water was worth not less than RMB 810 million. Shine Wing was appointed to perform the due diligence investigation only on 27 November 2007. Ms Georgiana Chu said that the due diligence report was available for the board meeting of China Water on 24 December 2007, as was an informal indication of an estimated valuation, sent by e-mail that day, of Jinan Hong Quan Water of just over RMB 800 million. The valuation report provided to the Board of Directors of China Water by Asset Appraisal Limited is dated 16 January 2008.

265. Although payment had in fact been made to Mega Mount on 14 December 2007, the payment was stopped and the position unwound. The conditions for payment had not been met. We are satisfied that was at the behest of Mr Georgiana Chu.

266. As Mr Marash has suggested, another extraordinary feature of the steps taken to make not only expeditious but premature payment by China Water for its acquisition of Blue Mountain was the fact that Mr Zhong Wen Sheng, the Managing Director of China Water, was made a signatory of the bank account of

Mega Mount when it was opened with Hang Seng Bank Limited on 4 December 2007.

267. We are satisfied that it is no coincidence that the date on which payment by China Water for the acquisition of Blue Mountain, namely 18 January 2008, was made to the account of Allan Ip & Co was the very day on which Mr Allan Ip, at the request of Mr Vico Hui, who in turn accepted that he was acting at the behest of Mr Wang Chao made a request of Hang Seng Bank Limited for a proof of funds. That proof of funds was not forthcoming until 28 January 2008. In the interim, the proof of funds obtained by Mr Vincent Sze on the account of Super Sino, a subsidiary of China Water, dated 8 November 2007 was used.

268. Mr Harris was correct in conceding in his closing submissions that it was 'highly irregular' for Mr Vincent Sze, as Deputy Managing Director of China Water, to permit Mr Andy Cheung to use a proof of funds, a redacted bank statement of a wholly-owned subsidiary of China Water, for his own personal purposes. Clearly, there existed an obvious conflict of interest, of which we are satisfied he was aware.

The funding of the takeover of ABC

269. We are satisfied that deliberate and elaborate steps were taken to make it difficult to establish the use to which the $230 million payment by China Water for the acquisition of Blue Mountain was put and by whom. Firstly, $42 million of the monies deposited into the account of Allan Ip & Co were

withdrawn in cash. Secondly, of the $183 million transferred to the account in the name of Mr Charlie Ng, large amounts were also withdrawn in cash. We are satisfied that the account in the name of Mr Daniel Kwong was an account used by Mr Wang Chao at his direction to conceal the provenance of monies, approximately $50 million in February 2008, in the bank account of Easygold. Why else were the monies not transferred directly to Easygold from the account of Mr Charlie Ng? Why were the payments split in to 4 discrete tranches before being deposited in the account of Easygold?

270. A total of just over $84 million deposited into the account of Easygold in January and February 2008 originated from the payment of $230 million by China Water for the acquisition of Blue Mountain. Similarly, the overwhelming majority of the payment of $60 million made from Easygold to the account of Mr Wang Xiaobo on 17 March 2008 had its origin in the $230 million payment. Those monies were the provenance of the payment of $20 million and $24.4 million made from the account of Mr Wang Xiaobo to that of Mr Vincent Sze on 2 and 7 May 2008. In turn, they were used to provide the payments by Mr Vincent Sze to Stephenson Harwood & Lo of $20 million on 2 May 2008, $20 million and $4.2 million to President Securities and Ha and Ho respectively on 7 May 2008. The balance of those monies in the account of Mr Wang Xiaobo, with its origins in the $230 million payment, form part of the payment of $77,514,865.00 made to Mr Vincent Sze from the account Mr Wang Xiaobo on 9 May 2008.

271. The Tribunal has been unable to determine the ultimate provenance of the more than $51 million paid into the account of Mr Wang Xiaobo in multiple remittances on 5 and 6 May 2008. Those monies formed the larger part of the payment of $77,514,865.00 of 9 May 2008. The use of remittance agents in the Mainland to make payments to remittance agents in Hong Kong has proved to be an effective barrier to further inquiry. Certainly, there is no supporting evidence for Mr Vincent Sze's testimony that the monies were paid at the direction of Mr Jiang Qing Xin and were a loan to him from Mr Jiang Qing Xin. Even on Mr Vincent Sze's evidence the 'loan' was wholly unsecured and, although overdue for repayment, remains unpaid. Even more implausibly, on Mr Vincent Sze's account, Mr Jiang lent the money without ever being told how they were to be spent. Furthermore, although Mr Vincent Sze testified that he has maintained contact with Mr Jiang and has even met him in the summer of 2011 he has offered no supporting documentation from or about Mr Jiang to put before the Tribunal.

