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Abbreviations

BOC	Bank of China
DBS	DBS Bank (Hong Kong) Limited
DoJ	Department of Justice
Ever Long	Ever Long Securities Company Limited
FS	Financial Secretary
Golden Fountain Co	Golden Fountain Securities Company
Golden Fountain Securities	Golden Fountain Securities Limited
Hantec	Hantec International Finance Group Limited
HSBC	The Hongkong and Shanghai Banking Corporation Limited
HSI	Hang Seng Index
HT Securities	Hantec Securities Company Limited
M2B Ltd	M2B Holdings Limited
M-Bar	M-Bar Limited
Menlo	Menlo Capital Limited
Mobicon	Mobicon Group Limited
Mr Alvan Yeung	Mr Yeung Kin Kwan, Alvan
Mr Brewer	Mr John Brewer
Mr Bruce	Mr Andrew Bruce, SC
Mr Chan	Mr Derek Chan
Mr Choy	Mr Edwin Choy
Mr Chu	Mr Chu Kin Ming
Mr Cooney	Mr Nicholas Cooney
Mr Laurence Tam	Mr Tam Kwok Wai, Laurence
Mr Marcel Cheung	Mr Cheung Chiu Hing, Marcel
Mr Measure Hung	Mr Hung Kim Fung, Measure
Mr Michael Leung	Mr Leung Chai On, Michael

Abbreviations

Mr Patterson	Mr Kevin Patterson
Mr Shek	Mr Shek Kam Por
Mr Simon Chan	Mr Chan Shiu Wah, Simon
Mr Stephen Leung	Mr Leung Ka Fai, Stephen
Mr Sunny Ng	Mr Ng Ching Yeung, Sunny
Mr Winson Lee	Mr Lee Yiu Kong, Winson
Ms Beryl Yeung	Ms Yeung Man Yi, Beryl
Ms Ivy Ho	Ms Ho Siu Wan, Ivy
Ms Vicky Fan	Ms Fan Suk Han, Vicky
Ms Yu	Ms Yu Min Yin
Oriental Patron	Oriental Patron Asia Ltd
Phillip Securities	Phillip Securities (Hong Kong) Limited
SEHK	Stock Exchange of Hong Kong Limited
SFC	Securities and Futures Commission
SforJ	Secretary for Justice
the Ordinance	Securities and Futures Ordinance
Wing Hang Bank	Wing Hang Bank Limited
Wing Hang Brokerage	Wing Hang Shares Brokerage Company Limited
Wing Lung Bank	Wing Lung Bank Limited
Wing Lung Securities	Wing Lung Securities Limited

CHAPTER 1

THE FINANCIAL SECRETARY'S NOTICE

1. This Tribunal was constituted in consequence of the Financial Secretary's ("FS's") Notice of 8 April 2008.

**“IN THE MATTER OF THE LISTED SECURITIES
OF MOBICON GROUP LIMITED
(Stock Code 1213)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL
PURSUANT TO SECTION 252(2) AND SCHEDULE 9 OF
THE SECURITIES AND FUTURES ORDINANCE, CAP 571
(‘THE ORDINANCE’)**

WHEREAS it appears to me that market misconduct, within the meaning of section 274 ('False Trading') of Part XIII of the Ordinance, has or may have taken place in relation to the securities of Mobicon Group Limited (Stock Code 1213) ('the Company'), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine -

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

Persons Specified

Mr Hung Kim Fung Measure ('Hung') and Mr Yeung Kin Kwan Alvan ('Yeung')

Statement for institution of proceedings

1. At all material times, Hung was the Company's Chairman, Yeung was the Company Secretary and Mr Chan Siu Wah Simon ('Chan') was the Company's Assistant Export Manager.
2. Between 1 August 2004 and 14 December 2004 ('the inquiry period'), the Company shares were thinly traded in the Stock Exchange of Hong Kong within a narrow range of \$0.95 and \$1.02. During the inquiry period, which consisted of 94 trading days, there was trading on only 28 days and no trading at all on other days. The

trading records show that Chan and Yeung took up more than half of all the buying and selling orders respectively. During the said 28 days when there was trading, Chan and Yeung's transactions matched (i.e. they were the opposite parties in their transactions) on 18 days. In fact, during 14 of these 18 days, these matched transactions constituted 100% of the market turnover.

3. In Chan's interviews with the Securities and Futures Commission ('SFC'), Chan initially said that he had asked Yeung to trade the Company shares for him, but he later admitted to the SFC that actually Hung had asked him to lie to the SFC, and the truth was that the Company shares in his 2 securities accounts with Wing Hang Shares Brokerage Co. Ltd. and another firm did not belong to him. He did not know details of the trading conducted in those accounts. He had been asked by Ho Siu Wan ('Ho'), the Company's Financial Controller, to open the 2 accounts for holding some of Hung's Company shares. He had also told him to open a current account with Wing Hang Bank and asked him to pre-sign cheques for the purpose of settlement of the trading conducted in those securities accounts.
4. From the computer of Ho, there were e-mails showing that Yeung had instructed Ho to arrange transfers between the bank accounts and securities accounts of M-Bar Limited (a company controlled by Hung) and those of a number of Company employees (including Yeung and Chan). Chan's pre-signed cheques relating to Wing Hang Bank current account were also found in the desk of Ho.
5. The account opening documentation and internet password of Chan's securities account with Wing Hang Shares Brokerage Co. Ltd. were found in the office of Yeung.
6. From the computer of Hung, there were e-mails showing that since 2003 Yeung had been reporting to him the number of Company shares held by various employees (including Yeung and Chan).
7. In Yeung's interviews with the SFC, Yeung said he was authorized by Chan to trade on Chan's behalf. On being asked why he sometimes bought the Company shares for Chan while selling his (Yeung's) own shares at the same time, Yeung claimed that the matched transactions were purely a matter of coincidence, and he was not aware that he and Chan were the opposite parties in those transactions.
8. Yeung's trading of the Company shares had the effect of creating a false or misleading appearance of active trading of the shares. Some, if not all, of the shares traded belonged to Hung, and he was aware of the trading.

9. Accordingly, Hung and Yeung engaged in False Trading contrary to section 274(1)(a) of the Ordinance.

Dated this 8th day of April 2008.

(Signed)
(John C. Tsang)
Financial Secretary”.

2. On 7 November 2008, pursuant to section 15 of Schedule 9 of the Securities and Futures Ordinance (“the Ordinance”) the Tribunal ordered that Notice to be amended.

**“IN THE MATTER OF THE LISED SECURITIES
OF MOBICON GROUP LIMITED
(Stock Code 1213)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL
PURSUANT TO SECTION 252(2) AND SCHEDULE 9 OF
THE SECURITIES AND FUTURES ORDINANCE, CAP 571
(‘THE ORDINANCE’)**

**AMENDED PURSUANT TO SECTION 15 OF
SCHEDULE 9 OF THE ORDINANCE BY ORDER OF
THE MARKET MISCONDUCT TRIBUNAL**

WHEREAS it appears to me that market misconduct, within the meaning of section 274 (‘False Trading’) of Part XIII of the Ordinance, has or may have taken place in relation to the securities of Mobicon Group Limited (Stock Code 1213) (‘the Company’), the Market Misconduct Tribunal is hereby required to conduct proceedings and determine –

- (a) whether any market misconduct has taken place;
- (b) the identity of any person who has engaged in the market misconduct; and
- (c) the amount of any profit gained or loss avoided as a result of the market misconduct.

Persons Specified

Mr Hung Kim Fung, Measure (‘Hung’) and Mr Yeung Kin Kwan, Alvan (‘Yeung’)

Statement for institution of proceedings

1. At all material times, Hung was the Company’s Chairman, Yeung was the Company Secretary and Mr Chan Siu Wah, Simon (‘Chan’) was the Company’s Assistant Export Manager. Tam Kwok Wai,

Laurence ('Laurence Tam') was an employee of the Company, having the title of Manager of the Export Department. Fan Suk Han, Vicky ('Vicky Fan') was employed by the Company as an accountant. Cheung Chiu Hing, Marcel ('Marcel Cheung') was a senior executive of the company and a director of a subsidiary company of the Company. Yu Min Yin was and is the wife of Marcel Cheung.

2. Between 1 April 2003 and 25 May 2005 ('the specified period'), the Company shares were thinly traded in the Stock Exchange of Hong Kong within a narrow price range. During the specified period, which consisted of 510 trading days, there was trading on only 209 days and no trading at all on other days.
3. In Chan's interview with the Securities and Futures Commission ('SFC'), Chan initially said that he had asked Yeung to trade the Company shares for him, but he later admitted to the SFC that actually Hung had asked him to lie to the SFC, and the truth was that the Company shares in his 2 securities accounts with Wing Hang Shares Brokerage Co Ltd and another firm did not belong to him. He did not know the details of the trading conducted in those accounts. He had been asked by Ho Siu Wan ('Ho'), the Company's Financial Controller, to open the 2 accounts for holding some of Hung's Company shares. Ho had also told him to open a current account with Wing Hang Bank and asked him to pre-sign cheques for the purpose of settlement of the trading conducted in those securities accounts.
4. From the computer of Ho, there were e-mails showing that Yeung had instructed Ho to arrange transfers between the bank accounts and securities accounts of M-Bar Limited (a company controlled by Hung) and those of a number of Company employees (including Yeung and Chan). Chan's pre-signed cheques relating to Wing Hang Bank current account were also found in the desk of Ho.
5. The account opening documentation and internet password of Chan's securities account with Wing Hang Shares Brokerage Co Ltd were found in the office of Yeung.
6. From the computer of Hung, there were e-mails showing that since 2003 Yeung had been reporting to Hung the number of Company shares held by various employees, including Yeung, Chan, Laurence Tam, Vicky Fan, Marcel Cheung and his wife and non-employee Yu Min Yin. Those e-mails were also concerned with the disposition of the dividend on the Company shares held in the accounts of those persons to Hung and his wife through accounts under the control of Hung.

- 6A. Laurence Tam opened a securities account with HanTec International Finance Group Ltd (also known as HT Securities Ltd) on 20 April 2001. From 3 May 2001 until 31 March 2003, only shares of the Company were bought and sold through this account. At the commencement of the specified period, the account in the name of Laurence Tam held 9.75 million Company shares. On 26 March 2003, a cheque in the sum of \$3,000,000 from an account under the control of Hung was deposited into the securities account in the name of Laurence Tam.
- 6B. During the specified period, through the securities account in his name, Laurence Tam bought a total of 50,000 Company shares and sold 1,760,000 Company shares, which represented 0.27% of market purchases and 9.53% of market disposals. There were 21 separate transactions. Of those transactions :
- (a) 12 were fully matched with purchases by Vicky Fan and 1 was partially matched with Vicky Fan;
 - (b) none were fully matched with purchases by Yeung and 1 was partially matched with Yeung; and
 - (c) none were fully matched with purchases by Chan and none were partially matched with Chan.
- 6C. During the specified period, on or shortly after the date upon which the dividend paid by the Company was paid into the securities account in the name of Laurence Tam, a demand was made by Hung and Yeung or persons acting on their behalf for Laurence Tam to pay an amount representing part of the dividend so received. The amount so demanded was calculated on the basis that only 3.5 million of the shares held in securities accounts in his name belonged to him and that the dividends paid on shares in excess of that amount were to be remitted to a bank account under the control of Hung. As required, Laurence Tam made such payments.
- 6D. Vicky Fan opened a securities account with Phillip Securities (Hong Kong) Limited on 30 January 2004. From that date until the conclusion of the specified period, through the account in the name of Vicky Fan a total of 2,814,000 Company shares were purchased and 914,000 Company shares were sold, which represented 15.23% of market purchases and 4.95% of market sales. There were 37 separate transactions. Of those transactions :
- (a) 12 were fully matched with purchases by Laurence Tam and 1 was partially matched with Laurence Tam;
 - (b) 6 were fully matched with purchases by Yeung and 4 were partially matched with Yeung; and
 - (c) none were fully matched with purchases by Chan and 2 were partially matched with Chan.
- 6E. Between the time of the opening of the securities account in the name of Vicky Fan until the end of the specified period Vicky Fan,

as required by Hung and Yeung or persons acting under their direction remitted to bank accounts under the control of Hung the whole of the dividend paid in respect of the Company shares in her securities account and did so. (sic)

- 6F. Chan opened a securities account with Wing Hang Shares Brokerage Co Ltd on 26 February 2003. During the specified period, through the account in the name of Chan a total of 4,116,000 Company shares were purchased and 1,316,000 Company shares were sold, which represented 20.2% of market purchases and 6.45% of market sales. There were 155 separate transactions. Of those transactions :
- (a) none were fully matched with purchases by Laurence Tam and none were partially matched with Laurence Tam;
 - (b) 40 were fully matched with purchases by Yeung and 7 were partially matched with Yeung; and
 - (c) None were fully matched with purchases by Vicky Fan and 2 were partially matched with Vicky Fan.
- 6G. Between 19 February 2004 and 18 June 2004 Laurence Tam, as required by Hung and Yeung or persons acting under their direction, remitted funds derived from the sale of shares in the securities account in his name to a bank account under the control of Hung, which funds were used to purchase Company shares through the securities account in the name of Vicky Fan.
- 6H. Marcel Cheung, through securities accounts with the Wing Lung Bank, Golden Fountain Securities Ltd. in his own name and Everlong Securities Co Ltd, HanTec International Finance Group Ltd and a securities account with the Bank of China in the name of Yu Min Yin, traded or permitted Hung and Yeung to trade in shares of the Company. Marcel Cheung opened current and saving accounts with the Wing Lung Bank. The securities and bank accounts were opened in or about April or May 2001. The bank accounts were operated by or on behalf of the Hung and Yeung to fund or substantially fund the purchase of shares in the Company in the accounts previously mentioned in this paragraph and accounts in the name of Chan, Yeung, Vicky Fan and Laurence Tam. During the course of the trading activity described in this paragraph, there were, at various times, matched trades of shares in the Company between the accounts in the name of Marcel Cheung and Yu Min Yin and accounts in the name of Chan, Yeung, Laurence Tam and Vicky Fan. Most of these matched trades were fully matched. A few were partially matched.
- 6I. Throughout the specified period Marcel Cheung and Yu Min Yin, as required by Hung and Yeung or persons acting under their direction, remitted to bank accounts under the control of Hung the whole of the dividends paid in respect of their company shares in their respective accounts.

7. In Yeung's interviews with the SFC, Yeung said he was authorized by Chan to trade on Chan's behalf. On being asked why he sometimes bought the Company shares for Chan while selling his (Yeung's) own shares at the same time, Yeung claimed that the matched transactions were purely a matter of coincidence, and he was not aware that he and Chan were the opposite parties in those transactions.
- 7A. During the specified period, Yeung, Chan, Vicky Fan and Laurence Tam, in aggregate bought 10,230,000 Company shares and sold 7,934,000 Company shares, representing 55.38% of market purchases and 42.95% of market sales. Out of 510 trading days during the specified period, transactions were found on only 209 trading days with turnover averaged at 88,383 Company shares. The number of matched trades amongst Yeung, Chan, Vicky Fan and Laurence Tam amounted to 4,732,000 Company shares representing 25.62% of market turnover during the specified period or 46.26% of their total purchases and 59.64% of their total sales, which was very substantial. The trading days involving Yeung, Chan, Vicky Fan and Laurence Tam as a percentage of the daily turnover of trading in the Company shares are summarised as follows :

Buy/Sell as a % of Daily Turnover	Buying (No. of Days)	Selling (No. of Days)	Matched Trades (No. of Days)
100%	109	53	41
80% to 99%	11	11	3
60% to 79%	15	9	8
40% to 59%	6	15	11
20% to 39%	7	6	6
1% to 19%	3	4	5
0%	58	111	135
	209	209	209

- 7B. The matched trades in shares of the Company between securities accounts in the name of Yeung, Chan, Vicky Fan, Laurence Tam, Yu Min Yin and Marcel Cheung did not bring in any benefit per se from any normal pattern of trading to the traders. On the contrary, they incurred transaction costs. Based on the total value of the matched trades between Yeung, Chan, Vicky Fan and Laurence Tam at \$9,407,560 (\$4,703,780 x 2), the minimum transaction costs incurred were \$34,055.37.
8. Most, if not all, of the Company shares traded through the securities accounts in the name of Chan, Yeung, Vicky Fan, Laurence Tam, Marcel Cheung and Yu Min Yin belonged to Hung. Hung exercised control or influence over and contributed substantially to the financing of and generally caused trading,

through Yeung and others under their control; thereby Hung and Yeung created a false or misleading appearance of active trading of the company shares to occur.

9. Accordingly, Hung and Yeung engaged in False Trading contrary to section 274(1)(a) of the Ordinance. The conduct of Yeung and Hung as described in this Statement is market misconduct as defined in section 245(1) of the Ordinance.

[Original Notice :

Dated this 8th day of April, 2008

(signed)

(John C Tsang)

Financial Secretary]

Dated this 7th day of November 2008

(signed)

The Hon Mr Justice Lunn

(Chairman)

(signed)

Mr Malcolm A Barnett

(Member)

(signed)

Ms Susan Wong

(Member)".

CHAPTER 2

THE COURSE OF THE PROCEEDINGS

3. Set out below is a chronology of relevant events :

1 April 2003 to 25 May 2005 - the events the subject of the Amended FS's Notice;

1 August to 14 December 2004 - the events the subject of the FS's Notice;

8 April 2008 - the FS's Notice;

29 April 2008 - the appointment of Mr Edwin Choy as the Presenting Officer on the delegated authority of the Secretary for Justice ("SforJ");

30 April 2008 - Preliminary Conference conducted by the Chairman, pursuant to section 30 of Schedule 9 of the Ordinance; in light of an intimation by counsel appearing for Mr Hung Kim Fung, Measure ("Mr Measure Hung") of the possibility of applications of stay of proceedings for delay/challenges to the jurisdiction of the Tribunal an hearing was fixed for 10 July 2008, with dates for an hearing of preliminary and/or jurisdictional issues fixed for 22, 25 and 26 September 2008 and the substantive hearing fixed to commence on 13 October 2008 with 20 days reserved;

22 May 2008 - appointment by the FS, on the delegated authority of the Chief Executive, of the Ordinary members;

20 June 2008 - at the request of the solicitors for Mr Measure Hung, on the intimation of the court in HCAL 123 and 124 /2007 and HCAL 22/2008, of the likely date of delivery of judgment the hearing of 10 July 2008 was vacated and a hearing for 30 July 2008 fixed;

24 July 2008 - at the request of the solicitors for Mr Measure Hung, and in the absence of delivery of the above judgment the hearing was re-fixed to 18 August 2008;

18 August 2008 - second Preliminary Conference at which counsel for Mr Measure Hung and Mr Yeung Kin Kwan, Alvan (“Mr Alvan Yeung”) informed the Chairman that an application for a permanent stay of proceedings would be made to the Tribunal; the hearing of that application was fixed for 22 September with 25 and 26 September 2008 reserved;

21 and 28 August 2008 - the solicitors for Mr Alvan Yeung and Mr Measure Hung respectively informed the Tribunal of the withdrawal of that application;

29 August 2008 - all the parties to the proceedings advised by the Tribunal that the hearing dates of 22 September 2008 and following were vacated;

2 October 2008 - the appointment of Mr Andrew Bruce, SC as the Presenting Officer and Mr Edwin Choy as the Assistant Presenting Officer on the delegated authority of the SforJ;

13 October 2008 - counsel for both Specified Persons indicated that they wished the Tribunal to receive material in which the Specified Persons would make admissions relevant to the proceedings; at their request the proceedings

were adjourned until 14 October 2008 when the Tribunal received statements of that date from both Mr Measure Hung and Mr Alvan Yeung;

14 October to 7 November 2008 - oral testimony;

7 November 2008 - the Tribunal ordered the FS's Notice to be amended, pursuant to section 15 of Schedule 9 of the Ordinance;

8 to 17 December 2008 and **13 January 2009** - oral testimony; and

13, 14 and 16 January 2009 - closing submissions.

CHAPTER 3

THE LAW

4. The Chairman gave the Tribunal the following directions in law :

Section 245(1) of the Ordinance provides that :

“ **‘market misconduct’** means -

- (a) ...
- (b) false trading within the meaning of section 274;

...

and includes attempting to engage in, or assisting, counselling or procuring another person to engage in, any of the conduct referred to in paragraphs (a) to (f).

‘securities’ means -

- (a) shares, stocks ... issued by, a body whether incorporated or unincorporated ...

‘relevant recognized market’ means -

- (a) in relation to securities, means a recognized stock market; ...”.

5. Schedule 1 of the Ordinance provides that :

“ **‘recognized stock market’** means a stock market operated by a recognized stock exchange;”.

6. By operation of Schedule 1 and Schedule 5 Part 2 :

“ **‘automated trading services’** means services provided by means of electronic facilities, not being facilities provided by a recognized exchange company or a recognized clearing house whereby -

- (a) offers to sell or purchase securities or futures contracts are regularly made or accepted in the way that forms or results in a binding transaction in accordance with established methods, including any method commonly used by a stock market or futures market;”.

7. Section 19 of the Ordinance provides for recognition of the Stock Exchange of Hong Kong Limited (“SEHK”) as a stock market in that it states :

“(1) No person shall -

- (a) operate a stock exchange unless the person is -

- (i) the Stock Exchange Company;”.

8. Section 252 of the Ordinance provides that :

“(4) Subject to subsections (5) and (6), the Tribunal may identify a person as having engaged in market misconduct pursuant to subsection 3(b) if -

- (a) he has perpetrated any conduct which constitutes the market misconduct;.....
- (c) notwithstanding that he has not perpetrated any conduct which constitutes the market misconduct -
 - (i) the Tribunal identifies any other person as having engaged in market misconduct pursuant to subsection (3)(b); and
 - (ii) he assisted or connived with that the person in the perpetration of any conduct which constitutes the market misconduct, with the knowledge that such conduct constitutes or might constitute market misconduct.”.

False trading.

9. Section 274(1) of the Ordinance provides that :

“(1) False trading takes place when, in Hong Kong or elsewhere, a person does anything or causes anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance -

- (a) of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services; or
- (b) with respect to the market for, or the price that dealings in, securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services.”.

10. (i) “active trading”.

In having regard to the phrase “active trading” the Tribunal is to have regard to all the material received in respect of trading in Mobicon shares in the specified period, in particular the evidence of Mr Shek, and is not confined only to a consideration of the number of such trades.

(ii) “likely”.

The word “likely” means that it is more probable than not. It is not necessary that the false or misleading appearance, as particularised in section 274(1)(a) or (b), is created. Breach of the section occurs when a person does anything or causes anything to be done with the intention that, or being reckless

as to whether, it has, or is likely to have, the effect of creating that result. [See paragraph 42 of the judgment of Mason J in the High Court of Australia in *North v Marra Development Ltd* 4 ACLR 585 in construing section 70 of the Securities Industry Act 1970 (NSW) :

“A person shall not create or cause to be created or do anything which is calculated to create, a false and misleading appearance of active trading in any securities on any stock market in the State, or a false or misleading appearance with respect to the market for, or the price of, any securities.”.

“Reckless”.

11. The Chairman has directed the Tribunal in respect of the ingredient of recklessness in accordance with the judgment of Sir Anthony Mason NPJ, with whose judgment all the other judges agreed, in the Court of Final Appeal in *Sin Kam Wah v HKSAR* [2005] HKCFAR 192 at paragraph 44, page 210 D-G. A person acts recklessly in respect of a circumstance if he/she was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him unreasonable to take the risk. If, due to his/her age or personal characteristics, he/she genuinely did not appreciate or foresee the risks involved in his/her actions he/she is not reckless.