272. One extraordinary feature of Mr Vincent Sze's account of the funding of the takeover of ABC is the undisputed evidence that he has made no payments from his own funds. Indeed, it is accepted that he was not in a position to do so. On his account, he borrowed everything and did so at the very last minute with the barest minimum of supporting documentation. The documents said to evidence the three loans, two from Mr Wang Chao and one from Mr Jiang Qing Xin, are not witnessed by third parties let alone notarised. The document said to evidence the first loan, of $46 million, from Mr Wang Chao to Mr Vincent Sze makes no provision whatsoever for security for the loan.

Further, although it makes provision for repayment to fall due on 1 November 2009, Mr Vincent Sze testified that he responded positively to Mr Wang Chao's demand for repayment prematurely in May 2009, when the second loan fell due for repayment. Similarly, the document said to evidence the loan from Mr Jiang makes no provision whatsoever for security for the loan. We reject his evidence that the monies that he received were loans from Mr Wang Chao and Mr Jiang Qing Xin.

273. Mr Vincent Sze's account that, although Mr Wang Chao's enthusiasm for being his partner in the takeover of ABC waned and then vanished, nevertheless he remain prepared to lend the money, initially without any security whatsoever, is bizarre and devoid of commercial logic. It is to be noted that the relatively modest initial payment of $500,000.00 on 19 February 2008 was not made by Mr Vincent Sze, as one might have expected, rather it was funded by Easygold, a company controlled by Mr Wang Chao.

274. The pattern of payments being made with monies that had their provenance in accounts controlled by Mr Wang Chao continued throughout the transaction. In particular, it is noticeable that what Mr Vincent Sze has described as being repayments of loans to him by Mr Wang Chao in July and September 2009 were used largely to make payments to President Securities and Partners Capital for expenses related to the takeover of ABC. Mr Vincent Sze has been unable to produce anything whatsoever to substantiate his claims that loans were made by him to Mr Wang Chao, and these monies were repayments.

We are satisfied that these payments were made by Mr Wang Chao for expenses arising out of the takeover of ABC and for no other reason.

275. It is to be noted that $60 million was transferred from the account of Easygold into Mr Wang Xiaobo's account on 17 March 2008. That was three days after Mr Vincent Sze had acquired Asian Gold Dragon, the corporate vehicle used in the takeover of ABC. Clearly, Mr Wang Chao was taking steps to have funds available for purposes of the acquisition of ABC shares. Those monies remained in that account until 2 May 2008 when $20 million was transferred into the account of Mr Vincent Sze to provide for the purchase of a cashier's order in favour of Stephenson Harwood & Lo.

276. It is to be acknowledged that the monies were on a seven-day deposit, created on 29 April 2008. Accordingly, it was necessary for Mr Wang Chao to uplift the deposit prematurely. He was able to do so without any apparent difficulty, albeit that no interest was paid for the period during which the monies were on deposit. The fact that Mr Wang Chao had to break the fixed deposit does not cause us any misgivings about our rejection of Mr Vincent Sze's evidence that the monies were lent to him by Mr Wang Chao and that he had sought the loan only on 30 April 2008. It was suggested that the fact that Mr Wang Chao had to break the fixed deposit supported the contention that Mr Wang Chao was not taking steps to be expected of an investor knowing that he was about to be called upon to fund his investment. We are satisfied that Mr Wang Chao was confident that he would be permitted access to his monies, albeit at the loss of interest. That confidence was justified.

277. Although the Sale and Purchase Agreement between Asian Gold Dragon and HCBC Communications for the purchase by the former of the latter's holding of 52.59% of the shares of ABC was conditional only, on 9 May 2008 payment was made on a cheque drawn on the account of Mr Wang Xiaobo to Mr Vincent Sze of $77,514,865.00. In the event, those monies were not required to make payment to HCBC Communications until 20 August 2008 when a cashier's order in favour of HCBC Communications for $78,014,865.00 was purchased and debited to the account of Mr Vincent Sze.