12. Section 274(5) of the Ordinance provides for a deeming provision, namely :

“Without limiting the general nature of the conduct which constitutes false trading under subsection (1) or (2), where a person;

- (a) enters into or carries out, directly or indirectly, any transaction of sale or purchase, or any transaction which purports to be a transaction of sale or purchase, of securities that does not involve a change in the beneficial ownership of them;
- (b) ...
- (c) ...

then, unless the transaction in question is an off-market transaction, the person shall, for the purposes of subsections (1) and (2), be regarded as

doing something or causing something to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance -

- (i) where the securities are traded on a relevant recognized market by means of authorized automated trading services, of active trading in securities so traded...”

13. Section 274(6), of the Ordinance provides that :

“A person shall not be regarded as having engaged in market misconduct by reason of false trading taking place through the commission of an act referred to in subsection (5)(a)...if he establishes that the purpose to which he committed the act was not, or , where there was more than one purpose, the purposes for which he committed the act did not include, the purpose of creating a false and misleading appearance of active trading in securities.... referred to in subsection (i).”.

The Standard of Proof.

14. 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.”.

15. 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.”.

16. In his judgment in the Court of Final Appeal in *Koon Wing Yee and Insider Dealing Tribunal* (unreported) FACV No. 19 of 2007 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.

17. 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).”.

18. 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.”.

19. The Tribunal approached the drawing of inferences adverse to the Specified Persons with those considerations in mind. Mindful of the fact that the conduct alleged against all of the Specified Persons is of a nature that could have resulted in the bringing of serious criminal charges the Tribunal did not draw inferences from proved primary facts that any one of the Specified persons was culpable of the alleged misconduct unless to do so was very compelling and the evidence was of a very high standard of cogency indeed.

Lies.

20. The Tribunal has reminded itself in its approach to the evidence of the respective Specified Persons in the Tribunal and their statements outwith the Tribunal 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.

21. 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 outwith the Tribunal in his records of interview,

Separate consideration.

22. The Tribunal has considered the case against and for each of the Specified Persons separately.

Statements made outwith the Tribunal inconsistent with oral testimony.

23. Statements made outwith 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.

Delay.

24. The Tribunal has borne in mind in favour of the Specified Persons that the events the subject of the proceedings, in consequence of the Tribunal's order that the FS's Notice be amended, occurred more than five years prior to the commencement of the substantive hearing. Inevitably, with the passage of time memories dim or fade and relevant documents may be lost or destroyed. On the other hand, the Tribunal bore in mind that the Specified Persons were alerted to the fact of enquiries being made by the SFC into events in the second half of 2004, in particular in respect of alleged false trading in Mobicon Group Limited ("Mobicon") shares, in mid-2005 in consequence of Notices served upon them and records of interview conducted of them.

CHAPTER 4

THE MATERIAL RECEIVED BY THE TRIBUNAL

- (I) Witness statements of witnesses that none of the parties required to give oral evidence.
25. (a) Mr Choi Yiu Keung – a sales manager of Mobicon;
- (b) Mr Yan Chi Kuen - a marketing director of a subsidiary company of Mobicon;
- (c) Mr Leung Chai On, Michael (“Mr Michael Leung”) - a director of Menlo Capital Limited (“Menlo”);
- (d) Mr Wong Tak Ping - an employee of Menlo;
- (e) Mr Wong King Lung - a shareholder of Menlo;
- (f) Mr Leung Ka Fai, Stephen (“Mr Stephen Leung”) - an officer of the Enforcement Division of the SFC;
- (g) Mr Ko Lai Kee - an officer of the Enforcement Division of the SFC;
- (h) Mr Chiu Kwok Wai - an officer of the Enforcement Division of the SFC;
- (i) Mr Hui Chi Ping - an employee of PCCW;
- (j) Mr Tom Chi Keung - an employee of Wing Hang Shares Brokerage Co Ltd (“Wing Hang Brokerage”); and
- (k) Mr Chiu Chi Man - an employee of Wing Lung Securities Limited (“Wing Lung Securities”).
- (II) Documentary records obtained in both paper and electronic forms in searches conducted pursuant to Search Warrants issued to the SFC by the Magistracy.

(III) Documentary records received by the Tribunal pursuant to Notices issued under section 254(2) of the Ordinance.

26.

Date of Notice	Parties of whom a request was made for the provision of information and/or documents
30 September 2008	(a) The Hongkong and Shanghai Banking Corporation Limited; (“HSBC”) (b) M-Bar Limited (“M-Bar”) and/or Ms Yeung Man Yi, Beryl (“Ms Beryl Yeung”) and/or Mr Measure Hung; (c) M2B Holding Limited (“M2B Ltd”) and/or Ms Beryl Yeung and/or Mr Measure Hung; (d) Phillip Securities (Hong Kong) Limited (“Phillip Securities”); and (e) Wing Hang Bank Limited (“Wing Hang Bank”)
13 October 2008	M2B Ltd and/or Ms Beryl Yeung and/or Mr Measure Hung
20 October 2008	Hong Kong Exchanges and Clearing Limited
21 October 2008	HSBC
22 October 2008	Hantec Securities Company Limited (“HT Securities”) (Hantec International Finance Group Limited) (“Hantec”)
22 October 2008	HSBC
23 October 2008	(a) Ever Long Securities Company Limited (“Ever Long”); (b) HT Securities; (c) Golden Fountain Securities Company (“Golden Fountain Co”) and Golden Fountain Securities Limited (“Golden Fountain Securities”); and (d) Bank of China (“BOC”)
23 October 2008	Wing Lung Bank Limited (“Wing Lung Bank”)
24 October 2008	HSBC
24 October 2008	(a) Golden Fountain Securities; (b) Ever Long; (c) BOC; and (d) Hantec (formerly known as Hantec Securities Limited); (e) Wing Lung Securities

Date of Notice	Parties of whom a request was made for the provision of information and/or documents
31 October 2008	(a) HSBC; (b) Wing Hang Bank; and (c) Wing Hang Brokerage
3 November 2008	HSBC
3 November 2008	Wing Lung Bank
5 November 2008	Wing Hang Bank and Wing Hang Brokerage
13 November 2008	Hantec
13 November 2008	Ever Long
19 November 2008	(a) HSBC; (b) Hantec; (c) BOC; (d) DBS Bank (Hong Kong) Limited (“DBS”) (formerly known as DBS Kwong On Bank and Dao Heng Bank Ltd); (e) Oriental Patron Asia Ltd (“Oriental Patron”); and (f) Mobicon
25 November 2008	HSBC
27 November 2008	Oriental Patron
8 December 2008	Oriental Patron
9 December 2008	Hantec
10 December 2008	Standard Chartered Bank

(IV) Oral testimony.

The Tribunal received records of interview and/or witness statements from witnesses who also gave oral testimony.

27.

Tribunal Witness Number	Name
TW 1	Mr Chan Shiu Wah, Simon
TW 2	Ms Yeung Man Yi, Beryl
TW 3	Ms Ho Siu Wan, Ivy

Tribunal Witness Number	Name
TW 4	Ms Fan Suk Han, Vicky
TW 5	Mr Tam Kwok Wai, Laurence
TW 6	Mr Cheung Chiu Hing, Marcel
TW 7	Ms Yu Min Yin
TW 8	Mr Lee Yiu Kong, Winson
TW 9	Mr Shek Kam Por
TW 10	Mr Hung Kim Fung, Measure
TW 11	Mr Yeung Kin Kwan, Alvan
TW 12	Mr Ng Ching Yeung, Sunny

Statements of witnesses.

28. Mr Michael Leung Chai On stated in his witness statement that he is a director of Menlo Capital Limited, which was set up in January 2002 and of which Mr Alvan Yeung is also a director and majority shareholder. The company provides an advisory service to listed companies. An Internet connection was available in the company offices in Nam Fung Tower, 173 Des Voeux Road.

29. Mr Hui Chi Ping, a manager of PCCW, stated in his witness statement that Menlo Capital Limited was a subscriber of Internet services, for which purposes it was ascribed a “Fixed IP address”, namely 218.103.32.195. He said that whenever the Internet was accessed by Menlo the recipient of any communication would receive Menlo’s “Fixed IP address”.

30. Mr Tom Chi Keung, a manager of Wing Hang Brokerage, stated in his witness statement that the company provided its clients with an Internet securities trading service via the website : www.ez.128.com. Clients were able to access the website by use of a unique password, after which they were able to

conduct securities trading by selecting to buy or sell a particular volume of a stock at a stipulated price. Mr Chan Shiu Wah, Simon (“Mr Simon Chan”) was such a client. He produced a schedule of Internet trading in that account in the period August to December 2004 in which the “Fixed IP address” by which the client accessed the Wing Hang Brokerage website was identified. Orders were placed in the account of Mr Simon Chan from the “Fixed IP address” assigned to Menlo on various occasions on each of the months in the period August to December 2004. Some of those orders correspond exactly to some of the “matched trades”, between the account in the name of Mr Simon Chan and that of Mr Alvan Yeung set out in the schedule (SKP-24) to the statement of Mr Shek Kam Por (“Mr Shek”), an expert witness.

31. Mr Stephen Leung Ka Fai, an officer of the SFC, stated in his witness statement that on 8 July 2005, together with other SFC officers, he had conducted a search of the premises of Menlo in Nam Fung Tower, 173 Des Voeux Road and seized various documents.

32. Mr Ko Lai Kee, an officer of the SFC, stated in his witness statement that on 8 July 2005, together with other SFC officers, he had searched the premises of Mobicon at 7/F New Trend Centre, 704 Prince Edward Road East, Sam Po Kong and subsequently the home of Mr Measure Hung and Ms Beryl Yeung’s home at House # 4 Conwell Villa, 1 Cassia Road, Yau Yat Chuen and seized various items from both places.

33. Mr Chu Kin Ming (“Mr Chu”) participated in two records of interview with an officer of the SFC, dated 8 and 22 June 2005 respectively. At the time of the interviews he was the head of the Securities Department of HT Securities, which company he had joined in 1998. He was the account executive who had opened accounts in the name of five employees at Mobicon, including Mr

Simon Chan, Mr Alvan Yeung and Mr Tam Kwok Wai, Laurence (“Mr Laurence Tam”), the account opening documentation being dated 20 April 2001. To open the account he had visited the offices of Mobicon where he had liaised with Mr Alvan Yeung. He said that he had no impression of Mr Simon Chan having placed orders to trade in shares in his account. Apart from the account in the name of Mr Laurence Tam, in which Mr Alvan Yeung was permitted to place orders, orders in the other accounts were placed by the account holders. Of the circumstances in which Mr Alvan Yeung had been permitted to place orders in the account of Mr Laurence Tam, he said that at a date of which he was not sure after the account had been opened Mr Laurence Tam had told him that he would ask Mr Alvan Yeung to place orders on his behalf for trading in the account. When it transpired that most of the orders were so placed by Mr Alvan Yeung, arrangements were made for Mr Laurence Tam to provide Mr Alvan Yeung with a power of attorney. That document is dated 31 March 2003. As he recalled, after that date orders in the account were placed by Mr Alvan Yeung with whom he made confirmations of trades.

ORAL TESTIMONY.

Witnesses employed by Mobicon.

34. A number of employees of Mobicon, at the time of the events of the subject of the FS’s notice and in October 2008, together with the executive directors, Ms Beryl Yeung and her husband and specified person Mr Measure Hung gave oral evidence.

(i) Ms Beryl Yeung.

35. Ms Beryl Yeung testified that she and her husband, Mr Measure Hung, had held 45% of the shares of Mobicon since it was listed in May 2001. The shares scrip had been kept in a trust and then kept in a bank safe deposit box. It had never been mortgaged. Throughout that period, employment service

contracts provided for payments of \$1.3 million to each of them per year. She was in charge of overall management of the company and the Export Department. All heads of department, including the Financial Controller Ms Ho Siu Wan, Ivy (“Ms Ivy Ho”) reported to her, whereas Mr Measure Hung was in charge of strategic planning.

36. Ms Beryl Yeung testified that she had left secondary school in 1978 and had worked for most of her working life with her husband in the electronics business, in which Mobicon traded. In the last several years, through study, she had obtained an MBA degree.

The roles of the staff of Mobicon.

37. Ms Beryl Yeung said that Mr Alvan Yeung had been brought into the company to enable it to obtain a listed status, after which he had been retained as the company secretary. He was familiar with the “Listing Rules”. However, she seldom met Mr Alvan Yeung. Mr Measure Hung paid him by cheque each month.

38. Ms Fan Suk Han, Vicky (“Ms Vicky Fan”) took care of the finances of M-Bar and made arrangements for the movement of monies in and out of that account. M-Bar was described in the Prospectus as beneficially owned as to 30% by Mr Measure Hung, 30% by Ms Beryl Yeung and 20% each as to their respective brothers. She identified an HSBC passbook savings account of M-Bar and said that the handwritten entries were in the handwriting of Ms Vicky Fan. However, she said that she had never seen the passbook before, although she went on to say that she kept bank passbooks on her own desk, from where they were retrieved, as necessary, by Ms Vicky Fan. Of the entry for 21 August 2004, against the deposit of \$14,907.00 and the hand written name Simon, she said that she supposed that the handwriting “D” represented dividend. However,

she said she did not know why such a payment had been made. Of similar records of deposits, against the date 10 September 2004 and the names “Alvan-D”, “Laurence-D” and “Vicky-D”, she said that she had no idea of the fact of these deposits. She was a workaholic and concentrated on her work. She was not too concerned about money.

Account statements of Mr Marcel Cheung.

39. Ms Beryl Yeung said that after the listing she kept statements of bank and security accounts in the name of Mr Cheung Chiu Hing, Marcel (“Mr Marcel Cheung”). He was often on the Mainland and other people used his desk in his absence. Ms Beryl Yeung was adamant that she merely kept the documents for him and never opened the envelopes. Also, Ms Beryl Yeung said that she had kept his cheque-book for him. She did not know whether or not the cheques were signed. She did not do the banking transactions on his account. In due course, the cheque-books were passed on to Ms Ivy Ho. Ms Beryl Yeung did not know that Ms Ivy Ho wrote out cheques on the account. She knew of no borrowing of money from or to Mr Marcel Cheung by her husband or herself. However, when shown a book of cheque-book stubs, Exhibit 11, Ms Beryl Yeung said that, whilst she did not recognize the handwriting in the cheque-book stubs she agreed that it was not Ms Vicky Fan’s handwriting :

“At the beginning may be Mr Measure Hung told me, ‘You issue a cheque’, indicating what date, to whom, and then Mr Measure Hung will give me the instructions, and the girl will help, a girl.”

(ii) Mr Simon Chan.

40. Mr Simon Chan is an assistant manager of the Sales (Export) Division of Mobicon. He occupied that position in 2003-2004. His duties, then as now, were to prepare and send quotations to prospective customers. His immediate “boss” was Ms Beryl Yeung, whereas the overall boss of the company was his good friend Mr Measure Hung, whom he had known since primary school. His

“Employer Return” to the Inland Revenue Department stated that in the financial year ended 31 March 2004 he earned just short of \$275,000.00 and in the following year just less than \$330,000.00.

41. Mr Simon Chan had been educated to Form 3 in Middle School in Hong Kong. In 1976, he entered the workforce and was employed variously as a chauffeur and working in a factory. In 1991, he began to work for Mobicon.

Mr Simon Chan’s account with HT Securities.

42. In 2001, he had acquired 1.2 million shares of Mobicon at the time that it became a listed company. To do so, in April 2001, he had opened an account with HT Securities, subsequently known as Hantec. Mr Measure Hung had given him \$700,000.00 which, together with \$500,000.00 of his own monies, he had used to purchase the shares. He did not buy or sell the shares and retained all of them up to October 2008. From time to time he received dividends which were his and which he kept.

Mr Simon Chan’s account with Wing Hang Bank.

43. In early 2003, Mr Measure Hung told him that he would sponsor him personally by giving him money, telling him to open an account to buy stocks. Mr Measure Hung explained that Mr Simon Chan had helped him a lot and that he would like his children to go through university. As a result, on 26 February 2003 he had opened :

- (i) a bank account with Wing Hang Bank, so that Mr Measure Hung could remit money to be used for the purchase of shares; and
- (ii) a securities account with Wing Hang Brokerage.

44. His colleague Ms Ivy Ho had arranged for a member of the staff of the bank to attend the Mobicon offices so that the documentation could be

completed. The securities account permitted trading on the Internet, for which purpose he was given a password. In turn, he passed the password to Mr Alvan Yeung, then the company secretary, whom he authorised to trade in Mobicon shares in that account. Much later in his testimony, he qualified that account, saying that he had given the password to Ms Ivy Ho and not directly to Mr Alvan Yeung. Subsequently, and on a monthly basis he was sent statements of those accounts from which he learned of the deposit of monies and the trading activity. Having read the statements he passed them on to Ms Ivy Ho for her to keep.

45. Mr Simon Chan explained that there was a caveat to the gifts of money made to him by Mr Measure Hung, namely that if he personally did not perform well or the results of the company were not good then Mr Measure Hung would keep the dividend payments made by Mobicon. However, the shares themselves were his own to deal with as he wished.

Mr Simon Chan's account with Ever Long.

46. On 3 April 2003, at Mr Alvan Yeung's suggestion, Mr Simon Chan opened another securities account this time with Ever Long. He was told that it was better to have more accounts, so that investment could be made separately. Once again, Ms Ivy Ho had arranged for the staff of that company to attend his workplace to complete the documentation. He said that in April-June 2003 shares of Mobicon had been bought in that account. Settlement of the monies due as a result was made from monies that had come from Mr Measure Hung. He did not know how it was that the latter knew the exact money amount to stipulate on the cheques required to make the settlements.

The receipt of monies into Mr Simon Chan's Wing Hang Bank account.

47. Mr Simon Chan said that the first payment of \$10,000.00, apparently made in February 2003 as a credit to his current account with Wing Hang Bank,

was money provided to him by Mr Measure Hung. Similarly, he said that the payments made in March 2003 namely of \$1 million on 11 March and \$400,000.00 on 24 March 2003 were payments made to him by Mr Measure Hung as a gift. Those payments were used to settle monies due to Wing Hang Brokerage for shares of Mobicon that were purchased in March 2003. Mr Measure Hung provided a further payment of \$390,000.00 on 9 May 2003. Again, the monies were used to settle purchases of shares that were made thereafter.

Mr Simon Chan's records of interview by an officer of the SFC.

48. At the outset of his testimony Mr Simon Chan had identified a record of an interview that an officer of the SFC had conducted of him on 6 July 2005. He acknowledged that he had signed it as being accurate. In fact, the acknowledgement extended further, namely to it being true to the best of his knowledge and belief. However, in the course of his testimony Mr Simon Chan identified various passages which he said were not the truth. He gave various explanations as to how that had come about. Firstly, he said that he had misunderstood the situation in respect of the return of dividends and the effect that had on his ownership of the shares acquired in the two accounts with Mr Measure Hung's monies. Secondly, in the course of the interview he had been told at counter # 13 that he would be subject to SFC criminal prosecution if he provided false or misleading information.

49. Much later in his evidence, Mr Simon Chan amplified that account, saying that the SFC officer had said that giving false evidence might cause him to be imprisoned and then posed the question :

“Why do you have to take all the responsibility on your own?”.

50. Mr Simon Chan said that in consequence he became very scared and confused. He repeatedly testified that during the interview he had headaches. In the answers that followed, untruthfully, he had "...put the responsibility on Mr Measure Hung". In particular, it was untrue when he said :

"Although the account was in my name, the Mobicon shares and transactions in the account did not belong to me. It was only that before the account was opened, Mr Hung told me personally that he had some Mobicon shares which were not convenient for him to keep in his own name, and then later Ivy Ho also told me that Mr Hung had some Mobicon shares that had to be kept in the securities account under my name."

51. Similarly, it was untrue that :

"The subsequent transactions in the two accounts, in Wing Hang and Ever Long respectively, were not done through me and I had nothing to do with them. The shares in the accounts were not mine either. Only the shares in the account opened with Hantec for the IPO subscription of Mobicon were mine."

52. Furthermore, it was untrue that :

"I never minded who did the transactions in my accounts. It was only after I received the SFC letter I went to ask Mr Hung that Mr Hung said that the transactions were done by Alven Yeung".

53. Mr Simon Chan said that it was true that on receipt of the letter from the SFC he had gone to speak to Mr Measure Hung, that Mr Alvan Yeung had been summoned by a telephone call and that he had left the two of them alone in Mr Measure Hung's room, after which Mr Measure Hung had spoken to him. However, he was not sure that Mr Measure Hung had told him to tell the SFC that the money was a bonus given to him by Mr Measure Hung. Mr Measure Hung had simply told him to tell the truth and that explanation of the flow of monies from Mr Measure Hung was the truth.

(iii) Ms Vicky Fan.

54. Ms Vicky Fan testified that the record of an interview conducted of her by an officer of the SFC dated 5 September 2005 was accurate. She said that

she was an accountant employed in Mobicon, for whom she had worked since 1995. She left school in 1990 as a Form V graduate. In 2005, she obtained a degree in accounting from the Open University. She worked with Mr Alvan Yeung when he was the Financial Controller of Mobicon for some time prior to it being listed in 2001, after which he was replaced by Ms Ivy Ho. In the year ended 31 March 2004, her salary was \$215,800.00 and in the following year \$228,000.00.

Opening and operation of an account in the name of Ms Vicky Fan at Phillip Securities.

55. In early 2004, Mr Measure Hung told her that he wished to give her an incentive at work and promised that she would be paid about \$2 million in total. Next, she asked Mr Alvan Yeung to introduce her to a stockbroker. In his turn, Mr Alvan Yeung introduced her to Mr Ng Ching Yeung, Sunny (“Mr Sunny Ng”) and she opened an account at Phillip Securities on 26 January 2004. She agreed that the assertion in the account opening documentation that she had known Mr Sunny Ng for one year was untrue. She had known him for one to two months. Similarly, she said of the statement that she had liquid assets of \$1 million and net assets of \$3 million that :

“... maybe I did not have that much.”.

56. She said that when she signed the form that information was not written there. She did not know by whom it was written. The account opening documentation states that the “online trading” service was not requested.

57. She said that at the beginning she had asked that communication with her about the operation of the account be sent to her by mail. However, within a week of opening the account she had changed her mind and asked for it to be sent to her at the e-mail address written on the account opening documentation,

namely “vickymobicon@yahoo.com.hk”. Mr Sunny Ng had written that information. Subsequently, she received communications from Phillip Securities, including copies of contract notes, to that account. She did not disclose the password given to her to operate that account to anyone. The account was used only in respect of dealings in the Phillip Securities account, whereas she received other communications at the e-mail address : “vicky@mobicon.com”.

58. Of the process by which she bought shares and received monies, she said that Mr Measure Hung would first inform her, normally face-to-face, of the size of the prospective gift. Then, she would telephone the broker and give instructions to purchase shares to approximately that value. Next, again face-to-face, she would tell Mr Measure Hung of the amount of money she had expended on purchases and that needed to be deposited to settle the resulting monies due. However, Mr Measure Hung did not give her a cheque for that amount and she was not sure how the payments were settled.

59. Ms Vicky Fan accepted that in the seven-week period up until the end of March 2004, during which shares were purchased, some \$1.21 million had been spent on the purchases. When shown cheque-stubs in the account of Mr Simon Chan with Wing Hang Bank she said that the handwriting looked like that of Ms Ivy Ho and agreed that her account at Phillip Securities had been stipulated as payee, and that the amounts matched the amounts described as due in consequence of purchases and described as settled by cheque payments on her Phillip Securities statements. At the time of the transactions she did not know the provenance of monies deposited into her account with Phillip Securities.

Related e-mail communications : the account of Mr Simon Chan as the provenance of payments to Phillip Securities for settlement of share purchases in the account of Ms Vicky Fan.

8 March 2004.

60. She said that she had never seen an e-mail, dated 8 March 2004, from Mr Alvan Yeung to Ms Ivy Ho and copied to Ms Beryl Yeung, to which was attached a Phillip Securities contract note for the purchase of 100,000 Mobicon shares in her account on 7 March 2004 for \$98,364.56. The request made of Ms Ivy Ho in the e-mail included :

“Pls. arrange issuing a cheque of HK\$98,364.56 from Simon Wing Hang c/a to P. SHK-AC-Fan Suk Han on 9/3.”.

61. Ms Vicky Fan did not know how the attached contract note came to be passed between these parties. For her part, she said that on occasions she did print out contract notes to give to Mr Measure Hung when she sought payment from him for purchases of shares, but she did not e-mail him such documents. She did not forward the e-mail of 8 March 2004 or the attached contract note to anyone in the Mobicon group. She knew nothing of the participation of the various parties in the settlement of her purchases of those shares in her account.

25 April 2005.

62. Similarly, Ms Vicky Fan did not know how an e-mail sent from Mr Alvan Yeung to Ms Ivy Ho dated 25 April 2005, in which the latter was asked to arrange the deposit into Ms Vicky Fan’s Phillip Securities account of a sum of money from “...Simon WHB c/a account”, had attached to it an earlier e-mail of 21 April 2005 addressed to Ms Vicky Fan from Phillip Securities relating to a statement of that account of that date.

27 January 2005.

63. Ms Vicky Fan said that she did not know why Ms Ivy Ho had sent her an e-mail, dated 27 January 2005, requesting her to check the receipt of the interim dividend into her bank account, after which she was invited to issue a cheque, deposit it into M-Bar's bank account and provide a copy of the cheque in advance of doing so. She said that for her part she had contact with Mr Measure Hung only in respect of these matters.

64. Ms Vicky Fan agreed that there had been no purchases of Mobicon shares in the months of April to June 2004 and that, following a purchase of 50,000 shares in early July 2004, on three separate days in July 2004 a total of 250,000 Mobicon shares had been sold. She did not know why Mr Measure Hung had made no further advances to her in that three-month period. At first, she said that she did not recall why it was that she had sold shares but, on reflection, said that it might have been because she wanted to test the market, that is to see if someone was prepared to buy at that price, namely \$1.00 - \$1.01. She was not in need of money. She agreed that she had made further purchases of Mobicon shares in late July and the first part of August 2004 : 260,000 shares in the period 22 - 28 July; 200,000 shares on 30 July; 120,000 shares on 12 August and 70,000 shares on 13 August 2004. She agreed that the net balance of \$50,700.21 due after a combination of sales and purchases in July 2004 was reflected as an entry in her favour in another of the cheque stubs in the account of Mr Simon Chan with Wing Hang Bank dated 29 July 2004, as were payments of net balances in August 2004 of \$312,014.24 and \$69,759.05.

The remittance of dividend payments to M-Bar.

65. Ms Vicky Fan said that after she had received a dividend of \$32,032.00, in August 2004 payable on the 1.12 million shares that she held at the date on which the dividend was calculated, she had spoken to Mr Measure Hung about

the matter. She did so because from the beginning he had made it clear that if the company's results were not good, in particular if they did not reach \$35 million, the dividend had to be given back. As a result, she made out a cheque drawn on her own account in the amount of the dividend, payable to M-Bar. She did not discuss the matter with either Mr Alvan Yeung or Ms Ivy Ho. She agreed that she was aware that some of her colleagues also made out cheques payable to M-Bar, but she was not sure if that was in respect of dividends.

Ms Vicky Fan's duties in respect of M-Bar.

66. Ms Vicky Fan said that her employment duties involved the company M-Bar. On occasions she filled in the details of payees on cheques on that account, usually signed by Ms Beryl Yeung. Also, she compiled the General Ledger, including the Directors Current-Account, and did so in part from details in the HSBC bank savings passbook. She agreed that some of the handwritten notation that appeared against printed entries in that passbook were in her hand. Sometimes such entries were based on information supplied to her by Ms Ivy Ho. She said that she wrote the handwritten entries against various sums of money deposited into the account on 28-30 January 2004, including various names : Marcel, Simon, Alvan and Laurence followed by "-D". The pattern was illustrated against the entry for the date 29 January 2004 and the amount \$42,944.20, against which she had written : "Simon-D". She said that the name referred to a particular person and the letter "D" conveyed the meaning that it was a remittance that was to be recorded in the Directors Current-Account. She said that that was the case in respect of the entry for the date 11 September 2004 in which the money deposited was \$32,032.00, against which she had written "Vicky-D". She maintained that position notwithstanding that it was pointed out to her that it was her evidence that the payment was in fact payment of the dividend that she had received in respect of the Mobicon shares held in her Phillip Securities account.

67. Ms Vicky Fan said that the handwritten reference “Div” above the entry for 18 August of a deposit of \$3.6 million was the dividend received by the four directors of M-Bar, namely Mr Measure Hung, his brother, Ms Beryl Yeung and her brother, in respect of their holding of Mobicon shares. Similarly, the reference “Div” followed by the name “Allix” next to the sum of \$900,000.00 and a similar reference with the names “Beryl” and “Measure” next to the sum \$2.7 million was the division of that earlier dividend payment. However, she said that she did not know that the entries accompanied by references to the names Alvan, Laurence, Simon, Mrs Marcel together with “-D” in the period 21 August to 25 September 2004 were in fact repayments of dividends by those persons.

68. In compliance with the Tribunal’s order, the day after Ms Vicky Fan had given this aspect of her evidence, she produced to the Tribunal a printout of the General Ledger of M-Bar for the period 2003-2005. She agreed that against entries of money debits in the period 26 August to 3 September 2004 against particular entries she had entered the names of Simon Chan, Alvan, Marcel, Laurence and Yu Min Yin with the reference “DIVIDEND”. She had repeated that exercise against the male names for entries in the period 28 - 30 January 2004. Immediately before that, against the dates of 16 and 17 January 2004, she had made entries of the receipt of dividend of \$2.4 million and the subsequent division of that money between Measure, Beryl and Allix.

Issue : the provenance of the Mobicon shares bought into the account of Ms Vicky Fan at Phillip Securities.

69. In the course of his examination of Ms Vicky Fan, Mr Edwin Choy took the witness to three sets of documents to demonstrate the provenance of the Mobicon shares bought and sold in her account at Phillip Securities :

- (i) her account statement at Phillip Securities stated that she had brought 50,000 shares at \$0.98 on 17 February 2004;
- (ii) the MSS Stock Activities schedule in Mr Shek's report stated that in total 110,000 Mobicon shares had been bought on that date and that Hantec had been the broker for the seller in all three of the trades. Two trades were for 50,000 shares each and the other 10,000 shares. One of the trades was with Phillip Securities for 50,000 shares at \$0.98 per share; and
- (iii) Mr Tam Kwok Wai's account statement in Hantec stated that he had sold all 110,000 shares on that date, including 100,000 shares at \$0.98 per share.

70. Ms Vicky Fan accepted that on the documents Mr Tam Kwok Wai, Laurence ("Mr Laurence Tam") was the seller of the shares bought in her account and that Mr Laurence Tam was her colleague, but said that she was unaware the purchase was made from him.

71. Ms Vicky Fan went on to accept that the same was demonstrated to be the case, as described on the documents in respect of no less than a total of 17 occasions on which she had bought or sold shares of Mobicon in that account, namely that her trades were with Mr Laurence Tam but she asserted that she was unaware of that fact at the time of the transactions. Also, she accepted that on many of those occasions the trading between the two of them was the only trading of Mobicon shares that day.

M-Bar's bank account activity.

72. Ms Vicky Fan said that she had written Mr Simon Chan's name as the payee on two cheques drawn in the sum of \$1 million each on the account of M-Bar on 15 October and 17 November 2004 respectively. She agreed that before

doing so she would have needed to have checked that there were sufficient funds in the account of M-Bar. She said that she had written that company's name next to an entry on 15 October 2004 for the withdrawal of \$300,000.00. She agreed that the M-Bar savings account had received that sum of money on the same day and that the monies had then been transferred to the M-Bar current account, upon which the cheque had been drawn. Furthermore, she agreed that she had written Mr Simon Chan's name on the cheque drawn on the account of M-Bar dated 9 March 2004 in the sum of \$630,000.00. However, she denied a suggestion that she knew that those monies enabled Mr Simon Chan to buy Mobicon shares.

(iv) Ms Ivy Ho.

73. Ms Ivy Ho has been the Financial Controller of Mobicon since May 2001. At that date her salary was \$25,000.00 per month. Now, it is \$38,000.00 per month. She identified the transcript of two records of interview conducted of her by an officer of the SFC, dated 5 August and 12 October 2005 respectively, as accurate records of those interviews. She is a member of the Hong Kong Institute of Certified Public Accountants and has been since about 1997. Also, she is a member of the Association of Chartered Certified Accountants. She graduated in accountancy at the then Hong Kong Polytechnic in 1990, after which she worked as an auditor for Deloitte for three years. Thereafter, she worked as an accountant in various companies until she joined Mobicon.

74. Her duties at Mobicon included the preparation of monthly management reports, the interim and annual report of the company. Also, she received and responded to notices from the SEHK and was concerned in Human Resources. She said that Ms Vicky Fan was the accounting manager of the company and reported directly to Mr Measure Hung.

Assistance to Mr Simon Chan.

75. Ms Ivy Ho confirmed Mr Simon Chan's testimony that she had assisted him in opening his share-trading account with Wing Hang Brokerage on 26 February 2003. She had done so on the instructions of Mr Alvan Yeung. At the same time, he had opened a bank account with Wing Hang Bank and had given her the related cheque-books which were signed, but otherwise blank. She did not recall having been given the password to operate Mr Simon Chan's internet trading account with Wing Hang Brokerage. Mr Simon Chan either handed her the statements on those accounts or left them in her "In-tray". She filed and kept them in a drawer, which was locked by a combination lock, which only she knew. She never looked at those statements and could not recall if Mr Simon Chan had come to look at them. Certainly, no one else looked at them.

76. Ms Ivy Ho said that on receiving instructions from Mr Alvan Yeung she completed details of the payee, date and amount of money on the pre-signed blank cheques of Mr Simon Chan, with matching entries in the cheque stubs, and banked them as instructed. She did the same in respect of blank pre-signed cheques in cheque-books of Mr Marcel Cheung. At an earlier stage Ms Beryl Yeung had custody of Marcel Cheung's cheque-books.

Cheques drawn on the account of Mr Marcel Cheung.

77. Ms Ivy Ho identified her handwriting in the entries in the cheque-book stubs of Mr Marcel Cheung's cheque-book, in respect of cheques drawn in the amounts of \$400,000.00 and \$390,000.00 on 24 March and 9 May 2003 respectively in favour of Mr Simon Chan. The earlier entries were not in her handwriting, but she added that they might be the handwriting of Ms Beryl Yeung. The entries in the cheque stubs after the date 24 March 2003 were in her handwriting. She did not know why those cheques were drawn on Mr Marcel

Cheung's account in favour of Mr Simon Chan. She merely carried out Mr Alvan Yeung's instructions. Mr Simon Chan's Wing Hang Bank statement records deposits in those amounts of money on those dates. Also, microfiche copies of the two cheques, which match the cheque numbers on the cheque stubs, have been received by the Tribunal. Other microfiche copies of cheques drawn on the account of Mr Marcel Cheung in favour of Mr Simon Chan describe the payment of sums of \$100,000.00 on 23 September and 11 November 2003 respectively and \$150,000.00 on 28 October 2003. Those transactions are reflected in the bank statements for Mr Simon Chan's account with Wing Hang Bank.

78. Of the other cheque stubs in Mr Marcel Cheung's cheque-book in the handwriting of Ms Ivy Ho, six are described as cheques drawn in favour of Ever Long and one a cheque drawn in favour of "Hantec". The latter is dated "2.4.03" and is drawn in the sum of \$338,084.60. The account of Mr Alvan Yeung with Hantec, or HT, records the deposit of a cheque on that date in that sum of money as settlement for monies outstanding following the purchase of Mobicon shares on 31 March 2003. The six cheques described in the cheque stubs as drawn on dates on between 8 and 15 April 2003 exactly match in monetary terms the deposit of cheques into the account of Mr Simon Chan with Ever Long on those dates. Those cheques were received as payments for six purchases of a total of 590,000 Mobicon shares on and between 3 to 10 April 2003. Following the purchase of further tranches of Mobicon shares in May and July 2003, so that the total reached 816,000 Mobicon shares, those shares remained in that account until they were all withdrawn in September 2005.

Cheques drawn on the account of Mr Simon Chan.

79. Ms Ivy Ho acknowledged that entries in the cheque stubs of the cheque-book of Mr Simon Chan's account at Wing Hang Bank describe :

- two payments to the Phillip Securities account in the name of Mr Measure Hung and Ms Beryl Yeung in December 2004;
- a payment to the Phillip Securities account of Ms Vicky Fan in January 2005; and
- two payments to M-Bar in the same month.

80. She said that she simply acted upon Mr Alvan Yeung's instructions by e-mail and never asked what was going on. The cheque stubs themselves described four other payments to Ms Vicky Fan's account at Phillip Securities on and between 2 February and 12 May 2005.

E-mails.

(a) Simon Chan's account.

81. Ms Ivy Ho acknowledged the fact of e-mail communication in which she was the recipient or which had been copied to her. Of the fact that an e-mail, dated 15 January 2004, from Mr Alvan Yeung to Ms Beryl Yeung had been copied to her in which Ms Beryl Yeung had been asked to arrange the transfer of \$1 million to "Simon Wing Hang Bank s/a", she said she thought the purpose was so that she might remind Ms Beryl Yeung of that request. Of the e-mail, dated 29 January 2004, from Mr Alvan Yeung to Ms Ivy Ho, copied to Mr Measure Hung and Ms Beryl Yeung, in which the subject was described as : "Interim Dividend-Simon-EL" she said that she had carried out the request, namely issuing a cheque of "\$16,218.40 from Simon Wing Hang c/a to M-Bar". She said that she was given no explanation as to the nature of the transaction nor did she seek an explanation.

(b) Ms Vicky Fan and Simon Chan's account.

82. Of the e-mail sent to her from Mr Alvan Yeung, copied to Ms Beryl Yeung, dated 8 March 2004, she said that she did not know why she had been

asked to issue a cheque of \$98,364.56 from Simon's Wing Hang current-account to Ms Vicky Fan's account at Phillip Securities. Similarly, she said she did not know why a contract note reflecting the purchase of 100,000 Mobicon's shares in Ms Vicky Fan's account, giving rise to a debit in that very sum of money, was attached to the e-mail. Also, in context of the second request made in the e-mail, namely to arrange a cheque in the sum of \$630,000.00 drawn on the account of M-Bar in favour of Mr Simon Chan's Wing Hang current-account she said that she did not understand the accompanying reference "(clearing the 1st to 7th deposit made by Laurence)".

83. Of the e-mail, dated 27 January 2005, that she sent to Mr Alvan Yeung in which she asked :

"Have you ever check with the bank account of Simon Chan regarding the receipt of interim dividend?"

she explained that her concern was that Mr Alvan Yeung might have overlooked this matter, particularly in light of the fact that he had given such instructions on earlier occasions. Ms Ivy Ho acknowledged that by an e-mail dated 31 January 2005 she sent to Mr Alvan Yeung she had asked :

"How about the dividend income received by Simon Chan on behalf of M-Bar? Did the money deposited into Wing Hang Bank? Please check."

84. However, she said that she was not sure that Mr Simon Chan was receiving dividend income on behalf of M-Bar. She had noticed that dividends had been transferred from Mr Simon Chan's account to that of M-Bar. She added that she knew that the relationship between Simon, Measure and Beryl was very intimate. She denied that she knew that Mr Simon Chan held Mobicon shares on behalf of M-Bar, Mr Measure Hung and/or Ms Beryl Yeung.

(c) Mr Marcel Cheung and Ms Yu's account.

85. Ms Ivy Ho acknowledged that she was sent an e-mail by Mr Alvan Yeung, dated 30 January 2004, in which the subject matter was described as “2004 Interim Dividend-Marcel wife-EL-TIF”. In the text she was told :

“\$22,825.20 being the dividend should be deposited to MBar.”.

86. In the e-mail trail, attached to the e-mail, was an earlier e-mail to Mr Marcel Cheung from Mr Alvan Yeung in which he had been informed :

“Pls. be noted that \$88,162.73 has been deposited by Ever Long Securities to your wife bank a/c on 20.1.2004.

The amount represents interim dividend \$22,825.20 and the remaining balance in the securities account \$65,337.53. Please arrange issuing a cheque out as instructed by Ivy....”.

Ms Ivy Ho said that she was not sure on what basis the payment was requested.

87. Again, Ms Ivy Ho acknowledged that she sent the e-mail to Mr Alvan Yeung, dated 6 September 2004, in which the subject was described as : “Ever Long statement - Yu Min Yin” and in which she stated :

“Just faxing you August 04 statement for your ease checking and calculation of dividend refund.”.

Ms Ivy Ho explained Mr Marcel Cheung had handed her the document and she was merely passing it on to Mr Alvan Yeung for his records.

88. Ms Ivy Ho accepted that she had been copied an e-mail, dated 20 February 2005, sent by Mr Alvan Yeung to Mr Marcel Cheung in which the subject was described as : “2005 Interim Dividend-Marcel-Golden Fountain”.

The text stated :

“Pls. see attached the details of the 2005 interim dividend for your Golden Fountain a/c. Pls. arrange issuing cheque according to the instruction of Ivy.”.

89. The attachment was a monthly statement of account in Mr Marcel Cheung's name with Golden Fountain Securities, dated 31 January 2005, in which 944,000 shares were stated to be held, together with a Wing Lung Bank deposit slip showing the deposit of \$27,083.35 into Mr Marcel Cheung's account on 24 January 2005 with a handwritten reference "#1213 Div". For her part, Ms Ivy Ho said that her role was to follow up the matter with Mr Marcel Cheung. By an e-mail dated 21 February 2005 she sent to Mr Alvan Yeung bearing the same subject heading she informed Mr Alvan Yeung : "...a cheque for value of HK\$27,083.36 would be issued fm Marcel's c/a in Wing Lung to M-Bar Limited today."

(d) Mr Laurence Tam.

90. Although Ms Ivy Ho acknowledged that she had sent an e-mail to Mr Alvan Yeung dated 14 April 2004 in which the subject was described as "8th - 11th deposit into Laurence a/c" and in which she had informed Mr Alvan Yeung of the receipt of :

"... the cheque payment total of HK\$270,000 fm Laurence to M-Bar ..."

she said that she had no idea why such payments were made.

91. Ms Ivy Ho accepted that she had sent an e-mail dated 7 September 2004 to Mr Alvan Yeung in which the subject had been described as : "Dividend refund to M-Bar" and in which she had written :

"Measure has reminded me to chase the dividend refund from you and various friends as soon as possible."

She explained that the phrase "various friends" had come from Mr Measure Hung himself and she did not know to whom it referred.

92. Finally, Ms Ivy Ho accepted that she had sent an e-mail to Mr Alvan Yeung dated 31 March 2005 in which she stated that she had received a cheque from Marcel in the sum of \$888,464.00 and of which he enquired : “Does it relate to the share transfer? How about the calculation?”

93. She said that given the size of the money amount in the cheque she thought that it was not related to a dividend and hence had made enquiries. It is to be noted that the General Ledger of M-Bar describes that payment as a credit against the name Ms Yu Min Yin (“Ms Yu”).

(v) Mr Laurence Tam Kwok Wai.

94. Mr Laurence Tam testified that he was the Sales Manager of the Export Division of Mobicon and had been employed by the company since 1992. He identified as accurate three transcripts of records of interview conducted of him by an officer of the SFC dated respectively 20 July, 11 August and 7 September 2005.

95. In 1994, he had acquired 30% of the issued shares of Mobicon Agent Ltd on payment of \$300,000.00 to M-Bar. Prior to the listing of Mobicon, Mr Measure Hung told him to sell that shareholding to him. He was given a choice as to the consideration for that sale : money or shares in Mobicon. He chose the latter and he had signed a sale agreement presented to him by Mr Measure Hung and Mr Alvan Yeung. He was told that they would open an account for him with a securities company.

Mr Laurence Tam’s account at HT Securities and the allotment of Mobicon shares in May 2001.

96. In due course, an account was opened in his name with HT Securities. He was the sole authorised signatory. He said that he did not recall the exact

number of shares that he obtained on listing, but that it was about 3 million. The statements of account in his name with HT Securities describe the deposit into that account by way of allotment on 3 May 2001 of 2,694,000 Mobicon shares. He explained that the credit to his account on 24 April 2001 by cheque of \$3,535,350.00 was a cheque from Mr Measure Hung. Documents obtained from the Standard Chartered Bank state that a payment in that amount accompanied an application for 3.5 million shares made by HT Securities. At this time his monthly salary was about \$30,000.00.

The Mobicon “bonus/punishment scheme”.

97. Mr Laurence Tam said that some little time after the company had been listed Mr Measure Hung had told him that he would be awarded bonuses which would arise in two ways : firstly, on the performance of the company and secondly, on his own performance. However, there was a caveat, namely that if Mr Laurence Tam performed badly he would be punished by the removal of shares from his account. Nevertheless, he denied that he had surrendered control of his account to Mr Measure Hung.

Mr Alvan Yeung authorized to operate Mr Laurence Tam’s HT Securities account.

98. Mr Laurence Tam identified his signature on an authorisation letter dated 31 March 2003 addressed to HT Securities in which he authorised Mr Alvan Yeung to operate his securities account for one year. He said that this had come about after Ms Beryl Yeung had issued a warning letter to the staff of Mobicon, reminding them not to trade in shares whilst at work. He had spoken to Ms Beryl Yeung and she had suggested that he allow Mr Alvan Yeung to monitor the account. At one stage in his evidence, Mr Laurence Tam asserted that he was the person who gave directions to Mr Chu Kin Man at the brokerage for both sale and the purchase of all shares. Later, he gave contradictory

evidence : he did not deal with the account directly and he did not know how transactions were done. He accepted that in 2001 he had not given anyone permission to deal in his account.

99. Mr Laurence Tam said of the sale of 50,000 Mobicon shares in his account of 14 May 2001 that he had called his broker, Mr Chu, and given him instructions to make that sale. He did so because he needed to raise money to pay for a “punishment”. He did so either by cheque or by depositing cash into a designated account as instructed by Mr Measure Hung. However, he accepted that on 16 May 2001 there was a purchase of a similar amount of shares in his account. When asked to explain if this was now a reward, Mr Laurence Tam said that there were delays in the paying of rewards for good performance.

(vi) Ms Yu Min Yin.

100. Ms Yu is a housewife, who married Mr Marcel Cheung in 1985 and by whom she has two sons. She was educated to Form II level and then employed both at home, cutting material and assembling products, and later in an electronics factory. After the birth of her elder son in 1987 she ceased to work other than as a housewife.

Ms Yu’s accounts at HT Securities and Ever Long.

101. At the time of the listing of Mobicon in 2001, at the request of her husband, she signed account opening documentation for securities accounts at both HT Securities and Ever Long. She said repeatedly that she knew nothing about shares, she did not call the respective brokers and did not trade herself in those accounts. She received the monthly account statements for the accounts, but handed them over to her husband. She agreed that the Hantec statement described the deposit on 24 April 2001 of \$7,070,700.00 and the allotment of 7 million Mobicon shares on 3 May 2001. She could not recall how the monies

came to be paid in to the account, although she said that later she became aware that there were shares. Similarly, of the 500,000 shares, described as having been bought in the Hantec account on 26 September 2001, she said that she did not know of that event and that they were not bought by her. In a similar way, she said that she knew nothing of the deposit of a cheque of over \$1.3 million into the Ever Long Securities account in her name on 8 May 2001.