278. We are satisfied that Mr Wang Chao was an investor for himself in the takeover of ABC. Mr Vincent Sze acted on his behalf and according to his instructions. It may be that there were other investors in the project. We do not need to determine that issue. We are satisfied that Mr Vincent Sze provided Mr Andy Cheung with the information that in turn was included in the e-mail of 25 January 2008 to Mr Lawrence Chan from Mr Simon Tsang, namely 'the buyer is a group of Chinese businessmen headed by Mr Wang Chao'. Of course, any non-portfolio investor needs to know the identity of his investment before he is prepared to and does advance his monies. We are sure that once Mr Vincent Sze learned the identity of ABC on 19 February 2008, as the company available for acquisition, he passed on that information to Mr Wang Chao. After all, on that very day Mr Wang Chao had provided the forfeitable deposit of $500,000.00. Similarly, we are sure that Mr Vincent Sze kept Mr Wang Chao fully apprised of the progress of negotiations in respect of the takeover of ABC. There is no dispute that telephone calls were made from Mr

Vincent Sze's telephone to that of Mr Wang Chao in March and April 2008. It is to be noted that on 26 March 2008 there were three such telephone calls. On 31 March 2008, the first tranche of ABC shares was acquired in the account in the name of Mr Guo Ai Wen.

279. We accept the force of Mr Marash's submission that the initial pattern of buying ABC shares in the account in the name of Mr Guo Ai Wen, in particular that purchases were made progressively in relatively small amounts is consistent with a buyer who did not wish to alert the market or market regulators to his activities and to keep the price of ABC shares relatively low and stable. By contrast, the purchases made in the last two trading days before suspension of trading in ABC shares, 29 and 30 April 2008, were aggressive, in much larger volume and at ever-increasing prices. However, the maximum price paid for ABC shares was still at a level 10% less than the guaranteed price that a holder of the shares could obtain under the agreements.

280. On any view, Mr Lin Qun played a purely nominal role in the acquisition by Asian Gold Dragon of ABC. He made no contribution at all, monetary or otherwise, save for appending his signature on documents as and when requested. Whilst we are conscious that he has not been subjected to oral examination in these proceedings, nevertheless we are satisfied and accept his assertion that he was a mere 'nominee'. That is entirely consistent with all the other evidence. He was not Mr Vincent Sze's partner in the takeover of ABC. It is to be noted that the information supplied to Mr Lawrence Chan at the 19 February 2008 meeting of Mr Lin Qun, namely that he had worked from 1984 to

2006 with Jinan City Water, was entirely missing from his curriculum vitae set out in the 30 May 2008 Joint Announcement. As a result, any connection between Asian Gold Dragon and Jinan Hong Quan Water was not contained in any publicly available information.

Did Mr Vincent Sze disclose'relevant information' to Mr Wang Chao 'knowing or having reasonable cause to believe' that he would make use of the 'relevant information' to deal in the shares of ABC?

281. We are satisfied that, as a businessman of experience and the Deputy Managing Director of a publicly listed company, Mr Vincent Sze was acutely aware of the value of the relevant information of which he was in possession in respect of the takeover of ABC. Notwithstanding Mr Vincent Sze's attempts to distance himself from his knowledge of and relationship with Mr Wang Chao, we are satisfied that he knew him to be a businessman who would readily identify the value of the relevant information given to him that ABC was the company in respect of which the takeover was to be launched. At the very least, we are sure that he had reasonable cause to believe that Mr Wang Chao would make use of the relevant information, in particular to buy ABC shares.

CONCLUSION

282. Pursuant to section 252(3)(a) and (b) of the Ordinance we determine that market misconduct has taken place, in that Mr Vincent Sze engaged in insider dealing in that, he being a person contemplating a takeover offer of ABC, knowing that the information as to the offer price and special dividend per share of about that ultimately agreed and stipulated in the Joint Announcement of 30

May 2008, namely of $0.3992 and $0.5866 respectively, in the context of a consequent mandatory general offer was relevant information in relation to ABC, disclosed that information to Mr Wang Chao having reasonable cause to believe that he would make use of the information for the purpose of dealing, or of counselling or procuring another person to deal, in the shares of ABC, contrary to section 270(1)(d) of the Ordinance. Pursuant to section 252(3)(c) of the Ordinance we determine that the profit gained as a result of the market misconduct was $1,669,955.00.

The Hon Mr Justice Lunn

(Chairman)

Mr James Wardell

(Member)

Mr Wong Hong Yuen, Peter

(Member)

Dated 20 October 2011