102. In respect of the schedule, Exhibit 30, [**Appendix 1**] entitled “*Matched Trade between Marcel Cheung and Mrs Cheung from May 2001 to February 2003*”, which described multiple sales and purchases of shares between her account with Ever Long and her husband’s account with Golden Fountain Securities she said that she was unaware that the trades were between she and her husband. As and when required, by the available balance in the account in Ms Yu’s name with Ever Long Securities, purchases of Mobicon shares from her husband were funded by payments made from the bank account in his name with Wing Lung Bank.

The sale of Mobicon shares in the account in Ms Yu’s name with Ever Long in March 2003 and the remittance of those proceeds.

103. Ms Yu acknowledged that the account statements in HT Securities and Ever Long in her name for February 2003 stipulated that over 6 million and 8 million Mobicon shares respectively were held in those accounts at the end of the month. She said that she had never seen those statements before. She agreed that the account statement for her Ever Long account stated that in March 2003 about 6 million Mobicon shares had been sold in a month and that on 1 and 4 April 2003 withdrawals had been made by cheque in the sums of \$4 million and \$2,727,854.13. She said that she was unaware of those events at the time. However, she agreed that she had signed two cheques drawn on her account with HSBC, dated 4 and 7 April 2003, in favour of Mr Measure Hung and Ms

Beryl Yeung in the sums of \$4 million and \$2 million respectively. She had done so at the request of her husband without asking him why she should do so or finding out if there were sufficient funds in the account to meet the withdrawals. She trusted him. She acknowledged that those cheques were in large sums of money and that her HSBC bank account reflected the drawing of cheques with the same numbers as were on the two respective cheques and a third cheque in the sum of \$727,854.13. She had signed all three cheques on her husband's instructions. She did not pre-sign blank cheques.

Payment of dividends received in her Ever Long and HT Securities accounts to M-Bar.

104. Ms Yu said that she did not know whether or not dividends received on Mobicon shares held in her HT Securities and Ever Long accounts were paid to M-Bar nor could she recall if she signed cheques in favour of M-Bar.

Mobicon announcement : 18 March 2005.

105. Of the announcement made by Mobicon on 18 March 2005, in the context of addressing the requirement of at least 25% of the issued share capital of the company being in the hands of the public, in which it was stated that she held 7,182,000 shares that had been obtained by subscription in the initial public offering of the shares she said that she had told no one that. She acknowledged that it was stated in the announcement that she was a party to an agreement of 11 March 2005 under which she undertook to sell 6 million Mobicon shares. She said that she had sold shares in March 2005 and had done so because her husband had told her to do so.

Sales of shares in accounts in the name of Ms Yu in March 2005.

(i) Ever Long.

106. Ms Yu acknowledged that the account statement of Ever Long in her name stated that she had sold 1,050,000 shares on 21 March 2005 and that there

after the proceeds of the sale, \$1,098,464.34 had been withdrawn on 23 March 2005. However, she said that she knew nothing of those events.

(ii) HT Securities.

107. Similarly, she accepted that the account statement in her name with HT Securities stated that 2.95 million shares had been sold in the account on 21 March 2005 for \$3,086,193.61 and that a cheque had been withdrawn on 21 April 2005 in the sum of \$3 million. Of that, she said probably she had transferred it to a savings account in her name at the Bank of China. She agreed that her BOC savings account statement indicated a credit of \$3 million on 21 April 2005 followed by a debit on the following day in the same amount.

(iii) Bank of China.

108. Finally, she acknowledged that the monthly securities statement in her account in the BOC stated that 2 million shares had been sold on 21 March 2005 for \$2.1 million. She agreed that the statement for March 2005 in her savings account at the BOC showed a credit on 23 March in the sum of \$2,093,488.00 followed by a debit on 24 March in the sum of \$2 million. She added that, probably, the proceeds had been placed in a fixed deposit in Hong Kong dollars.

109. She acknowledged that a summary of her BOC savings account indicated the receipt of \$2,093,488.00 and \$3 million on 23 March and 21 April 2005 respectively. A summary of her BOC “Multicurrency Time Deposit” describes the receipt of sums of money in similar amounts, placed on fixed deposit on 8 and 22 April 2005 respectively.

(vii) Mr Marcel Cheung.

110. Mr Marcel Cheung confirmed that he was the husband of Ms Yu. He said that he had been involved in the sale of electronic spare parts for over 20

years. In cross-examination by Mr Brewer he agreed that he was a specialist in electronic toys. M-TEC was a company that he ran as a joint-venture with Mobicon from 1996. He held 40% of the shares of M-TEC and Mobicon the remaining 60%. The Prospectus issued for the listing of Mobicon described M-TEC as having been incorporated in 1992 and

“...through its operation, the Group began to sell electronic parts and components to customers from the electronic toys industry in May 1996.”.

The sale of 40% of the shares of M-TEC.

111. At the time of the listing of Mobicon Mr Marcel Cheung sold his 40% shares in M-TEC to Mr Measure Hung for \$58,440.00 as described in the Prospectus, which payment he received. Mobicon was described as the purchaser in the Prospectus. He accepted that the Prospectus described the payment as having been calculated on the net asset value of M-TEC. However, at that time he had complained to Mr Measure Hung that the price was unfair : the profit of M-TEC was about \$2 million a year, there having been an increase in both profit and turnover of 30% per annum from 1996. The profit of \$2 million per year represented about 10% of the total annual profit of Mobicon.

112. In cross-examination by Mr Brewer, Mr Marcel Cheung was shown a “Statement of Adjustments” dated 24 April 2001 prepared by Arthur Andersen and Co, the firm of accountants that had signed off the Accountant’s Report contained in the Prospectus. In a letter to the directors of the Mobicon Arthur Andersen stated that these adjustments had been incorporated in the Accountant’s Report. Mr Marcel Cheung said that the ratio of the stipulated contribution of M-TEC to the Combined Adjusted Income Statement of the Group for the years ended 31 March 1998, 1999 and 2000 in respect of “Profits after taxation but before minority interests” accorded with his recollection of those results, namely :

	<u>M-TEC</u>	<u>Combined Balance as per Prospectus</u>
1998	\$1.185 million	\$18.42 million
1999	\$1.501 million	\$17.205 million
2000	\$2.713 million	\$28.933 million

113. Mr Marcel Cheung said that projecting that profit growth forward for five to 10 years he estimated that his 40% of those shares was worth about \$15 million. In the result, he said that Mr Measure Hung had said that he would “arrange that his request would be fulfilled”. In particular, he promised him orally that he would receive :

- (i) \$7 million as the balance of the payment for his 40% shareholding in M-TEC; and
- (ii) in return for Mr Marcel Cheung’s promise to obtain a double-digit increase per annum in the profit of the whole company in the next two to three years Mr Measure Hung promised that he would
 - (a) give him in and around \$6,000,000.00 by giving him that in advance by way of shares; and
 - (b) lend him a total of \$2 million. The loan was to bear interest calculated on the higher of the bank savings account rate or the dividend of Mobicon.

114. Mr Marcel Cheung said that the arrangement had been carried through : at the time of the listing he had received \$7 million as additional consideration for his shares in M-TEC and had received about 6 million Mobicon shares. Also, he had received payments of parts of the total of \$2 million loan at various times within a year of the listing. Later in his evidence, in reply to being asked to quantify the amount in money terms that he had received from Mr Measure Hung and/or companies he controlled in the period after the listing, Mr Marcel Cheung said :

“... it would be about \$23 million, including shares and cash.”.

115. In 2001, his salary was in the range of \$30,000.00 - \$40,000.00 per month. In 2001-2002 he received bonuses in the range of \$400,000.00 - \$500,000.00 per annum. In cross-examination by Mr Brewer, Mr Marcel Cheung confirmed that his HSBC savings account reflected the deposit of his monthly salary of \$29,000.00 for the period from October 2001 up and until April 2005 when it was increased to \$34,000.00. In addition, he received a one-month bonus payment at or about Lunar New Year. He agreed with the suggestion put to him by Mr Brewer that his combined salary and bonuses resulting in an annual income \$800,000.00 to \$900,000.00 was insufficient to fund the education of his sons at their boarding school in New Zealand and with the further suggestion that it was in consequence that most of the loan of \$2 million from Mr Measure Hung had been forthcoming.

The opening of securities accounts and bank current and savings accounts.

(i) Accounts in the name of Mr Marcel Cheung.

116. Mr Marcel Cheung said that on the introduction of Mr Alvan Yeung, at the time of the listing of Mobicon, he had opened securities accounts at Ever Long, Golden Fountain Securities and Wing Lung Bank, at the last of which companies, he had opened a current and savings account. He retained control of the securities accounts and never surrendered control to anyone else. Although he had given books of pre-signed cheques drawn on his current account at Wing Lung Bank, first to Ms Beryl Yeung and later to Ms Ivy Ho, he did not surrender control of those bank accounts to anyone. Furthermore, whilst he agreed that there was a password by which he could operate his Wing Lung Bank savings account, he was adamant that he had not disclosed that password to anyone else.

(ii) Accounts in the name of Ms Yu.

117. At the time of the listing of Mobicon, on the introduction of Mr Alvan Yeung, securities accounts had been opened in the name of his wife, Ms Yu, at Ever Long and Hantec. Mr Marcel Cheung said that he, and no one else, exercised control over those accounts.

118. On receipt of the statements of account of those securities accounts, and having browsed them, he passed them on to Ms Ivy Ho. Mr Marcel Cheung did so in order that she could check that sales and purchases had gone through and so that on occasions when there was insufficient funds in the account to meet purchases he could ask either Ms Ivy Ho or Mr Alvan Yeung to bank cheques on his behalf.

The application for and allotment of Mobicon shares in April/May 2001.

(i) Ms Yu's account with Hantec.

119. Mr Marcel Cheung agreed that the "Pay in" of \$7,070,700.00 by cheque on 24 April 2001 into Ms Yu's Hantec account was the payment he had agreed with Mr Measure Hung as the additional consideration for his sale of 40% of the shares of M-TEC. For no particular reason, he had requested that the monies be paid into an account in the name of his wife. He had not thought of it as being a way of disguising the fact of the payment to a senior employee of Mobicon. He accepted that, on 3 May 2001, 7 million Mobicon shares had been deposited in that account following their allotment to Ms Yu, of which 2 million shares had been sold on 9 May 2001. That was a transfer of those shares to some Taiwanese friends who had paid him the purchase price of about \$2 million.

(ii) Mr Marcel Cheung's account with HT Securities.

120. Mr Marcel Cheung accepted that he had applied for the allotment of 4.1 million Mobicon shares and had been allotted 3.156 million shares. However,

he was unable to point to any of the bank accounts held in his name on which the cheque was drawn to accompany the application, namely \$4.1 million, or an account which had received the refund cheque of \$953,534.40. He said that the monies had come from either Mr Measure Hung or his Taiwanese friends. Similarly, he was unable to identify any securities account, in either his or his wife's name, in which the 3.156 million shares had been deposited. He was unable to remember if he had taken the shares as scrip. He said it was possible that he transferred some of the shares to his Taiwanese friends on whose behalf he acquired shares. The records of the "Fully/Partially Successful Applicants list" of those who subscribed in the IPO states that an application for 4.1 million shares was made in the name of Marcel Cheung, and that 3.156 million shares were allotted and a refund made of \$953,534.40. He was named as the payee on a cheque drawn on the Standard Chartered Bank in that amount dated 3 May 2001.

121. In re-examination by Mr Bruce, Mr Marcel Cheung acknowledged that the annual report of Mobicon for the year ended 2001 made reference to a dividend of \$7.9 million that had been declared on 15 March 2001 by M-TEC. He agreed that as a shareholder of 40% of the company's shares he had been entitled to 40% of the payment. He acknowledged that, in response to a notice from the Tribunal, solicitors acting on behalf of Mobicon, asserted that from the \$7.9 million dividend \$7.25 million had been paid to M-Bar and \$650,000.00 had been offset against amounts due from the director's current account. Also, he acknowledged that the HSBC savings passbook in the name of M-Bar stipulated a deposit of \$7,250,000.00 on 24 May 2001, against which was written "M-Bar Dividend" and that the General Ledger of M-TEC provided further particulars of the amount offset, namely that \$260,000.00 was offset against an amount due from shareholders and \$390,000.00 from an amount due from the directors of the company. Although he accepted that he was a director

of the company, together with Mr Measure Hung, he said the accounts were a matter for the accountants and he was unable to give any further explanation.

122. When asked to explain what had become of the dividend monies, Mr Marcel Cheung said that during the listing the "...monies had been changed into shares". When asked to note that the 3.156 million shares, at \$1.00 per share, amounted to \$3,156,000.00, which amount constituted 40% of the dividend of \$7.9 million declared by M-TEC, Mr Marcel Cheung said that he did not know whether or not it was pure coincidence that was the amount of shares allotted to him following his application.

Subsequent transactions in the Hantec account in the name of Ms Yu.

123. Mr Marcel Cheung said that the purchase of some 500,000 shares in September 2001 was a transaction he entered into for another friend, the cheque deposits received in the account of \$500,000.00 being that friend's payment. He had held those shares in that account for about a year. He agreed that he had not shared with that friend any of the dividend payment received in the account on all the Mobicon shares held in that account in December 2001. Of the deposit of 534,000 shares into that account on 2 January 2002, he said that those shares could have been bought in the market or transferred from his account. He was not sure. Finally, of the withdrawal of 3 million shares from the account in September 2004 he said that that was done because he was trying to get cash, but made no response to the question as to where the shares had gone.

Ever Long account in the name of Ms Yu.

124. Of the securities account in the name of Ms Yu with Ever Long Mr Marcel Cheung said that he did the buying and selling of shares and, by arrangement, the payments of monies into the account were made by Mr Measure Hung. However, Mr Measure Hung could not withdraw those monies.

These payments were part of the \$2 million loan from Mr Measure Hung. He said that the purchase of a total of over 1.3 million Mobicon shares on 7 May 2001 were purchases made at the request of some Taiwanese friends. The cheque deposit, \$1,385,726.41, settling the monies due from those purchases were paid by those Taiwanese friends. However, having been shown the statements of account for his current and savings account with Wing Lung Bank he accepted that the cheque was in fact drawn on his current account, following a deposit of an exactly matching sum transferred from his savings account. Initially, he said that the deposit of \$8 million into his savings account had come from those Taiwanese friends. However, having been shown a copy of the cheque itself he accepted that those monies in turn had come from the deposit of \$8 million on 28 April 2001 in a cheque drawn on the account of M-Bar.

Assistance to Taiwanese friends and their acquisition of Mobicon shares.

125. In cross-examination by Mr Brewer, Mr Marcel Cheung agreed with the suggestion that he had assisted three directors of Excel Cell, a Taiwanese company, namely Mr Chang Chu Tai, Mr Lee Shiu Cheung and Mr Liao Pen Lin to acquire Mobicon shares in the respective amounts of about 200,000 shares, several hundred thousand shares and 2 million shares. Similarly, he assisted Mr Liao, a director of Bright Led, another Taiwanese company, to acquire more than a million Mobicon shares; Mr Lin Zhuhai of Li Jia Electron Ltd to acquire 1.5 to 2 million Mobicon shares and Mr Tony Tseng of Siward to acquire one million Mobicon shares.

Dividend payments on the shareholding of Mobicon shares.

126. Mr Marcel Cheung accepted that in December 2001 a dividend payment of \$162,203.50 had been received on the 6,072,000 Mobicon shares held in the Ever Long account in the name of Ms Yu at a dividend calculated at \$0.025 per share. He accepted that the withdrawal by cheque of the amount of the dividend

payment was a repayment of the whole amount to Mr Measure Hung. When asked to explain why the repayment was not \$50,000.00, that being the amount that would have been due on a loan of \$2 million calculated at the dividend rate, Mr Marcel Cheung explained that the whole 6,072,000 shares were treated as a loan from Mr Measure Hung upon which interest calculated at the dividend rate was due and paid. He denied the suggestion that in fact he had surrendered complete control of this account and his Wing Lung Bank accounts to Mr Measure Hung and his associates.

The provenance of deposits of substantial sums of money into Mr Marcel Cheung's savings account at Wing Lung Bank.

127. Exhibit 31 [**Appendix 2**] is a schedule of deposits in excess of \$100,000.00 into Mr Marcel Cheung savings account at Wing Lung Bank in the period 28 April 2001 to 8 April 2003. It describes a payment of \$8 million on 28 April 2001 from M-Bar and two payments of \$2 million and two of \$1 million from the joint account of Mr Measure Hung and Ms Beryl Yeung in the period June 2001 to March 2002. Over \$5 million of the monies described in the schedule were deposits made from Mr Marcel Cheung's account with Golden Fountain Securities and \$1,993,555.44 came from Ms Yu's bank account, originating from the sale of Mobicon shares in the account in her name at Ever Long. Of the deposit into the account of \$1 million by cheque on 11 May 2001, Mr Marcel Cheung said that this was a cheque payment made by a Taiwanese friend who wanted to buy shares. However, when his attention was drawn to the fact that the cheque stated that it was drawn on the account of his colleague, Mr Lee Yiu Kong, Winson ("Mr Winson Lee") he said that this was a time of chaos and it might be that his Taiwanese friends had paid the money first to Mr Winson Lee.

Matched trades of Mobicon shares between the account of Mr Marcel Cheung at Golden Fountain Securities and the account in the name of Ms Yu at Ever Long.

128. Exhibit 30 is a schedule that describes the matched trades of over 5.5 million Mobicon shares between the account of Mr Marcel Cheung at Golden Fountain Securities and the account in the name of his wife, Ms Yu, at Ever Long in the period May 2001 to February 2003. Of the sale in the account of Ms Yu and his purchase of those shares in his account at Golden Fountain Securities on 14 May 2001 of 50,000 Mobicon shares Mr Marcel Cheung explained, firstly that he wished to give his wife a dividend on those shares and, secondly that he wished to practise his skills in trading in shares. However, he accepted that in fact the dividends were paid to Mr Measure Hung.

The sale of Mobicon shares in March 2003 in the account in the name of Ms Yu.

129. Mr Marcel Cheung said that he had sold shares in the account in the name of Ms Yu with Ever Long in the period beginning 21 March and ending 31 March 2003, a total of 5,870,000 shares, because Mr Measure Hung had asked for repayment following Mr Marcel Cheung's failure to achieve double-digit increase in profit of the company in 2001 and 2002. He owed him about \$6 million. The withdrawal of \$4 million and \$2,727,854.13 from the account in the name of Ms Yu at Ever Long was part of the process of making that repayment, of which the two cheques drawn on the account of Ms Yu at HSBC in favour of Mr Measure Hung and Ms Beryl Yeung jointly of \$4 million and \$2 million dated 4 and 7 April 2003 were the actual repayments made at his request of his wife. The cheque for the balance of the monies withdrawn from the account in the name of Ms Yu, namely \$727,854.13 was credited to Mr Marcel Cheung's current account at Wing Lung Bank as a cheque deposit and debited to Ms Yu's current account with the BOC as a cheque payment on 8 April 2003.

Payments to Mr Simon Chan.

130. At the outset Mr Marcel Cheung denied that he had provided monies to fund the purchase of shares by Mr Simon Chan. It was suggested to Mr Marcel Cheung that monies from the \$727,854.13 deposited into his account in a cheque drawn on Ms Yu's account was used to pay for Mobicon shares bought in the account of Mr Simon Chan. The statement of account of Mr Marcel Cheung with Wing Lung Bank for April 2003 describes five cheques drawn on and between 8 and 14 April 2003, following the deposit of \$727,854.13. The monetary amount of those cheques matches exactly to cents credits received by cheques into the account of Mr Simon Chan at Ever Long Securities in the period 8 - 15 April 2003 in settlement for purchases of Mobicon shares. Similarly, he acknowledged that the payment of \$119,435.54 into Mr Simon Chan's account on 7 April 2003 was described in his cheque stub book as a payment to Ever Long in the same amount. Of the circumstances in which these payments had been made from his account, Mr Marcel Cheung said that he had acted on instructions of Mr Measure Hung, from whom he was given the details of the exact sum of money in which to draw the cheque. For his part, he said that he conveyed the information to Ms Ivy Ho who made out the pre-signed cheque. However, he added that he had borrowed about \$100,000.00 - \$200,000.00 from Mr Simon Chan.

Payments made from the account in the name of Mr Marcel Cheung with Wing Lung Bank to the accounts in the name of Mr Simon Chan.

131. Exhibit 34 is a schedule of payments made by cheques drawn on the account of Mr Marcel Cheung with Wing Lung Bank and received in securities accounts in the name of Mr Simon Chan, at either Ever Long or Wing Lung Bank, and in the current account in his name at Wing Lung Bank in the period on and between 24 March and 11 November 2003 to a total of \$1,966,352.92. On 24 March and 9 May 2003 two such cheques, in the sums of \$400,000.00

and \$390,000.00, were deposited into the account in the name of Mr Simon Chan at Wing Hang Bank.

Matched trades of Mobicon shares between Mr Marcel Cheung's account and the account in the name of Ms Yu at Ever Long in April 2003.

132. Mr Marcel Cheung acknowledged that the account statement in the name of Ms Yu stated that on 1 and 2 April 2003 the account had sold 480,000 and 470,000 Mobicon shares respectively. Furthermore, he accepted that on 1 April 2003 he had bought 420,000 Mobicon shares in his Wing Lung Securities account and on 2 April 2003 he had bought a total of 470,000 Mobicon shares, 70,000 in his Wing Lung Securities account and 400,000 in his Golden Fountain Securities account. He acknowledged that the MSS records stated that on 1 and 2 April 2003 respectively 510,000 and 470,000 shares had been sold and that all the shares that he bought came from sales in Ms Yu's account at Ever Long. Of the circumstances in which those transactions occurred, Mr Marcel Cheung said that he wanted to move Mobicon shares from Ever Long to Golden Fountain Securities because he was going to close the Ever Long account in Ms Yu's name. When it was pointed out to Mr Marcel Cheung that the account was still open and holding Mobicon shares in May 2005 he explained that the level of trading in the account had faded away. When it was suggested to him that that was not the reason for the transfer of the shares Mr Marcel Cheung gave an additional explanation : he felt that the service at Ever Long was getting worse, they had temporarily lost a cheque he had written for about \$100,000.00.

Matched trades between the account of Mr Marcel Cheung at Wing Lung Bank and the account in the name of Mr Simon Chan at Ever Long in April 2003.

133. Mr Marcel Cheung acknowledged that his Wing Lung Securities statement of account for April 2003 stated that he had sold Mobicon shares on the dates and in the amount as follows :

7 April	80,000 shares
8 April	80,000 shares
9 April	84,000 shares
10 April	90,000 shares.

134. He accepted that on 7, 8 and 10 April all of those shares had been bought in the account in the name of Mr Simon Chan at Ever Long , whereas on 9 April all but 4,000 of the shares sold had been bought in that same account. He said that he did not know the identity of the buyer and explained that he had sold shares in order to raise money to repay Mr Measure Hung.

Payments made from the account in the name of Mr Marcel Cheung at Wing Lung Bank to accounts in the name of Mr Alvan Yeung.

135. Mr Marcel Cheung agreed that on the instructions of Mr Measure Hung he made monetary payments to Mr Alvan Yeung as part of the overall scheme of his repayment of monies to Mr Measure Hung. He acknowledged that an entry in his Wing Lung Bank cheque stubs for 2 April 2003 for \$338,084.60, where the payee was described as “HT”, was matched by a cheque deposit in the account of Mr Alvan Yeung at Hantec on 3 April 2003. The monies were settlement for the balance due from the purchase of Mobicon shares on 31 March 2003 in that account. On 9 May 2003, a cheque in the sum of \$390,000.00 drawn on the account of Mr Marcel Cheung with Wing Lung Bank was deposited into the account in the name of Mr Simon Chan at Wing Hang Bank.

Payments made from the account in the name of Mr Marcel Cheung at Wing Lung Bank to accounts in the name of Mr Laurence Tam.

136. Mr Marcel Cheung accepted that he had made payments to Mr Laurence Tam, explaining that Mr Measure Hung had told him that not all of the monies

loaned to him by Mr Measure Hung belonged to him, adding that he had to consider the needs of Mr Marcel Cheung's colleagues as well. Exhibit 33 is a schedule of payments made from the bank account of Mr Marcel Cheung at Wing Lung Bank to Mr Laurence Tam's account with HT Securities in the period 7 January 2002 and 17 February 2003. Mr Marcel Cheung acknowledged that a cheque stub in his Wing Long Bank dated 7 January 2002 described the payee as "HT Securities" and the amount of money in which the cheque was drawn as being \$96,014.95. That amount of money was described as a cheque debited to his account at Wing Lung Bank. Similarly, he accepted that the statement of account of Mr Laurence Tam at HT Securities described the receipt of that sum of money as a cheque "Pay In" on 8 January 2002, which payment settled the balance due in respect of the earlier purchase of Mobicon shares. Mr Marcel Cheung said that he had made the payment on Mr Measure Hung's instructions as part of his repayment of monies due to Mr Measure Hung. He accepted that the other payments described in Exhibit 33, to a total of \$1,254,958.51 were also made to Mr Laurence Tam on the instructions of Mr Measure Hung.

E-mails.

(i) 12 April 2003 : "Share position - 6.4.2003" [**Appendix 5**].

137. Mr Marcel Cheung said that previously he had not seen an e-mail dated 12 April 2003 from Mr Alvan Yeung to Mr Measure Hung and Ms Beryl Yeung to which was attached a document headed : "Share position - 6.4.2003", which was divided into three columns :

- (i) (initials and names);
- (ii) Shares; and
- (iii) Cash.

138. Against the initials “GF” and “WL” appeared his name and under “Shares” 1,174,000 and 490,000 respectively. Against his wife’s name, next to the initials “EL” appeared the number in the “Share” column 1,222,000 and in the “Cash” column 727,853.18. He accepted that the latter was the amount of money drawn in a cheque dated 5 April 2003 in his favour on Ms Yu’s account, being the balance of the proceeds from the sale of Mobicon shares in the account in her name with Ever Long not remitted to Mr Measure Hung.

139. In explaining how it was that Mr Alvan Yeung was possessed of details of the shareholdings in his accounts and in the account in the name of his wife, Mr Marcel Cheung said that he had provided that information to Mr Alvan Yeung so that he could “...calculate the selling of Mobicon shares.” In response, Mr Alvan Yeung had told him the amount of the shares held in his account and in the account in the name of his wife. He did not know why the schedule contained the names of other persons. He denied the suggestion that the document evidenced the fact that Mr Alvan Yeung, amongst others, was controlling his Wing Lung Securities and Golden Fountain Securities accounts and his wife’s account at Ever Long.

(ii) September 2004 : “Final Dividend : 4/03 - 3/04”.

140. Mr Marcel Cheung agreed that the attachment to an e-mail from Mr Alvan Yeung to Mr Measure Hung and Ms Beryl Yeung, dated 8 September 2004, entitled “Final Dividend : 4/03 - 3/04” recorded, amongst other information, the shareholding, dividend payment and handling charges in respect of the Mobicon shares held in his accounts at Golden Fountain Securities and Wing Lung Securities and the account in the name of his wife at Ever Long. He explained that Mr Alvan Yeung was possessed of the information relevant to his wife and his accounts because he had sought his help in the context of his need to repay dividends on those shareholdings to Mr Measure Hung. He had

passed the monthly account statements of his accounts and that of his wife to Mr Alvan Yeung. He passed those statements, firstly to Ms Ivy Ho, whom he then asked to pass them on to Mr Alvan Yeung. Mr Marcel Cheung denied the suggestions that he exercised no control at all over the securities accounts in his or his wife's name and the Wing Lung Bank account. He asserted :

“All the tradings going through my accounts were performed by myself and all the cheques were written by myself.”

(viii) Mr Lee Yiu Kong, Winson (“Mr Winson Lee”).

141. Mr Winson Lee testified that the record of interview conducted of him by an officer of the SFC on 18 January 2006 was both accurate and his answers truthful to the best of his knowledge and belief. He was employed as a Sales Manager of Mobicon and had been since 1991. He agreed that his basic monthly salary, as reflected in the statements of his HSBC bank account of October 2001, was \$21,600.00.

142. Before the listing of Mobicon in May 2001 Mr Measure Hung had told him that he would receive a bonus in the form of shares to the value of \$1.5 million. As a result, he opened an account in his name at HT Securities. He confirmed the accuracy of his answer to the SFC that he had received \$1.5 million by way of a cheque from Mr Measure Hung. However, when he was shown his HT Securities accounts statement for April 2001, which showed a deposit on 24 April 2001 of a cheque in the sum of \$3,045,000.00, for the first time Mr Winson Lee explained that \$1.5 million of that money was in respect of an application for shares made on behalf of “Taiwan people”. He said that he had agreed to Mr Measure Hung's request that he helped arrange or handle the application on their behalf.

143. Mr Winson Lee acknowledged that on 2 May 2001, 3 million Mobicon shares had been allotted to him in his HT Securities account. Of the 1.5 million

shares obtained on behalf of the “Taiwan people”, he said that in the absence of instructions he did not do anything. Eventually, Mr Measure Hung told him that he no longer had to handle those shares and instructed him to withdraw the shares. He could not remember if he had done so. Having been shown his HT Securities account statement, he acknowledged that it stipulated that one million Mobicon shares had been sold in that account on 8 May 2001. He could not remember having sold those shares or if he had acted on Mr Measure Hung’s instructions in so doing. Mr Winson Lee was adamant that he and no one else controlled his HT Securities account. Similarly, whilst he acknowledged that the statement indicated the withdrawal by cheque of an amount of a little over \$1 million on 10 May 2001, he said that he could not remember the transaction or how he had returned the monies owed to the “Taiwan people”. Mr Winson Lee could not remember what had become of that money. When shown a cheque dated 10 May 2001 drawn on his own HSBC account in the sum of \$1 million in favour of Mr Marcel Cheung he was unable to offer any explanation. He could not remember if he had been instructed to draw the cheque. He accepted that the 600,000 Mobicon shares sold in the second half of May 2001 in that account may have been sold on Mr Measure Hung’s instructions.

144. Mr Winson Lee accepted as accurate the account of Mr Measure Hung, to the SFC in an interview, of a meeting several months after the listing of Mobicon attended by Mr Laurence Tam, Mr Marcel Cheung, Mr Franky LEE and Mr Measure Hung at which he, Mr Winson Lee had become agitated over the respective distribution of bonuses. In particular, Mr Winson Lee said that he thought Mr Marcel Cheung had been given too much money and he had received too little.

145. Of the document bearing the fax transmission data : “Alvan Yeung Measure Hung 22/4/2001” and headed “HT List” he confirmed that his name

(ix) Mr Shek Kam Por.

146. Mr Shek Kam Por is a director of the Enforcement Division of the SFC. He graduated from the University of Hong Kong in social sciences, specialising in management studies and economics, in 1989. In 1996, he qualified as a member of what is now the Hong Kong Institute of Certified Public Accountants. In 2002, he became a Fellow of the Association of Chartered Certified Accountants in the United Kingdom.

147. Having worked in the Official Receiver's office he joined the SFC, first in the Investigation Department of the Enforcement Division and then, in 1997, the Surveillance Department. It has been part of his duties to monitor the activities of securities traded on the SEHK. On a number of occasions over a number of years he has given evidence as an expert witness in respect of market practices and market misconduct in both the criminal courts and in tribunals. In that capacity, he has testified in criminal trials in the Magistracy and the District Court and before both the Insider Dealing Tribunal and the Market Misconduct Tribunal. He was permitted to give expert evidence in those areas in these proceedings.

Mr Shek's statements.

148. The Tribunal received no fewer than four separate statements of Mr Shek, dated 19 January 2007, 10 and 27 October 2008 and 21 November 2008. Of the period 1 April 2003 to 31 May 2005, it was his opinion that the share price of Mobicon's shares was extremely stable, moving narrowly around the \$1.00 per share level, and that it was inactively traded. In contrast, the Hang Seng Index ("HSI") had risen 65.96%, or 5,670 points, from 8,596 points 1 April 2003 to a high of 14,266 on 29 December 2004, before ending at 13,867 on 31 May 2005, a gain of 61.32%. In addition, Mr Shek observed that the "profit attributable to shareholders" in the years ended 31 March 2001 to year ended 2005 varied considerably :

2001 : \$35.03 million

2002 : \$4.4 million

2003 : \$17.9 million

2004 : \$28.6 million

2005 : \$32.4 million.

The narrow band within which the price level of Mobicon shares moved did not reflect the changes in profits of the company.

149. In his first statement, Mr Shek limited his analysis of "matched trading" to that which occurred in the accounts in the name of Mr Alvan Yeung and Mr Simon Chan only and to the period 1 August to 31 December 2004. Of matched trading, he said that it did not bring any benefit to the traders and, on the contrary, incurred costs. On the other hand, it could have the effect of stabilising the price of Mobicon shares at the level of \$1.00 per share whilst providing an appearance of much more trading in the share than was actually the case.

150. It was his opinion, based on his experience of market surveillance, that manipulators may deliberately trade actively in a stock at certain price level, so as to create a false appearance of active trading of the counter at that price level with a number of potential motives :

- to improve liquidity of a stock so as to attract other investors, both retail and institutional, to invest in the counter;
- to convince investors that there is strong support in the counter at a certain price level;
- to maintain a certain level of turnover for financing purposes, as some financial institutions may only accept liquid stock as collateral and may require additional margin when the share price falls below a certain level; and
- to prepare for a potential share placing or a fund-raising exercise, given that it would be difficult to induce investors to invest in a volatile stock with little trading activities in the market.

151. In cross-examination by Mr Brewer, Mr Shek said that in the absence of matched trading (between combinations of Mr Simon Chan, Mr Alvan Yeung, Mr Laurence Tam and Ms Vicky Fan) the trading inactivity in Mobicon shares would have been much less than even the relatively low level achieved. He remained of the opinion that the impression given to the market and the potential investor was that there was a strong level of support for all Mobicon shares at around \$1.00 per share. Of the suggestion that the turnover level of Mobicon shares was generally, or particularly in the period August 2003 to March 2004, too low to permit the shares to be used as collateral in raising finance from banks Mr Shek said that that depended very much on the policy of the individual bank. He noted that throughout there were transactions in the shares in every month.

152. In his third statement, at the request of the Presenting Officers, Mr Shek calculated trading in the accounts in the names of Mr Simon Chan, Mr Alvan Yeung, Ms Vicky Fan and Mr Laurence Tam in the period 1 April 2003 to 25 May 2005. He noted that in that period 10,230,000 Mobicon shares were bought in those accounts and 7,934,000 shares sold, representing respectively 55.38% of the purchases and 42.95% of the sales in the market. Of the 510 trading days in that period, there were transactions in Mobicon shares in the market on only 209 trading days with an average daily turnover of 88,383 shares. Next, he calculated the “matched trading” between those accounts in that period and noted that 4,732,000 shares were traded between the four accounts, representing 25.62% of the market turnover during that period and that the costs incurred were \$34,055.37. He noted that represented 46.26% of the total purchases and 59.64% of the total sales of shares in that period.

153. Of the 209 trading days, he noted of the trading in the accounts of those four persons that on :

- 41 days the “matched trades” represented 100% of the trading;
- 109 days the purchases represented 100% of the trading; and
- 53 days the sales represented 100% of the trading.

Change in “notification” level on and after 1.4.2003 from 10% to 5% holding of the issued share capital of a listed company.

154. One of the issues addressed by Mr Shek in his fourth statement was the relevance of the change in the level of the holding of shares in a publicly listed company at which the holding or change in the holding becomes notifiable. Broadly speaking, the Securities (Disclosure of Interests) Ordinance provided for notification in respect of holdings of 10% or greater of the issued share capital of a company. By contrast, the SFO provides for notification in respect

of holdings of 5% or greater of the issued share capital of a company or increases or decreases of 1% or greater in such holdings.

155. In that context, Mr Shek noted that at the end of February 2003 a total of 14,086,000 Mobicon shares were held in the accounts in the name of Ms Yu with HT Securities and Ever Long. The issued share capital of Mobicon at that time was 200 million shares. Clearly, that holding, even when combined with the 1,554,000 shares held in the account in the name of Mr Marcel Cheung at Golden Fountain Securities, was less than 10% of the issued share capital of Mobicon. However, he noted that in March 2003 the holdings in the account in the name of Ms Yu with Ever Long was reduced by 5,880,000 shares, with the result that at the end of March 2003, immediately before the commencement of the SFO, the total number of Mobicon shares held in the account in her name was 8,206,000 shares. In March 2003, the Mobicon shares held in the account of Mr Marcel Cheung with Golden Fountain Securities was reduced by 780,000 shares to a total of 774,000 shares. Accordingly, the aggregate number of shares held in the accounts in the name Ms Yu and Mr Marcel Cheung was 8,980,000 shares, which amount was less than 5% of the issued share capital of Mobicon.

The holding of 7,968,000 shares of Fujikon and 5,550,000 shares in Mobicon.

156. The document entitled “Position as at 30.9.2003” describes holdings on the one hand of 7,968,000 Fujikon shares and, on the other hand, 5,550,000 Mobicon shares. In schedule form it sets out the cost of purchase, the receipt of dividends and the disposal of shares and provides for the payment of monies due from/to M and J it was Mr Shek’s opinion that the computations appear to relate to the fund flow of two total return swaps as at the 30 September 2003. He observed that a holder of shares under a total return swap is not entitled to dividend payment or gain in value of the shares. The calculation in respect of Fujikon, namely dividends received and a capital gain on the disposal, describes

monies due to the other party of \$6,845,032.49. Conversely, any monies due, arising from the holding of the Mobicon shares, was very much dependent on the value of Mobicon shares. So long as the share price of Mobicon was at or above \$0.943 per share, no payment would be necessary to compensate the other party for holding those Mobicon shares. It is to be noted that from 3 September 2003 until the end of the month the price of Mobicon shares was \$0.96 per share, trading being very thin throughout the month.

The consequences of low-volume trading in a share.

157. Mr Shek informed the Tribunal that he was not aware of any regulatory requirement in respect of liquidity, or market turnover, in a share of a publicly listed company.

158. Of the economic consequences of low liquidity in a share Mr Shek noted the following effects :

- the share was less attractive to investors as they may find it difficult to offload their shares after acquisition;
- some financial institutions may only accept liquid stock as collateral;
- difficulties may be encountered in raising capital by issuing new shares as low liquidity may make it difficult for placing agents to find investors;
- some indexes may require minimum trading requirement, for example the selection criteria of the Hang Seng Composite Index is no more than 20 trading days without turnover in the previous 12 months; and
- the shares may be less attractive to the recipient in a transaction involving the issue of new shares by a listed company as consideration.

THE SPECIFIED PERSONS

(x) Mr Measure Hung.

159. Mr Measure Hung identified as accurate the transcripts that he had signed, including answers which he has asserted as being true to the best of his knowledge and belief, that he had given in three records of interview by an officer of the SFC, namely on 25 January, 20 February and 16 June 2006 respectively. Similarly, he indicated that he had authorised the disclosure of information contained in letters sent by his solicitors to the SFC on 9 February, 13 March and 19 June 2006, which information he asserted was true, accurate and complete.

Background.

160. Mr Measure Hung said that he was born in 1961 and brought up in Hong Kong. He was educated to Form VII, first at La Salle College and then at a Christian College. Having worked for three years in a trading company trading in electronic parts and as a marketing manager for a short time in V-TEC he set up Mobicon in 1983. At first, he operated it with his wife from small premises. In 1989, he purchased a ground floor shop after which 11 people were employed. All but Mr Simon Chan were members of the family. In due course, he employed Mr Laurence Tam, with whom he had worked previously. In 1995, the business moved to premises occupying 10,000 sq ft. He had the ambition to become the most famous electronic spare parts company in Asia. He described the culture of Mobicon as being one of “open management”, in which no secrets were kept. Everything was discussed openly. For his part, his duties included the development of the company and its internal affairs, in particular the promotion of employees and even their own emotional matters. The general administration of the company was handled by his wife.

Character

161. Mr Measure Hung asserted in his statement of 14 October 2008 that he had no criminal conviction and recited in an appendix his many contributions to the community by way of service on trade, vocational and public bodies.

Assertions made by Mr Measure Hung in his statement of 14 October 2008.

162. In his statement of 14 October 2008, Mr Measure Hung addressed the un-amended Notice of the Financial Secretary dated 8 April 2008, which directed attention to trading in the shares of Mobicon in the accounts of Mr Alvan Yeung and Mr Simon Chan in the period 1 August to 14 December 2004. He said that he had made cash awards from either M-Bar or from his own account to the staff of Mobicon to show his appreciation of their work and to retain and motivate them, so long as the individual staff member and Mobicon performed satisfactorily. He encouraged the members of staff who received cash awards to buy shares of Mobicon. He asserted (paragraph 8) that : “I believed that if the trading of Mobicon shares in the market was too thin, my staff would have no interest to buy or retain Mobicon shares”. He went on to say (paragraph 9) : “And I believed that on-the-market tradings could improve the liquidity of the stock”.

163. He described this conduct as being an incentive scheme, albeit one that was not formally documented or one that he explained in detail to the members of staff. An important part of the scheme, so he asserted, was a procedure by which, unless the net profit level of Mobicon reached \$35 million per annum and the individual member of staff performed satisfactorily, the dividends/interest received by the members of staff from the Mobicon shares held in their name would be forfeited and the award re-allocated to another member of staff.

164. At his request, Mr Alvan Yeung co-ordinated the opening of securities accounts for members of staff for the purpose of trading in Mobicon shares and so that he would be helped in maintaining trading records of those members of staff under this incentive scheme. Given that Mr Alvan Yeung was not resident in the offices of Mobicon for most of the time, he asked Ms Ivy Ho, the Financial Controller of Mobicon, to collect statements of securities and bank accounts of members of staff benefiting from the incentive scheme.

Mr Simon Chan.

165. Mr Simon Chan, whom he described as an important member of staff and a key assistant to his wife in the making of quotations for sales, was one of the members of staff who benefited from the incentive scheme. He suggested to him that he used the cash to buy the shares of Mobicon but he did not describe the scheme in detail to him nor did he inform him of the amount of the cash awards. Mr Measure Hung told Mr Simon Chan that Mr Alvan Yeung would assist in opening a securities account and would make purchases of shares from the cash awards on his behalf. Of the flow of money into Mr Simon Chan's accounts and the trading of shares, Mr Measure Hung said (paragraph 24) :

“Whilst the purchase of the Mobicon shares on Simon Chan's account was funded by me, the shares remained at all times the property of Simon Chan. However, I admit that at all material times :

- (1) control over dealings in those shares remained with myself (assisted by Mr Alvan Yeung);
- (2) I received the dividends paid on the shares through M-Bar Limited (a company controlled by me); and
- (3) the shares were used for the alleged trading by Mr Alvan Yeung in contravention of section 274 of the Securities and Futures Ordinance, Cap 571.”.

166. Mr Measure Hung admitted that, during the period 1 August 2004 to 14 December 2004 (paragraph 17) :

“.... I was aware that some of the buying orders traded under the name of Simon Chan (through Mr Alvan Yeung) were matched with the selling orders from Mr Alvan Yeung.”.

In particular, he accepted that those matched trades were described in the schedule to the record of interview of Mr Alvan Yeung dated 18 November 2005, setting out 28 such trades in that period, in which Mr Alvan Yeung was the seller on 25 and buyer on 3 of those occasions.

167. In his oral testimony, Mr Measure Hung made it clear that whilst he denied that he had intended to create a false or misleading appearance of active trading in Mobicon shares he did accept that he was reckless as to whether it did or was likely to have the effect of creating a false or misleading appearance of active trading in those shares. However, he went on to assert that his culpability lay only in the fact that he had provided the money with which Mr Alvan Yeung had traded in a manner that was in contravention of section 274 of the Ordinance. He acknowledged that the documentary records showed shares being traded between the accounts of Mr Alvan Yeung and Mr Simon Chan. He added :

“A. : This mistake is made by Alvan Yeung.

CHAIRMAN : Unknown to you?

A. : I don't know about such processing. But I told him to assist, so I feel I have the responsibility to take up. Assuming that he helps us doing some things, it means that when the employee makes mistakes it is not for the chairman to evade responsibility. I am an entrepreneur.”.

Trading in accounts in the names of other members of staff of Mobicon.

168. Mr Measure Hung went on to admit and assert in his statement (paragraph 21) :

“The purchases of the Mobicon shares on Mr Laurence Tam's account and Ms Vicky Fan's account were of a similar situation as those on Mr Simon Chan's account. The purchases were funded by me, I and Mr Alvan Yeung had control over dealings in the shares, however, the shares remained at all times the property of Mr Laurence Tam and Ms Vicky Fan.”.

169. In his oral testimony, when asked if he was culpable of false trading in those accounts, Mr Measure Hung replied :

“I feel it is not false trading, because it is from two different accounts. My original intention is just a given amount of money as a reward to buy in the company shares. I can only say the method, it is not done so properly.”.

170. Moreover, he denied that, in doing what he did or caused to be done in the accounts in the name of Mr Laurence Tam and Ms Vicky Fan, he was reckless as to whether it has or is likely to have the effect of creating a false or misleading appearance of active trading in Mobicon shares.

The “Listing” of Mobicon.

171. In 2001, Mobicon was listed on the SEHK. Mr Measure Hung said that his motive in so doing was firstly, so that employees could join in and become shareholders of the company and, secondly to become competitive. In 2000, he had discussed his idea of listing Mobicon with his then accountant, Ms Margaret Wong. She indicated to him that she was no longer able to handle the developing business of the company and introduced him to her friend, Mr Alvan Yeung. He and Mr Alvan Yeung worked long hours together for between five and seven months making preparations for listing. Mr Measure Hung was in charge of those arrangements and he was the one who had contacted the Sponsor.

Dividends paid prior to listing.

172. In the months leading up to the listing in May 2001, as set out in the Prospectus, the Mobicon Group declared a dividend of \$42 million for the seven months ended 31 October 2000 and a special dividend of \$75 million in March 2001. On 15 March 2001, its wholly owned subsidiary, A-plus Electronic Co Ltd, declared and paid a special dividend of over \$67 million, of which \$14,522,000.00 was paid in cash. Mr Measure Hung, his wife, brother and brother-in-law were the beneficiaries of that payment, although he was not sure if the dividend was divided amongst them or whether he received it all himself.

On the same day M-TEC, a 60% owned subsidiary company, declared and paid a special dividend of about \$7.9 million.

173. In his evidence, Mr Alvan Yeung said that although he was aware of the statements made in the Prospectus of the payment of these dividends he had not verified himself that such payments had been made. That was a responsibility of the auditors, but he was able to say that they had not complained to him that they were unable to find supporting documentation of the payments. He did not know if Mr Measure Hung had received such dividend payments or if he had used them to fund the payment of bonuses to members of his staff.

The acquisition of all the shares in subsidiary companies.

174. Mr Measure Hung agreed that on 12 April 2001 the Mobicon Group had acquired 40% of the shares of M-TEC held by Mr Marcel Cheung for \$58,440.00. Whilst he could not remember if that payment had been made, he said that there had been no earlier or later payment in connection with the acquisition of those shares. On the same date, Mr Laurence Tam's 30% shareholding in Mobicon Agent had been acquired by the Mobicon Group for \$472,307.00. Whilst he could not remember if it had been paid, he believed that to be the case. Again, Mr Measure Hung said that there was no other payment made in connection with the acquisition of those shares.

The gift of Mobicon shares to the employees of the company at the time of the IPO and/or placement in April/May 2001.

175. Mr Measure Hung said that at the time that Mobicon was listed as a public company in April/May 2001 he determined to give his employees rewards, if they agreed to buy Mobicon shares. Also, some of his Taiwanese and Mainland customers had indicated that they wish to subscribe for shares. Mr Measure Hung said that the faxed document bearing the transmission date

22.4.2001 bearing his name as recipient and Mr Alvan Yeung as the sender and the title “HT List” was a general list of persons who might be interested in taking shares. The handwritten reference at the bottom of the page “Excel 2M” was a reference that probably he had written and was a reference to Taiwanese investors from the Taiwanese company Excel Cell taking up \$2 million worth of the Mobicon shares. Mr Measure Hung agreed that typed script described Mr Winson Lee as taking 3 million shares. However, he said that he had given him only \$1.5 million as a reward, the remaining monies being held on behalf of his Taiwanese friends. He told Mr Winson Lee to subscribe for the additional 1.5 million shares on behalf of the Taiwanese investors, although, in light of his better command of Mandarin, it was left to Mr Marcel Cheung to communicate with those investors. He accepted that the date “20.4.2001” in the column “Cheque OK” indicated that a cheque had been drawn but not necessarily deposited into a bank at that date. The cheque was drawn in favour of Mr Winson Lee. When his attention was drawn to a matching entry in the bank record book maintained by his wife of activity in their joint account he accepted that the cheque would have been drawn on that account.

Taiwanese investors.

176. Mr Measure Hung said that the General Ledger of Mobicon for the period 1 April to 31 May 2001 contained descriptions of Taiwanese investors in Mobicon shares. He did not know the name Chang Chu Tai, which appeared against the date 19 April 2001 and in respect of whom there was a credit entered of \$200,000.00. He thought that the name Danny Lee that appeared against the date 21 April 2001 and a credit of \$202,000.00 was a member of staff of Bright LED. Liao Pen Lin, whose name appeared against the date 23 April 2001, and the credit \$1,999,950.00 was a director of Excel Cell. Mr Liao sent him \$2 million by “T.T.” It is to be noted that the matching debit entry for the

aggregate of those three sums appears against the name “Marcel” and the date 24 April 2001.

177. Of these 3 million shares placed with Mr Winson Lee, Mr Measure Hung said that he had told Mr Winson Lee that it was no longer necessary for him to handle the shares attributed to the Taiwanese investors. On his instructions 1.5 million Mobicon shares were sold and a cheque drawn by Mr Winson Lee on his account for \$1 million to be given to Mr Marcel Cheung. Mr Winson Lee accepted in his evidence that he had drawn a cheque in that amount in favour of Mr Marcel Cheung, dated 10 May 2001. Mr Measure Hung did not know how the balance of \$0.5 million was repaid.

Other members of staff who were beneficiaries of the gift of shares at the time of listing.

178. Mr Measure Hung agreed that at the time of listing he had given Ms Vicky Fan \$450,000.00 with which she had obtained 500,000 Mobicon shares, having added additional money herself. Similarly, he had given Mr Simon Chan \$700,000.00, to which he had added \$500,000.00 so that he was allocated 1.2 million Mobicon shares.

Mr Marcel Cheung.

179. Mr Measure Hung accepted that the 7 million Mobicon shares, allotted in the account in the name of Ms Yu, was paid for by monies that he had given as a reward to Mr Marcel Cheung. Also, he had given him a cheque for \$8 million, which was deposited in Mr Marcel Cheung’s Wing Lung Bank account. About \$4 million, was money given to him in order to fund the subscription of Mobicon shares of Mr Marcel Cheung’s friends in the Mainland, which friends had yet to make payment. In addition, he lent him \$2.5 million, the balance being treated as payment of an additional reward sought by Mr Marcel Cheung.

However, Mr Measure Hung said that he did not give Mr Marcel Cheung the \$4.1 million, from which payment was made for the 3.156 million Mobicon shares allotted to Mr Marcel Cheung in the public subscription. Those monies should have come from his Taiwanese friends. In particular, he said that whilst he acknowledged that the money cost of the 3.156 million shares allotted to Mr Marcel Cheung equated to 40% of the sum \$7.9 million special dividend declared and paid by M-TEC on 15 March 2003, about one month before Mr Marcel Cheung sold his interest in 40% of the shares of M-TEC, the two events were not connected. He pointed out that in the allotment of the shares in the public subscription Mr Marcel Cheung had been only partially successful, having applied for the allotment of 4.1 million shares at the outset and that the actual allotment of a specific number of shares were subject to various contingencies.

180. Mr Measure Hung said that notwithstanding the total amount of money that he had given to Mr Marcel Cheung the latter expressed great dissatisfaction with the rewards he had received. Mr Marcel Cheung suggested to him that if the profits of the Mobicon Group grew at an annual rate of 15% to 20% he should be given more reward, naming \$6 million as the sum he had in mind. As a result, he had instructed his wife Ms Beryl Yeung to draw two cheques on their joint account dated 26 June and 13 August 2001 in favour of Mr Marcel Cheung each in the sum of \$2 million. He thought that a cheque drawn on the same account by his wife a year later, namely 21 August 2002, in favour of Mr Marcel Cheung in the sum of \$1 million was also part of this reward.

181. Mr Measure Hung accepted that in his solicitor's letter of 13 March 2006 to the SFC, which letter he authorised, he had stipulated that the award under the incentive scheme made to Mr Marcel Cheung had been made in March 2002. By his solicitor's letter of 9 February 2006, the amount of that

award had been stipulated as being \$1 million only. When asked why it was that none of these other and earlier awards had been described as such to the SFC, Mr Measure Hung said that the SFC had only asked questions relating to the period of investigation, namely 2003. For his part, he merely answered the questions asked. It was pointed out to him that his own solicitor's letter had described the answers as relating to "...awards he gave to various selected core employees of Mobicon Group Limited ("Mobicon") and its subsidiaries (the Group") under his incentive scheme since the listing of Mobicon on the Hong Kong Stock Exchange". [underlining added] Also, his attention was drawn to the question in the first record of interview, in respect of various named persons including Marcel Cheung, which gave rise to the correspondence :

"26 After Mobicon was listed, how much have you distributed to these officers in total, in terms of each individual officer?". [underlining added]

182. Then, Mr Measure Hung said that the figure that he had supplied of \$1 million was probably a net figure. When it was pointed out to Mr Measure Hung that he had responded in his solicitor's letter of 13 March 2006 to the question of identifying the forfeiture of awards by stipulating one only and that in respect of Mr Laurence Tam, Mr Measure Hung said that the money he had given to Mr Marcel Cheung, arising out of his request for \$6 million, was different from the incentive scheme.

183. Mr Measure Hung denied the suggestion put to him that in fact the various sums of money given to Mr Marcel Cheung, \$8 million, the two cheques for \$2 million and the one cheque for \$1 million were not rewards, rather they were monies provided to operate a "share support scheme" for Mobicon shares. He denied that Mr Marcel Cheung had been instructed to buy and sell Mobicon shares to give the appearance of a larger turnover and to keep the price of those shares at about \$1.00 per share.

184. When it was pointed out to Mr Measure Hung that none of the accounts in the name of Mr Marcel Cheung, namely : Golden Fountain Securities, Wing Lung Securities or Ever Long reflected the purchase of either 2.4 million shares for the Taiwanese or 4 million shares for his Mainland friends Mr Measure Hung said that he was not in a position to answer that question.

Reward/punishment Scheme.

185. Mr Measure Hung said that at about the time of the listing of Mobicon in 2001, he had determined to introduce a reward scheme as an incentive to the chief staff of the company. The monies were to come from his private funds. The purpose of the scheme was so that he could retain the services of the chief staff of the company and to ensure a more fair allocation of shares to them. He did not discuss the matter in any depth with his wife and, as far as he was aware, his brother and brother-in-law, the other directors of Mobicon, were unaware of the scheme. He was the only person who made decisions about its implementation. To a significant extent the decision to reward an employee was based on his/her loyalty to the company. In his statement of 14 October 2008, he asserted that it was his intention, apparently uncommunicated, that "... the 'awards' would be completely vested in the staff when they attained the age of over 50".

186. As Mr Measure Hung had explained to an officer of the SFC in his first record of interview, he set a "threshold" of the company achieving a profit, after-tax and minority interests, of \$35 million per year before the recipients of the rewards of Mobicon shares could retain the dividends paid to them for holding those shares. The figure of \$35 million profit was chosen because it was the profit achieved in the year in which the company was listed. In the event, that the "threshold" was not reached, the monies had to be repaid to Mr

Measure Hung. He agreed that that profit “threshold” had not been reached in the succeeding years.

187. Mr Measure Hung said that there had been a meeting, as he had described in his first record of interview to an officer of the SFC, two or three months after Mobicon had been listed at which he was present together with Mr Winson Lee, Mr Franky Lee, Mr Laurence Tam and Mr Marcel Cheung. It was the occasion of a regular monthly meeting, but on this occasion the mood of the meeting was such that he was concerned that his whole management team might dissolve. In particular, Mr Winson Lee showed great discontent and even went to the extent of twisting a ballpoint pen around in contorted shapes. He had never seen such a terrible thing before and he was very angry. Mr Winson Lee’s concern was that Mr Marcel Cheung had been given more money than the others at the time of the listing. He determined to resolve the anomalies in the rewards given over a 10-year period.

Mr Laurence Tam.

188. Mr Measure Hung said that he had known Mr Laurence Tam since 1989. He described him as being possessed of a very stubborn character. At the time of the IPO he gave Mr Laurence Tam \$3,535,350.00 as a bonus, from which 2,694,000 Mobicon shares were allotted in his HT Securities account. None of those monies were in any way connected with the consideration paid for the acquisition of Mr Laurence Tam’s 30% holding of shares in Mobicon Agent. He agreed as being accurate the letter, dated 13 March 2006 written by his solicitors to the SFC on his authorization, in which it was asserted that the only forfeit of an award made to an employee under the Scheme had been in respect of \$1,539,000.00 forfeited in and between February and June 2004 from the \$3 million given to Mr Laurence Tam. He, Mr Measure Hung, made the decision that the monies be repaid so that they could be re-allocated. He did so because

his wife had complained to him about Laurence Tam's performance. He was charged with promoting the development of local sales agents for the products of MEC but had not been so successful. He took the view that Mr Laurence Tam's performance was not so good.

189. Mr Measure Hung said that he was aware that, following the listing of Mobicon in May 2001, Mr Laurence Tam had added to the shares that he had been allotted in the public subscription by buying more shares. He said that he had allocated more monies to Mr Laurence Tam for him to do so. Some of the persons acquiring shares through Mr Marcel Cheung had cancelled their subscriptions with the result that monies were owed by Mr Marcel Cheung to Mr Measure Hung. Mr Marcel Cheung had refused to hold those shares on behalf of Mr Laurence Tam. He directed Mr Marcel Cheung to effect repayment to him, Mr Measure Hung, by issuing cheques in favour of Mr Laurence Tam, to settle the purchase of Mobicon shares acquired in his account. When asked the aggregate value of such monies paid to Mr Laurence Tam, Mr Measure Hung said that was about \$0.5 million.

190. He said that Mr Laurence Tam and Mr Marcel Cheung had been allocated different amounts of rewards and he had started to re-allocate them as a result. It was pointed out to Mr Measure Hung that these payments from Mr Marcel Cheung to Mr Laurence Tam amounted to \$2.749 million but that they had formed no part of the disclosure he had made to the SFC in his solicitor's correspondence of awards that had been made to employees. Again, he said that he had understood that he was being asked to deal only with the period under investigation, namely 2003.

Mr Simon Chan.

191. Mr Measure Hung said that he had introduced Mr Simon Chan to Mr Alvan Yeung in order to open a securities account, so that he could receive some

rewards he had in mind to give him. He accepted accounts were opened in the name of Mr Simon Chan at Wing Hang Brokerage and Ever Long on 26 February 2003 and 3 April 2003 respectively. He could not remember if he was the source of the deposits of \$1 million and \$400,000.00 respectively in March 2003 into Mr Simon Chan's Wing Hang Bank account.

1 April 2003 : the change of the threshold of notifiable transactions in shares and the sale of Mobicon shares held in the accounts in the name of Ms Yu in March 2003.

192. Mr Measure Hung said that he was aware at that time of a prospective change of the rules relating to notifiable holdings of shares of a publicly listed company. He had learnt that either from his Financial Controller, Ms Ivy Ho, or the Company Secretary, Mr Alvan Yeung. It was their job to monitor these matters. Having initially said that it was not his concern whether or not there was a problem as a result arising out of the combined holdings in the accounts in the name of Mr Marcel Cheung and his wife Ms Yu, Mr Measure Hung said that Mr Alvan Yeung had mentioned this case. Mr Measure Hung denied the suggestion that, in consequence, he and Mr Alvan Yeung had taken steps to reduce the holdings of Mobicon shares in the accounts in the name of Mr Marcel Cheung and Ms Yu.

193. Mr Measure Hung accepted that Ms Yu's account statements at Ever Long indicated the sale of 5.4 million Mobicon shares in late March 2003 and that sales had continued in April 2003. He knew that Mr Marcel Cheung was going to sell shares, but did not know the volume of those sales. He acknowledged that the account statement stipulated a withdrawal of the resulting proceeds from Ms Yu's account by cheque in two amounts: firstly, \$4 million on 1 April 2003 and, secondly \$2,727,854.13 on 4 April 2003. Having been shown two copies of cheques drawn in the sum of \$4 million and \$2 million

respectively on 4 and 7 April 2003 in favour of his wife and himself, and the bank passbook for his joint account with his wife which reflected deposits of those monies at that time, Mr Measure Hung accepted that he and his wife had received those monies from Ms Yu.

Payments of \$3 million to each of Mr Alvan Yeung and Mr Laurence Tam on 26 March 2003.

194. Mr Measure Hung agreed that by two cheques dated 26 March 2003 he had made payment on the joint account he held with his wife of \$3 million each to Mr Alvan Yeung and Mr Laurence Tam. He said that they were rewards. When it was suggested to him that those monies were used to buy Mobicon shares sold in the account of Ms Yu, Mr Measure Hung said that these were two separate matters. He denied that he had control over Mr Laurence Tam's account but did admit that he had control over dealings in that account.

The payment of \$3 million to Mr Alvan Yeung.

195. Mr Measure Hung said that the payment of \$3 million to Mr Alvan Yeung had been made because Mr Alvan Yeung had helped him in several mergers and acquisitions in expending his "satellite policy", in particular in Malaysia and South Africa. It was not subject to the reward/punishment incentive scheme, although Mr Alvan Yeung had made repayments voluntarily of the dividends accruing to the Mobicon shares that he had bought with those monies.

Purchases of Mobicon shares in the account in the name of Mr Simon Chan.

196. Mr Measure Hung said that he had directed Mr Marcel Cheung to pay to Mr Simon Chan part of the monies that Mr Marcel Cheung was repaying him. When it was suggested to him that the aggregate of those payments was \$1.3 million Mr Measure Hung said that he had difficulty in answering that question.

Ms Vicky Fan.

197. Of the account at Phillip Securities in the name of Ms Vicky Fan, opened on 30 January 2004, Mr Measure Hung agreed that at that time he had told Mr Alvan Yeung that he was including Ms Vicky Fan in his “bonus” scheme and that he would be providing money to buy shares acquired in that account with which Mr Alvan Yeung was to make settlement for purchases of shares. He agreed that he had told Mr Alvan Yeung that this was a re-allocation of bonuses. In cross-examination by Mr Bruce, he denied that through Mr Alvan Yeung he controlled Ms Vicky Fan’s account or that he had used the account to create the impression of active trading in Mobicon shares.

The circumstances leading to the opening of an account in the name of Ms Vicky Fan at Phillips Securities.

198. Mr Measure Hung acknowledged that he had been sent an e-mail from Mr Alvan Yeung dated 15 January 2004, in which the subject matter was “opening of new securities a/c”. In the text, he was told :

“I would like to open a new securities a/c for Marcel at Phillips Securities for more flexible operations.
Or do you have another choice of candidate???
What do you think??”.

199. Mr Measure Hung said that he did not understand the message. Nevertheless, he accepted that he had responded to Mr Alvan Yeung by saying :

“I would like to talk with you in detail today personally.”.

200. However, he could not remember if they had met as a result. Mr Measure Hung denied that the opening of the account in the name of Ms Vicky Fan at Phillips Securities two weeks later was connected to this exchange of e-mails.

Records of interview.

201. Mr Measure Hung confirmed as true the answer he had given in his first record of interview, when confronted with the allegation made by Mr Simon Chan in his record of interview, namely that following his receipt of a notice to attend an interview at the SFC and, in respect of the transactions involving Mobicon shares in his Wing Hang Brokerage and Ever Long accounts, that Mr Measure Hung had asked Mr Simon Chan to tell the SFC that the money in the accounts was the bonus given to him privately and that he had asked Mr Alvan Yeung to buy Mobicon shares for him with that money. Mr Measure Hung's answer had been to tell Mr Simon Chan to tell the SFC the truth.

E-mails

(i) September 2004.

202. Of the schedule, attached to an e-mail from Mr Alvan Yeung to Mr Measure Hung and his wife entitled "Final Dividend : 4/03 - 3/04", in which a list of names (Tam, Yu, Simon, Marcel/Cheung and Vicky) appeared against specific quantities of shares, dividends and net dividends after expenses, Mr Measure Hung confirmed as true his answer to an officer of the SFC in his second record of interview that those shares did not belong to him. As he put it, he roughly understood that those shares belonged to the persons against whose names they appeared.

(ii) 17 July 2003.

203. Of the e-mail dated 17 July 2003, from Mr Alvan Yeung to Mr Measure Hung, in which the former appeared to be reporting the position of the Mobicon shares held by Mr Simon Chan and Mr Alvan Yeung, Mr Measure Hung confirmed his answer to an officer of the SFC in the second record of interview that it might be the case that Mr Alvan Yeung wished him to know that he had

acquired Mobicon shares with the monies given to him and had done likewise with the money given to Mr Simon Chan.

204. Of the cheque dated 17 November 2004 in favour of Mr Simon Chan in the sum of \$1 million drawn on the account of M-Bar, Mr Measure Hung said that his explanation to an officer of the SFC in his third record of interview that \$700,000.00 of that money was given to Mr Simon Chan under the bonus scheme was supported by the purchases evidenced in Mr Simon Chan's Wing Hang Brokerage account statements in October and November 2004. In particular, purchases of Mobicon shares of 138,000 in October and 610,000 in November 2004.

Borrowing/Loans from/to employees.

205. Mr Measure Hung said that he had probably borrowed up to \$1 million from Mr Simon Chan, but he could not remember when or exactly how much. He could not recall if he borrowed money from Mr Laurence Tam. Of Mr Marcel Cheung he said that Marcel had borrowed from him but, as he recalled, he had not borrowed in return. He did not borrow from Ms Yu.

Mobicon shares not used as collateral for loans.

206. Mr Measure Hung said that the shares he and his wife held in Mobicon were held through M2B and had never been used as collateral for loans.

Instructions to Mr Alvan Yeung.

207. In cross-examination by Mr Derek Chan, Mr Measure Hung said that when he had given monies to Mr Alvan Yeung he had advised him that the best investment to make was in Mobicon shares. When it was suggested to him that he had asked Mr Alvan Yeung to operate Mr Laurence Tam's HT Securities account to buy Mobicon shares with money that he had given to Mr Laurence

Tam, Mr Measure Hung said that Mr Laurence Tam indicated that he wished to buy Mobicon shares and that, for his part, he had told him that he could contact Mr Alvan Yeung for assistance.

208. Similarly, Mr Measure Hung had told Mr Simon Chan that he too could contact Mr Alvan Yeung for assistance in trading in shares and had asked Mr Alvan Yeung if he would provide such assistance. Mr Measure Hung agreed that he had told Mr Alvan Yeung that he would pay for purchases of shares made in Mr Simon Chan's account as part of his bonus. Mr Simon Chan had told him that he had authorised Mr Alvan Yeung to trade on his account.

209. Having been asked repeatedly whether or not he had told Mr Alvan Yeung to carry out more trading in Mobicon shares in order to improve its liquidity Mr Measure Hung agreed finally that he had requested him to do that.

The sale of Mobicon shares in the account of Mr Laurence Tam and the purchase of shares in the account of Ms Vicky Fan from February 2004.

210. Mr Measure Hung agreed that in February 2004 he had told Mr Alvan Yeung that Mr Laurence Tam agreed to sell 1.5 million Mobicon shares from his account and that Mr Measure Hung had informed Mr Laurence Tam that he was now including Ms Vicky Fan in the bonus scheme and would provide her with money to buy Mobicon shares. Mr Measure Hung agreed that he had told Mr Alvan Yeung that this was a re-allocation of awards under the incentive scheme.

E-mails from Mr Alvan Yeung reporting to Mr Measure Hung/Ms Beryl Yeung the holdings of Mobicon shares by others and the related return of dividends to M-Bar.

(i) 12 April 2003.

211. Mr Measure Hung acknowledged that an e-mail dated 12 April 2003 from Mr Alvan Yeung was addressed to him and his wife and that the

attachment, entitled “Share position : 6.4.2003” [**Appendix 5**] addressed the holdings of Mobicon shares held in various accounts in the names of employees. However, he denied that he and his wife were the owners of all the shares, except those described in the schedule as “personal”.

The return of dividends.

(ii) 8 September 2004.

212. Mr Measure Hung acknowledged that the e-mail sent to him and his wife of 8 September 2004 from Mr Alvan Yeung entitled “Final Dividend : 4/03-3/04” addressed not only the Mobicon shareholding of various named employees but also the net amount of the dividend that they had received as a result. Mr Measure Hung had told Mr Alvan Yeung to assist in obtaining the return of the dividends, in consequence of the company failing to make the net profit of \$35 million per year. Mr Measure Hung agreed that the reference to “MB”, as the prospective recipient of the payment of the net dividends, was a reference either to M-Bar or to himself and his wife. He explained that the deduction of the dividend in respect of 3.5 million shares in the name of Mr Laurence Tam was because those shares were not obtained under the incentive bonus scheme. Mr Measure Hung denied that he collected the dividends accruing to the shareholding in the names of various others because he owned all shares.

(iii) 7 September 2003.

213. When his attention was drawn to an e-mail from Ms Ivy Ho to Mr Alvan Yeung dated 7 September 2003 and entitled : “Dividend refund to M-Bar”, in which Ms Ivy Ho had told Mr Alvan Yeung :

“Measure has reminded me to chase the dividend refund from you and various friends as soon as possible. Please pay attention work out on it.”.

Mr Measure Hung said that he had requested Ms Ivy Ho to contact Mr Alvan Yeung but did not know why she had used the phrase “various friends”.

214. Mr Measure Hung agreed that he and his wife, or his wife alone, had been copied in many e-mail transactions in 2004 and 2005 between Mr Alvan Yeung and Ms Ivy Ho on the subject of the mechanics of the repayments of dividends from those employees who held Mobicon shares. He thought that had come about because his wife had scolded Ms Ivy Ho, on an occasion when she discovered some information contained in documents about which she was unaware, and that as a result both Ms Ivy Ho and Mr Alvan Yeung had copied these e-mails to at least Ms Beryl Yeung. He denied the suggestion put to him by Mr Bruce, that he and his wife were directly involved in the details of not only the transfer of monies to staff and the buying of shares but also the dividend refunds.

“Asset swap” of shares.

215. Mr Measure Hung denied that the e-mails dated on and between 29 August and 22 September 2003 between Mr Alvan Yeung and Mr Dylan Ng and the e-mail of the latter date between Mr Alvan Yeung and Mr Measure Hung together with the Excel file dated 30 September 2003 entitled : “Position as at 30.9.2003” described the reconciliation of monies due to and from Mr Johnny Yeung and Mr Measure Hung. Whilst he accepted that he had bought shares in Fujikon and that friends of Mr Johnny Yeung had bought shares in Mobicon, he denied that they had each bought and held them for the benefit of the other party, as a total return asset swap.

The absence of documentary records evidencing the incentive scheme or its operation.

216. Mr Measure Hung accepted that notwithstanding the fact that the incentive scheme had been in operation from the listing of Mobicon in 2001

until at least 2004 there was a complete absence of records documenting the existence or operation of the scheme. He explained that was because the scheme itself was very sensitive and that he worried that if he were to award employees in private they might compare any documentary records made in consequence, enquiring of one another how much each had received.

(xi) Mr Alvan Yeung.

217. Mr Alvan Yeung identified as accurate and signed by him the transcripts of the five records of interview conducted of him by an officer of the SFC, namely on 25 July, 15 August, 25 October and 18 November 2005 and 28 February 2006.

Assertions made by Mr Alvan Yeung in his statements of 14 October and 5 December 2008.

218. Mr Alvan Yeung testified that his assertions in his statement of 14 October 2008 and his later statement of 5 December 2008 were true and encompassed the evidence he wished to put before the Tribunal.

Background : Character.

219. Mr Alvan Yeung was the Company Secretary of Mobicon at the material time. He had graduated from the Hong Kong Polytechnic and obtained a professional diploma in accountancy in 1990. He is a Fellow of the Association of Chartered Certified Accountants, the Hong Kong Institute of Certified Accountants and the Hong Kong Institute of Directors. Also, he is an associate member of the Institute of Chartered Accountants in England and Wales and the Taxation Institute of Hong Kong.

September 2000 to May 2001.

220. In examination by Mr Choy, Mr Alvan Yeung said that he had joined Mobicon in September 2000 as its Financial Controller and Company Secretary,

responsible for both financial management and company secretarial functions. From that date, until its listing in May 2001, he had prepared many financial analyses needed for listing and coordinated with the Sponsor and Reporting Accountants. He had been paid about \$1.5 million for those services. Mr Alvan Yeung accepted that he had compiled the document headed “HT list”, which he had faxed to Mr Measure Hung on 22 April 2001. It summarised the information given to him by different people, but mainly Mr Measure Hung, of the interest of people to subscribe for Mobicon shares in the placement. He accepted that in the Prospectus it was stated that it was intended that the allocation in the placement result in the establishment of a “solid professional and institutional shareholder base”. He agreed that the “HT list” did not contain any institutional investors, but suggested that those described as subscribing for large money amounts should be professional investors.

Post May 2001.

221. After listing, he resigned his position as Financial Controller, but continued to act as the Company Secretary and adviser to the board of Mobicon on a part-time basis. He was responsible for the announcements made by Mobicon of its interim and annual results and advising the Board on mergers and acquisitions.

Mr Alvan Yeung’s statement of 14 October 2008.

222. Mr Alvan Yeung claimed in his statement of 14 October 2008 (paragraph 6) that Mr Measure Hung had described to him the general outline and principles of the “Incentive Scheme” by which senior management and long service staff of Mobicon were rewarded out of Mr Measure Hung’s personal financial resources. In particular, that they were given money out of which they could use to buy Mobicon shares and that, if the after-tax profits of the company reached \$35 million, the staff members could keep the dividends generated by

those shares. In his oral testimony, Mr Alvan Yeung said that he had that conversation with Mr Measure Hung in around 2002. He was told that Mr Simon Chan, Mr Laurence Tam and he were included in the scheme and that he could use the money in anyway he wished. He had not been told that if he had used the money other than to buy Mobicon shares he would still be required to pay back the equivalent of dividend payments on Mobicon shares to that value. He had not been asked to repay dividend payments made on his holding of Mobicon shares acquired with the \$3 million given to him. He had made those repayments because he was willing to do so.

Mr Simon Chan.

223. Mr Alvan Yeung said (paragraph 7) that in or about 2003 at Mr Measure Hung's request, after he had been told that Mr Simon Chan wished to purchase Mobicon shares with his own monies, he had assisted Mr Simon Chan to open securities accounts with Wing Hang Brokerage and Ever Long. Mr Measure Hung had given him a general instruction (paragraph 10) to make a profit for Mr Simon Chan. He was aware that a current account in the name of Mr Simon Chan was opened with Wing Hang Bank. Mr Alvan Yeung said (paragraph 9) Mr Simon Chan gave him general instructions to trade in the shares of Mobicon in those accounts and, through Ms Ivy Ho, provided him with a password by which he could execute on-line trading in the Wing Hang Brokerage account. He did so, both buying and selling shares. Settlement was made by direct debit payments from Mr Simon Chan's current account with Wing Hang Bank, which account was also used to settle payments due for trading in shares in the Ever Long account.

224. Mr Alvan Yeung asserted (paragraph 12) that he believed that the shares held in those two securities accounts were owned by Mr Simon Chan. Amongst the reasons he gave for that belief was that he had been told by Mr Measure

Hung that he had given Mr Simon Chan a cash bonus together with the fact that Mr Simon Chan did not tell him that the shares in those two accounts did not belong to him. However, he went on to admit (paragraph 15) :

“... I, together with Hung, participated in creating a false impression of active trading on Mobicon shares since Mobicon shares were inactively traded throughout the Inquiry period. The creation of that false impression was one of the purposes of the matched trades shown on Exhibit AY-8, exhibited to my Record of Interview dated 25 July 2005.”.

225. Mr Alvan Yeung made it clear (paragraph 14) that the matched trades in question were those contained in the schedule covering the period 1 August to 14 December 2004 in which there were 28 such matched trades.

Trading in Mr Simon Chan's accounts.

(i) Ever Long.

226. Mr Alvan Yeung said (paragraph 18) that, acting on Mr Measure Hung's instructions he had bought 606,000 shares in Mr Simon Chan's Ever Long account in April 2003 and a further 210,000 Mobicon shares in July 2003. Thereafter, he did not trade in Mobicon shares in that account. Those shares were retained in the account until, unknown to Mr Alvan Yeung, the resulting total of 816,000 Mobicon shares was withdrawn in September 2005. However, in his oral testimony he said that he was not sure if he had placed orders in the account with Ever Long in the name of Mr Simon Chan. He denied the suggestion that he had placed all the orders in that account.

(ii) Wing Hang Brokerage.

227. Mr Alvan Yeung said (paragraph 19) that he had accumulated Mobicon shares in Mr Simon Chan's Wing Hang Brokerage account in the period from March 2003 until mid-2004 before he began trading shares in that account.

Settlement of purchases in the accounts of Mr Simon Chan.

228. On Mr Measure Hung's instructions, Mr Alvan Yeung effected payment for purchases in the accounts of Mr Simon Chan with cheques drawn on Mr Marcel Cheung's Wing Lung Bank account. He did so by liaising with Ms Ivy Ho who arranged the details on the cheque, other than the signature. On other occasions, Mr Measure Hung paid monies directly into Mr Simon Chan's bank account. He agreed that in e-mails dated 27 October and 11 November 2003 written to Ms Ivy Ho with a copy to Ms Beryl Yeung he had asked Ms Ivy Ho to transfer \$150,000.00 and \$100,000.00 respectively from Mr Marcel Cheung's Wing Lung Bank account to Mr Simon Chan's Wing Hang Bank account. He said that he understood from Mr Measure Hung that this was the reallocation of "rewards" under the incentive scheme. He denied that he was involved because he had total control over both bank accounts.

The transfer of monies between accounts.

229. Mr Alvan Yeung said (paragraph 17) that on Mr Measure Hung's instructions to re-allocate a cash bonus given to Mr Simon Chan to Ms Vicky Fan he had instructed Ms Ivy Ho to effect the transfer of monies between those parties. Also, again on Mr Measure Hung's instructions, he had caused the transfer of monies received as dividends in Mr Simon Chan's account to be paid to M-Bar.

Mr Alvan Yeung's assistance to Mr Marcel Cheung and Mr Laurence Tam in respect of settlement for share purchases in their securities accounts and that of Ms Yu from May 2001.

230. Mr Alvan Yeung said (paragraph 4) that at about the time of the listing in 2001 Mr Measure Hung had asked him to assist in arranging for settlement of share purchases made in accounts in the name of Mr Marcel Cheung and his wife, Ms Yu, and Mr Laurence Tam with monies provided by Mr Measure Hung.

For his part, Mr Measure Hung made funds available to the account of Mr Marcel Cheung with Wing Lung Bank. To facilitate settlement of share purchases, Mr Marcel Cheung left signed blank cheques drawn on the account with Ms Beryl Yeung and Ms Ivy Ho. For his part, Mr Alvan Yeung arranged for the securities companies to fax him the securities statements so that he could liaise with Ms Beryl Yeung and Ms Ivy Ho to effect settlement of share purchases. Mr Alvan Yeung denied that he had control of any of those securities accounts. He did not know why those arrangements had been put in place nor did he ask Mr Measure Hung. Although he received the securities statements he did not notice that there was matched trading between accounts in the name of Mr Marcel Cheung and his wife, Ms Yu.

The provision of documentary information in respect of trading in shares.

231. In his oral testimony, Mr Alvan Yeung explained that he had made arrangements with Golden Fountain Securities, in respect of Mr Marcel Cheung, Ever Long, in respect of Ms Yu and Mr Simon Chan, HT Securities in respect of Mr Laurence Tam and Phillip Securities in respect of Ms Vicky Fan to be provided with contract notes on a daily basis. That was done by fax, except in Ms Vicky Fan's case where that information was forwarded by e-mail, upon receipt by Ms Vicky Fan from Phillip Securities, to his e-mail address. He agreed that he had access to statements in the account in the name of Mr Simon Chan at Wing Hang Brokerage by using the Internet password with which he had been provided.

Trading in the account in the name of Laurence Tam at Hantec Securities.

232. Mr Alvan Yeung said (paragraph 21) that in March 2003, on the instructions of Mr Measure Hung, he had purchased Mobicon shares in Mr Laurence Tam's HT Securities account following the provision of \$3 million by Mr Measure Hung to that account. Mr Alvan Yeung commenced purchases on

25 March 2003, although his written authorisation to trade in that account was dated 31 March 2003. In the period on and between 25 March and 1 April 2003, he bought 2.38 million Mobicon shares in Mr Laurence Tam's HT Securities account. Since Mr Measure Hung had not given him any instructions to trade in Mobicon shares in that account he did not do so. However, on Mr Measure Hung's instructions he had transferred the unused balance from the payment of \$3 million by Mr Measure Hung to the HT Securities account of Mr Laurence Tam, namely about \$600,000.00, to Mr Laurence Tam's bank accounts. He did not recall being involved in the subsequent transfer of those monies to a bank account in the name of Mr Marcel Cheung, as evidenced by the respective bank statements.

Mr Alvan Yeung's receipt of \$3 million on 26 March 2003 and subsequent trading in Mobicon shares.

233. Mr Alvan Yeung confirmed that Mr Measure Hung had given him \$3 million by cheque on 26 March 2003 as an award under the incentive scheme, of which he had been made aware by Mr Measure Hung in 2002. He said that at that time he had thought of leaving Mobicon but that Mr Measure Hung wished to retain his services to assist in developing the business of the company.

(i) HT Securities.

234. Of the \$3 million that Mr Alvan Yeung received he deposited \$1.5 million into his HT Securities account and, in the period on and between 28 and 31 March 2003, acquired 1.85 million Mobicon shares. His intention was to hold these shares on a long-term basis. He said that Mr Measure Hung had agreed to fund the purchase of the 350,000 shares he had purchased in excess of the \$1.5 million given to him. Mr Alvan Yeung effected payment for those shares by asking Ms Ivy Ho to settle the outstanding amount with a cheque drawn on the account of Mr Marcel Cheung.

(ii) Wing Lung Securities.

235. Mr Alvan Yeung said that he retained the other half of the \$3 million provided to him by Mr Measure Hung in his Wing Lung bank account in order to fund his trading in his Wing Lung securities account. In the first few days of April 2003, he began to buy Mobicon shares and then started to buy and sell actively. He did so (paragraph 14) because Mr Measure Hung had asked him to create more trading in Mobicon shares. In his oral evidence, Mr Alvan Yeung said that he believed that he was told that in about March 2003. In cross-examination by Mr Edwin Choy, he denied the suggestion that at the time of the opening of the accounts in the names of Mr Marcel Cheung and his wife Ms Yu he had been asked by Mr Measure Hung to conduct trading in those accounts to maintain share price stability and volume turnover.

Alleged lies to the SFC.

236. In cross-examination by Mr Edwin Choy, Mr Alvan Yeung acknowledged that in the notice dated 27 June 2005, which he received from the SFC in advance of his first record of interview, he was reminded of his obligations in law, in particular the consequences if he gave false answers to the SFC. He acknowledged that he was reminded of that in his first record of interview. He agreed that in his fourth record of interview he had said that in around 2003 he had received a bonus from Mr Measure Hung of about \$3 million. He was asked :

- “17. Q. Did you use any part or the whole sum of \$3 million to buy the shares of Mobicon?
A. Claim. I used part of it to buy the shares of Mobicon. I was not a full-time employee.
18. Q. How much of the aforesaid \$3 million did you spend on buying the shares of Mobicon?
A. Claim. About half of it, i.e. about \$1,500,000.”.

Later in the interview, he was asked :

- “26. Q. You used about \$1,500,000 of the bonus to buy the shares of Mobicon. What did you do with the remaining \$1,500,000?
A. Claim. I bought other stocks.”.

237. Having been taken through the banking records Mr Alvan Yeung accepted that they stipulated the receipt of \$3 million into his Wing Lung savings account on 26 March 2003, the transfer out of \$1.5 million on 28 March 2003 and the fact that the balance of \$1.5 million remained in his Wing Lung Bank account. He agreed that the \$1.5 million transferred out of his savings account had been deposited in his HT Securities account on 28 March 2003. He agreed that the account statements stipulated that in the period 28 to 31 March 2003, he had bought 1.85 million Mobicon shares in that account. Furthermore, he agreed that on 28 and 31 March 2003 he had bought 1.45 million Mobicon shares in his Wing Lung Securities account and that between 3 and 23 April 2003 he had traded in Mobicon shares in that account, with the result that at the end of the month the account held 1.538 million Mobicon shares.

238. When it was suggested to Mr Alvan Yeung that the banking records contradicted his answers to the SFC in his fourth record of interview in respect of his use of the other half of the \$3 million, in particular that his answer that he “bought other stocks” was a lie, he disagreed. He accepted that the securities account statements in his Wing Lung Securities account stipulated that the only trading that he had done in shares up and until the end of October 2004 was in Mobicon shares. He claimed that he meant and the SFC interviewing officer understood that he had used the monies transferred to the HT Securities account to buy Mobicon shares as a long-term investment and that the monies remaining in the other account had been used to buy the shares. However he accepted that in his fifth and final record of interview (Q&A 9) he had been confronted by the SFC officer with the allegation that his earlier answer that he had bought other stocks with half the monies was contradicted by the account statements in his

HT Securities and Wing Lung Securities accounts, which showed that in fact he had bought Mobicon shares. He accepted that when offered the opportunity to give an explanation, he had declined to do so. He said that he done so on the advice of his lawyer who had complained to the SFC officer that the question was outside the investigation period.

239. When asked why it was that if there were no restrictions on how he could use the \$3 million given to him by Mr Measure Hung in March 2003 he had chosen to invest in Mobicon shares, Mr Alvan Yeung said that he had done so because he was looking for a stable return by way of annual dividend income. When it was pointed out to him that in 2002 Mobicon's annual profits had plunged from \$35 million in \$2001 to \$4 million in 2002 he said that this was merely a question of the business cycle. He agreed that he had never filed a tax return in respect of the payment of \$3 million.

Matched trading - Mr Alvan Yeung : Mr Simon Chan.

240. Usually, he used Mr Simon Chan's securities account to buy shares that he sold in his Wing Lung Securities account. In so doing, he made a small profit. He admitted (paragraph 16) that one of the purposes of this matched trading with Mr Simon Chan's Wing Hang Brokerage account and his own account with Wing Lung Securities from 2003 to 2005 "... was to create a false and misleading appearance of active trading". However, in his oral testimony in cross-examination by Mr Edwin Choy he denied having such an intention.

241. He retained his holding of Mobicon shares in HT Securities until May 2007 (paragraph 40) when he withdrew them together with 732,000 Mobicon shares that he had transferred from his Wing Lung Securities account and sold them "off market" at \$1.00 per share to a colleague, using the proceeds to assist in the purchase of a property in Kornhill.

The fact of and reason for the “sell-off” of shares in the Ever Long account in the name of Ms Yu Min Yin in March/April 2003.

242. Mr Alvan Yeung accepted that he was aware at the time that on 1 April 2003 the SFO came into force, and in particular that the regime of disclosure of interests and shares changed. One change was in the level at which a holding in the shares of a listed company became “notifiable”, from 10% to 5%. However, he denied that as a result he and Mr Measure Hung had decided to transfer the false trading in shares from accounts in the name of Ms Yu and Mr Marcel Cheung to other accounts such as his own, Mr Laurence Tam’s and Mr Simon Chan’s accounts. He said that it was possible, although he was not sure, that he knew at the end of February 2003 that there were more than 14 million Mobicon shares in accounts in the name of Ms Yu. He denied operating accounts in the name of Ms Yu and Mr Marcel Cheung. He received “buy” but not “sell” contract notes, although he accepted that he received monthly statements if they were given to him by the account holders or Ms Ivy Ho. He denied that he had co-ordinated the transfer of shares out of the account in the name of Ms Yu because he was aware of matched trading in that account with the account in the name of Mr Marcel Cheung and his concern that, if the volume of shares held in that account was such that notification of an interest in shares was required to be made, it would come under regulatory scrutiny.

The purpose of the calculation of “Share Position 6.4.2003” [Appendix 5].

243. Mr Alvan Yeung accepted that he was the author of the e-mail, dated 12 April 2003, sent to Mr Measure Hung and Ms Beryl Yeung to which was attached a table he had compiled entitled “Share position - 6.4.2003”. He accepted that the table described the number of Mobicon shares held in particular securities accounts for Mr Simon Chan, Ms Yu, Mr Marcel Cheung, Mr Laurence Tam and himself. He thought that the reference under the column

“Cash” was to the money balances in those accounts. Also, the aggregate of Mobicon shares held by each person, Ms Yu and Mr Marcel Cheung being grouped together, had been calculated together with the percentage of that holding as against the issued share capital of Mobicon. He denied that the percentage calculation had been done to demonstrate to Mr Measure Hung that the shareholdings were below the notifiable interest in shares 5% provided for by the then new SFO. Initially, he said that this was merely another form of “expression” of information. However, having accepted that he did not calculate percentage holdings in any subsequent reports as to the position of holdings of Mobicon shares he agreed that this information had been included in light of the new Ordinance to inform Mr and Mrs Measure Hung of the percentage of the various holdings.

The sale of shares in Ms Yu’s account, the withdrawal and transfer of the proceeds to the joint account of Mr Measure Hung/Ms Beryl Yeung.

244. Mr Alvan Yeung agreed that the statement of account at Ever Long in the name of Ms Yu described very substantial sales of Mobicon shares, beginning on 25 March 2003 and continuing into early April and the withdrawal on 1 and 4 April from that account of \$4 million and 2.7 odd million dollars respectively. He agreed that Ms Yu’s bank statements showed the receipt of those monies in her savings account, the transfer to her current account and microfiche copies of two cheques dated 4 and 7 April 2003 drawn on that account and the passbook of the joint account indicated that \$4 million and \$2 million respectively had been paid into the joint account of Mr Measure Hung and Ms Beryl Yeung. He accepted it was probable that, in light of that information, that is why he had been asked to calculate the shareholding position at that date. However, he denied knowing of the transfer of these monies or the suggestion made to him by Mr Edwin Choy that the reason for the payment of \$6 million to the joint account of Mr Measure Hung and Beryl Yeung, being

proceeds of the sale of Mobicon shares in the account of Ms Yu, was because they owned those shares.

Provenance of the Mobicon shares acquired in the accounts in the name of Mr Alvan Yeung, Mr Simon Chan and Mr Laurence Tam in March and April 2003.

245. Mr Alvan Yeung said that when, in early 2003, Mr Measure Hung had told him of the prospect of he and Mr Laurence Tam receiving \$3 million each in the incentive scheme he had said that it would be possible to buy substantial quantities of Mobicon shares with that money in those two accounts and the account in the name of Mr Simon Chan because Mr Marcel Cheung and his wife would be selling their shares at that time. Mr Measure Hung explained that this was a re-allocation of rewards given to Mr Marcel Cheung under the incentive scheme. Mr Alvan Yeung said that whilst he was aware that the purchases that he made in the accounts that he controlled, namely his own, Mr Simon Chan's and Mr Laurence Tam's, were of shares sold from accounts in the name of Mr Marcel Cheung and his wife, there was no co-ordination as to price. He did not control the accounts in the name of Mr Marcel Cheung and his wife, Ms Yu.

Ms Vicky Fan.

246. Mr Alvan Yeung said that in early 2004 Mr Measure Hung had told him that he now wished to include Ms Vicky Fan in the incentive scheme and to provide her with money to purchase Mobicon shares. In cross-examination by Mr Edwin Choy, Mr Alvan Yeung accepted that he had assisted Ms Vicky Fan to open an account at Phillip Securities, the account opening documentation in respect of which was dated 30 January 2004. However, he did not have any control or influence over trading in her account nor did he ever direct her to execute any trade or otherwise communicate with her about share trading. Having arranged with Ms Vicky Fan that her account statements be e-mailed to an e-mail address in her name and automatically forwarded to him he was

provided with Phillip Securities account statements in Ms Vicky Fan's name. Also, he received the contract notes in respect of trades. He was instructed by Mr Measure Hung to arrange for settlement of purchases of Mobicon shares in that account from Mr Simon Chan's bank accounts. He did so by liaising with Ms Ivy Ho, whom he knew to be possessed of pre-signed cheques drawn on Mr Simon Chan's bank account. Mr Alvan Yeung accepted that in those circumstances, he was able to attach a contract note for the purchase of 100,000 Mobicon shares in the account in the name of Ms Vicky Fan to an e-mail that he had sent to Ms Ivy Ho, copied to Ms Beryl Yeung, dated 8 March 2004 in which he had asked Ms Ivy Ho to make out a cheque in settlement of the monies due from Mr Simon Chan's Wing Hang Bank account and that a cheque of \$630,000.00 be issued by M-Bar in favour of Mr Simon Chan's account.

247. At the same time, he was told by Mr Measure Hung that Mr Laurence Tam had agreed to return \$1.5 million to Mr Measure Hung, as a result of which he received instructions from Mr Measure Hung to sell Mobicon shares in accounts in the name of Mr Laurence Tam in order to generate those monies which were to be returned to M-Bar and then to Mr Simon Chan. In the period from mid-February to mid-June 2004, he sold 1.72 million Mobicon shares in the accounts in the name of Mr Laurence Tam and arranged for the return of monies, first to M-Bar and then to Mr Simon Chan. Given the thin trading in Mobicon shares he was aware that the shares that he was selling were being bought in the account of Ms Vicky Fan and admitted (paragraph 34) "...that created a false and misleading appearance of active trading" in Mobicon shares.

248. Mr Alvan Yeung accepted that he was the author of an e-mail to Mr Measure Hung dated 15 January 2004 in which the subject was "opening up new securities account". He had written :

“I would like to open a new securities a/c for Marcel at Phillip Securities for more flexible operations.
Or do you have another choice of candidate???”.

249. He agreed that Mr Measure Hung had replied : “I would like to talk with you in detail today personally.”

250. He denied that he was suggesting to Mr Measure Hung that yet another account be opened to facilitate false trading in Mobicon shares. Mr Marcel Cheung had told him that he was dissatisfied with the services at Ever Long and asked to be introduced to another securities company. He had suggested Phillip Securities because Mr Sunny Ng, whom he had known for a long time, had moved to Phillip Securities from Ever Long. He explained his use of the phrase “for more flexible operations” as being a reference to the fact that Mr Sunny Ng would be prepared to come to Mobicon’s offices in order to fill out the account opening documentation. He denied that after he and Mr Measure Hung had had the discussion, requested by Mr Measure Hung in his reply to the e-mail of 15 January 2004, it had been decided to open an account in the name of Ms Vicky Fan, rather than another account in the name of Mr Marcel Cheung. Furthermore, he denied that he had placed all the “buy” and “sell” orders in Ms Vicky Fan’s Phillip securities account.

Matched trading in Mobicon shares between the account in the name of Ms Vicky Fan and accounts in the name of Mr Alvan Yeung in July 2004.

251. Whilst Mr Alvan Yeung acknowledged that there were some matched trades of Mobicon shares between his account and that in the name of Ms Vicky Fan in July 2004, at the time he was not aware of the fact that Ms Vicky Fan was trading in Mobicon shares, notwithstanding the fact that he was provided with her account statements and asked to settle purchases of shares in that account by Mr Measure Hung. Nevertheless, he accepted that his trading in

Mobicon shares in that month was part of his general trading, done with a view to creating more active trading in Mobicon shares.

Mr Alvan Yeung's reports to Mr Measure Hung of the holdings of Mobicon shares and the return of dividends.

252. Mr Alvan Yeung said that Mr Measure Hung had explained to him in early 2003 that dividend payments made in respect of Mobicon and shares acquired with rewards paid to members of the staff were to be returned to him if the net profit of the Mobicon group did not exceed \$35 million per year. It was his task to effect the return of those dividend payments. All communication in respect of the trading in the respective accounts was between Mr Measure Hung and Mr Alvan Yeung only and not the account holders. Other than e-mail communications as to the holdings and trading in the various accounts, on occasions Mr Measure Hung telephoned him and he made an oral report to him.

E-mails.

(i) Overall repayment.

253. He made arrangements for the monies to be returned to Mr Measure Hung. In the case of Mr Laurence Tam, the dividends returned did not include those in respect of 3.5 million Mobicon shares that were not subject to the incentive scheme. He agreed that his e-mail to Mr Measure Hung and Ms Beryl Yeung, dated 8 September 2004 and entitled : "2004 Final Dividend" together with the attached table [**Appendix 6**] described the net dividend payments made on Mobicon shareholdings held in various accounts in the name of Mr Laurence Tam, Ms Yu, Mr Marcel Cheung, Mr Simon Chan, Ms Vicky Fan and his own account, which payments were payable to Mr Measure Hung and Ms Beryl Yeung. He denied that 3.5 million shares held in the name of Mr Laurence Tam were excluded because they were the only shares in all of the accounts not

owned by Mr Measure Hung and Ms Beryl Yeung, rather he said that they were not the subject of the incentive scheme having been obtained at the IPO.

(ii) Individual repayments.

(a) Mr Alvan Yeung.

254. Mr Alvan Yeung agreed that his e-mails to Ms Ivy Ho, dated 29 and 30 January 2004, in respect of monies that he stated he would deposit into the account of M-Bar were in respect of repayments of dividends obtained on Mobicon shares he held.

(b) Ms Vicky Fan.

255. In his e-mail to Ms Ivy Ho of 26 January 2005, he informed her of the fact of the deposit of a dividend payment in the Phillip Securities account of Ms Vicky Fan and asked her to arrange for repayment. In reply, Ms Ivy Ho said that she had obtained a cheque from Ms Vicky Fan and was arranging its deposit.

(c) Mr Marcel Cheung.

256. Similarly, he agreed that in his e-mail of 20 February 2005 to Mr Marcel Cheung, copied to Ms Ivy Ho, he had informed the latter of the receipt of an interim dividend in his Golden Fountain Securities account, attaching a bank deposit slip to that effect, and asked him to make repayment by cheque. Subsequently, Ms Ivy Ho confirmed that repayment in an e-mail dated 21 February 2005.

(d) Mr Laurence Tam.

257. Finally, he accepted that in his e-mail to Mr Laurence Tam dated 8 March 2005 he had set out the basis upon which the dividend received on Mobicon shares held in Mr Laurence Tam's HT Securities account was calculated for purposes of repayment. In particular, the dividend was split with

that received on 3.5 million shares being described as “Laurence’s share”, whereas the balance was described as “Our share”.

Ownership of Mobicon shares purchased with monies provided by Mr Measure Hung in the accounts in the names of Mr Alvan Yeung, Mr Simon Chan, Mr Laurence Tam, Ms Vicky Fan, Mr Marcel Cheung and his wife, Ms Yu.

258. Mr Alvan Yeung said that throughout Mr Measure Hung had consistently informed him that the monies given to various members of staff under the incentive scheme were rewards and had never suggested to him that the Mobicon shares thereby acquired did not belong to those persons. He was given to understand by Mr Measure Hung that the re-allocation of the rewards was part and parcel of the same scheme, they being punishments.

259. For his own part, he had always treated the \$3 million given to him by Mr Measure Hung in March 2003 and the Mobicon shares he had acquired in consequence as being his own property.

Fujikon/Mobicon shares : asset swap.

260. In cross-examination by Mr Edwin Choy, Mr Alvan Yeung admitted having corresponded with Mr Dylan Ng in e-mails in September 2003 on the subject of “Dividend Collection”. Mr Dylan Ng was either the Financial Controller or Company Secretary of Fujikon, of which Mr Johnny Yeung was chairman. Also, he accepted that he was the author of the table entitled “Position as at 30.9.2003” which described acquisition costs of dividends received in respect of 7.986 million Fujikon shares and 5.55 million Mobicon shares. He understood that friends of Mr Johnny Yeung acquired that parcel Mobicon shares, possibly at the IPO. Conversely, Mr Measure Hung had acquired the parcel of Mobicon shares. Whilst he accepted each of them had referred to a net balance being due that was not what was meant or understood

between the parties. Similarly, although in his own table he had entitled a column “M due from/(to) J”, he denied that this was connected with the references to “net balance due” in the text of e-mails between them. This was simply a reference to the difference in the monies accruing from the two separate investments. In particular, he denied that this correspondence and the schedule he had made addressed the fact that the two parties had entered into an arrangement whereby, although the shares were held in the name of one party all economic benefit in holding the shares accrued to the other.

The SEHK’s concerns about the percentage of the “public float” of Mobicon shares.

261. Mr Alvan Yeung agreed that, together with Ms Ivy Ho, he played a role in co-ordinating the responses of Mobicon to enquiries made of them by the SEHK in respect of the identity of those shareholders in the “public float” of Mobicon shares. He accepted that in earlier drafts of the eventual announcement of 18 March 2005 sent to the SEHK it had been asserted that shareholders holding their shares through the Central Clearing and Settlement Systems “...could not be identified by the company”. He denied that in so asserting he was a party to a deliberate lie being told to the SEHK. On the other hand he agreed that in his role of ensuring repayment of dividends and otherwise in the accounts in the names of of Mr Marcel Cheung, Ms Yu, Mr Laurence Tam, Mr Simon Chan and Ms Vicky Fan and his own holdings he was aware of the “ballpark” shareholdings held by those persons of Mobicon shares. Crucially, so he appeared to say, he did not know the exact figure and therefore was not in a position therefore to advise the SEHK.

262. Of the fact that the final announcement, together with some earlier drafts, asserted that Ms Yu held 7.182 million Mobicon shares and that they had been acquired in the subscription at the IPO he said that each of Mr Marcel Cheung

and Ms Yu had been asked by Ms Ivy Ho to confirm the figures and that those shares had been obtained in the IPO. He agreed that with the benefit of hindsight it was clearly inaccurate to assert that holding as having been obtained in the IPO, since Ms Yu had been allotted only 7 million shares at the IPO.

(xii) Mr Sunny Ng Ching Yeung.

263. In light of cross examination by the Presenting Officer of Mr Alvan Yeung, in which it was suggested to him that he had placed all the “buy” and “sell” orders in the account in the name of Ms Vicky Fan at Phillip Securities the Tribunal asked that the witness be called to give oral testimony.

264. Mr Sunny Ng Ching Yeung testified that the transcript of his record of interview of 20 June 2005 was accurate and that in it he had given true and correct answers to the best of his knowledge and belief. He had worked at Ever Long Securities as an account executive from 1997/1998 to October 2003. Then, he began working at Phillip Securities. At Ever Long Securities, he had opened accounts in the name of Mr Alvan Yeung and Mr Simon Chan. Having identified his account executive number on a statement of Mr Simon Chan, and having identified the same account executive number on statements of account of Ms Yu and Mr Marcel Cheung, he agreed that each of them was also his client at Ever Long Securities. At first, he said that Ms Yu placed trading instructions with him by telephone. But, having been told of Ms Yu’s testimony to the contrary he said that he could not recall the position. Similarly, at first he asserted that Mr Simon Chan had given instructions for trading in his account. Then, when asked if he was sure that it was not Mr Alvan Yeung who placed those instructions for Mr Chan he said that he was not sure.

The account in the name of Ms Vicky Fan at Phillip Securities.

265. Mr Ng testified that on the introduction of Mr Alvan Yeung he had taken instructions from Ms Vicky Fan to open an account with Phillip Securities on 26 January 2004. He accepted that the assertion that he had written on the account opening documentation that he had known her for more than a year was not true, probably it was several months. He agreed that he had written the e-mail address : vickymobicon@yahoo.com.hk. He had done so later on her instructions, she having changed her mind about receiving communications from Phillip Securities by mail. He testified that Ms Vicky Fan had telephoned him to give him instructions to trade in that account. Then, he said that he could not specifically recall that, it being too long ago. Later, he said that he was sure that she had placed the orders. It was not necessary to return a telephone call to her to inform her that her instructions had been carried out. No copies of documentation relating to her account were sent to other people, in particular Mr Alvan Yeung. He had never communicated with Mr Alvan Yeung about activities in the account.

266. Counsel for the Specified Persons did not avail themselves of the opportunity given to them by the Tribunal to recall either of the Specified Persons or call other evidence in the light of Mr Ng's testimony.

CHAPTER 5

A CONSIDERATION OF THE EVIDENCE

(I) CLOSING SUBMISSIONS

267. The Tribunal was assisted by detailed and relatively lengthy written closing submissions together with oral submissions provided by the Presenting Officer and Counsel for the Specified Persons. The Tribunal has had regard to all those submissions and here addresses only a particular submission of law, in respect of which the Chairman's directions are set out earlier.

“Active trading”.

268. At the outset Mr Brewer reminded the Tribunal that the term “active trading” in section 274 (1)(a) of the Ordinance is not defined. It has not been the subject of judicial interpretation either in respect of section 274 or section 295, the latter creating the criminal offence. The same term was to be found in the former Securities Ordinance in section 135(1) :

“(1) a person shall not intentionally create or cause to be created, or do anything with the intention of creating -
(a) a false or misleading appearance of active trading in any securities...”.

269. Mr Brewer pointed out that section 153(1) of the Securities Ordinance had its origins in the Corporations Law of the Commonwealth of Australia, section 998 of which provided :

“(1) a person shall not create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any securities.”.

270. In turn, he suggested that the genesis of this legislative provision was the Securities Exchange Act of 1934 of the United States of America, section 9 of which prohibits conduct :

“(1) For the purpose of creating a false or misleading appearance of active trading in any security....”

271. Mr Brewer invited the Tribunal to take note of the fact that :

- Barrons “Dictionary of Finance and Investment Terms” defines an “active market” as “heavy volume of trading in a particular stock, bond or commodity”, “a heavy volume of trading on the exchange as a whole”.
- The Modern Corporation and Private Property-Bearle and Means (1932 edition) describes security markets as, “... meeting places for buyers and sellers. In fact, however, they are more than this. They are points at which there are always purchasers prepared to buy at some price and sellers prepared to sell at some price. In other words, a security market contemplates that at all times there shall be stock offered for sale at a price and purchasers ready to take, at a price, stock which might be offered. When either of these requisites ceases to exist there is no market. The process must be continuous-ie, the exigency must never arise when there is a buyer with no seller or a seller with no buyer”.

272. In his written submissions Mr Brewer submitted that : “continuity, as opposed to volume *per se*, is a *sine qua non* of active trading”. In oral argument, he accepted that reduced to a factual illustration his submission amounted to asserting that eight transactions involving 100,000 shares constituted active trading whereas one transaction involving 800,000 shares did not.

273. As was his duty, Mr Brewer drew the Tribunal's attention to a judgment of a single judge of the Supreme Court of Victoria, dicta in which might be taken as contrary to his submissions in respect of "active trading". In *Endresez v Whitehouse* (1994) 14 ACSR 31 the court dismissed appeals against various convictions by the magistrate including a charge of creating a false or misleading appearance of active trading in shares of a company traded on the stock market in Victoria, contrary to section 124(1) and (3)(a) of the Securities Industry (Victoria) Code. Section 124(1) of the Code provided :

"A person shall not, whether within or outside Victoria, create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market in Victoria...".

274. As a result of instructions given by the appellant, on behalf of CTC Nominees Pty Ltd, to two separate brokers one agreed with the other to buy 4 million shares in the company at \$0.14 per share, whereas the market price was in the range of \$0.09 to \$0.10 per share, the purchase price not to be payable until three months after the date of the contract. The selling broker paid the appellant/CTC notwithstanding the deferred payment by the buyer. An issue at the trial was whether or not the appellant's intention was thereby to obtain a short-term loan, rather than an intention to create a false or misleading appearance of active trading.

275. At the hearing of the appeal, in addition to submissions in respect of the requisite intention of the offence it was submitted that :

"... the transaction of acquiring 4 million shares was a single event which by itself could not be active trading."

276. In his judgment, Hansen, J noted that the magistrate had found (page 38 lines 35-40) :

"... the market rigging of the price of the shares was very much a part of that overall plan. I therefore find that the charge under section 124 (1) is proved

not only in relation to the deeming clause, but upon its own specific terms, and that no defence to the charge has been made out.”.

277. Of that finding, Hansen J said (page 38, lines 40-50) :

“It should be said that the learned magistrate had before him evidence from a sharebroker who gave expert evidence that in all the circumstances the effect of the 4 million transaction was to increase turnover, creating the appearance of active trading in the stock. It is evident the learned magistrate accepted this evidence; it was not submitted that it was not open to him to do so and it would have accorded with common sense having regard to the evidence as to total transactions on the market. In my view it follows that the appellant’s submission that the single transaction could not be active trading was against the evidence and decision, and not open to the appellant on the appeal.”.

278. It is to be noted, that Hansen J accepted the submissions of the respondent (page 38 lines 32-33; page 39 lines 19-22) that the magistrate’s findings of fact were open to be made and could not be set aside as an error of law (page 40, lines 3-5) :

“In these circumstances the question of law raised by the grounds as to the matter of intention in a prosecution under s 124 (1) and s 124(3)(a) does not arise.”.

The Submissions of the Presenting Officer in Reply.

“active trading”.

279. Mr Bruce submitted that section 274(1)(a) was engaged in respect of the ingredient of “active trading” on the occurrence of trading for non-economic purposes. There was no requirement that there be a continuous line of trading. He said that even if there had been no trading in the stock over a series of days trading for non-economic purposes would engage the section. He submitted that anything other than a trivial level of trading was capable of engaging the section.

(II) FINDINGS

280. By the amended Notice of the Financial Secretary the Tribunal is required to determine, inter alia -

“(a) whether any market misconduct has taken place;

(b) the identity of any person who has engaged in the market misconduct;”

in dealings in the shares of Mobicon.

281. By the amended “Statement for institution of proceedings” the time period stipulated for the relevant dealings is 1 April 2003 to 25 May 2005 and the dealings in the shares of Mobicon extended to dealings not only in accounts in the names of Mr Simon Chan and Mr Alvan Yeung but also in accounts in the names of Mr Laurence Tam, Mr Marcel Cheung, his wife Ms Yu and Ms Vicky Fan. The original “Statement for institution of proceedings” stipulated the relevant time period for the relevant dealings to be 1 August to 14 December 2004 in respect of dealings in Mobicon shares in accounts in the names of Mr Simon Chan and Mr Alvan Yeung.

Admissions by the Specified Persons.

282. In their respective statements of 14 October 2008, Mr Measure Hung and Mr Alvan Yeung made certain admissions in respect of the original “Statement for institution of proceedings”.

A. Mr Measure Hung.

283. Mr Measure Hung admitted (paragraph 17) that during the period 1 August to 14 December 2004 he was aware that some of the buying orders made by Mr Alvan Yeung in the name of Mr Simon Chan were matched with selling orders from Mr Alvan Yeung and that such matching trades were set out in Exhibit “AY-8” to Mr Alvan Yeung’s record of interview dated 18 November 2005. Of the circumstances of that trading, he admitted (paragraph 24) that at all material times :

- “(1) control over dealings in those shares remained with myself (assisted by Mr Alvan Yeung);
- (2) I received the dividends paid on the shares through M-Bar Limited (a company controlled by me); and

- (3) the shares were used in the alleged trading by Mr Alvan Yeung in contravention of section 274 of the Securities and Futures Ordinance Cap 571.”.

B. Mr Alvan Yeung.

284. Mr Alvan Yeung admitted (paragraph 11) that, by use of a password given to him by Mr Simon Chan through Ms Ivy Ho, he had conducted all the transactions by internet in Mr Simon Chan’s Wing Hang Brokerage account and that of the 28 days, in the period 1 August to 14 December 2008, on which there was trading in Mobicon shares there was matched trading between that account and his own account on 18 days, of which on 14 days the matched trading accounted for all of the trades. In consequence, he admitted (paragraph 15) that :

“I, together with Hung, participated in creating a false impression of active trading on Mobicon shares since Mobicon shares were inactively traded throughout the Inquiry Period. The creation of that false impression was one of the purposes of the matched trades shown on Exhibit AY-8, exhibited to my Record of Interview dated 25 July 2005.”.

285. In his second statement, dated 5 December 2008, Mr Alvan Yeung addressed the expanded time period stipulated in the “Statement for the institution of proceedings” in the amended Notice, namely 1 April 2003 to 25 May 2005, and expanded that earlier admission (paragraph 16) :

“I admit that one of the purposes of my matched trading with Simon Chan’s Wing Hang account and my Wing Lung account from 2003 to 2005 was to create a false and misleading appearance of active trading.”.

286. Of his purchases of Mobicon shares in accounts in his own name, that of Mr Laurence Tam and Mr Simon Chan in March and April 2003 from sales of those shares made in accounts in the name of Mr Marcel Cheung and his wife, Ms Yu, he said (paragraph 25) :

“I admit that my purchases of Mobicon shares during this period of time with the accounts I controlled, knowing (from Hung) that Marcel Cheung and his wife would be selling a substantially similar amount of shares which I was to purchase (for myself, Laurence Tam and Simon Chan), amounted to false trading. Hung had all along mentioned to me generally that he would like to see more trading in Mobicon shares and *I believe that the transfer of shares*

from Marcel Cheung and his wife to the accounts I controlled through the open market was for this purpose—since a straightforward transfer of shares could have been effected off-market by instruments of transfer (bought and sold notes) without the need to put the shares for sale in the open market.”. [emphasis added]

287. Of his sale of Mobicon shares in accounts in the name of Mr Laurence Tam from mid-February to mid-June 2004 and the matched purchases in the account in the name of Ms Vicky Fan, he said (paragraph 34) :

“I admit that the selling of Laurence Tam’s Mobicon shares knowing that Hung had arranged for Vicky Fan to buy a substantially similar number of shares at the same time had created a false and misleading appearance of active trading, given the Mobicon shares would otherwise have been thinly traded during that period. I was told by Hung that the purpose of this exercise was to re-allocate Scheme payments in accordance to his wishes and I accepted those explanations at the time. Hung had all along mentioned to me generally that he would like to see more trading in Mobicon shares but he did not tell me any specific reason (if he had any) for generating trading volume with Laurence Tam and Vicky Fan’s accounts during the specific time period.”. [emphasis added]

Character.

288. In light of the admissions made in the one statement from Mr Measure Hung and the two statements from Mr Alvan Yeung received by the Tribunal and, in particular the admission of market misconduct by each of them the Tribunal has determined that it is not appropriate to give effect to the Chairman’s directions at paragraph 21 in respect of “good character” in respect of either Specified Person.

The issues.

289. Mr Measure Hung and Mr Alvan Yeung having admitted that they are culpable of false trading, contrary to section 274 of the SFO in dealing in Mobicon shares in some of the accounts within the time period specified in the amended Notice and in particular, the “Statement for institution of proceedings” the first issue for the Tribunal to determine is the ambit of that false trading, in particular as to the time period, the specific dealing and the securities accounts

involved. Secondly, at issue is the mental element involved, namely whether or not the conduct was done with intention or recklessly. Furthermore, at issue is whether or not there existed an incentive scheme and, if so, whether or not its operation explains, or explains in part or at all, the provision of monies to various accounts, the acquisition of shares, the transfer of the proceeds of the sale of shares and other monies and the repayment of dividends.

The relevance of the provision of funding to and trading in the shares of Mobicon prior to 1 April 2003 in accounts opened and operated in the names of Mr Marcel Cheung, Ms Yu and Mr Laurence Tam.

290. Although the time period directly relevant to the alleged market misconduct commences on 1 April 2003, the date on which the SFO came into force, evidence of the provenance of funding and the nature of trading in the accounts prior to that date is germane to the conduct in the specified period. In addressing the issue of the true beneficial ownership of Mobicon shares traded in the specified period, it is relevant to consider the provenance of funding used to acquire shares in some of those accounts in the IPO/placement of Mobicon shares in April/May 2001, the nature of subsequent trading in Mobicon shares and the flow of funds, in particular in the accounts in the names of Mr Marcel Cheung and his wife, Ms Yu. Next, it is relevant to consider the evidence of the sale of Mobicon shares in those accounts in late March 2003 and the transfer of \$3 million to each of Mr Alvan Yeung and Mr Laurence Tam on 26 March 2003 from the joint account of Mr Measure Hung and Ms Beryl Yeung. That conduct is relevant to a consideration of conduct within the specified period, in particular to the purchase of Mobicon shares in early April 2003 in some of the stipulated accounts from accounts in the name of Ms Yu and the transfer in early April 2003 of most of the proceeds of the sale of Mobicon shares in the account in the name of Ms Yu to the joint account of Mr Measure Hung and Ms Beryl Yeung.

The provenance of funding used to subscribe for shares in the IPO/placement in April/May 2001.

291. In May 2001, Mobicon allotted a total of 50 million shares, 30 million by way of subscription in an IPO and 20 million shares by way of placement. Mr Measure Hung testified that he had provided monies to various employees who subscribed for some of those shares :

- (i) \$3 million to Mr Winson Lee, to whom 3 million shares were placed;
- (ii) over \$3.5 million to Mr Laurence Tam, who was allotted over 2.6 million shares;
- (iii) \$700,000.00 to Mr Simon Chan, to whom 1.2 million shares were placed;
- (iv) \$450,000.00 to Ms Vicky Fan, to whom 500,000 shares were placed; and
- (v) over \$7 million to Ms Yu, the wife of Marcel Cheung, to whom 7 million shares were allotted.

292. Mr Measure Hung denied having provided the \$4.1 million with which Mr Marcel Cheung had subscribed for shares in the IPO, as a result of which he had been allotted 3.156 million shares.

The provision of funds to Marcel Cheung/Ms Yu's accounts in and between April 2001 and August 2002.

- \$8 million - April 2001;
- \$7 million - April 2001 (Ms Yu); and
- \$6 million - June 2001-August 2002.

293. Mr Measure Hung testified that, in addition to the more than \$7 million he had provided to the account of Ms Yu at Ever Long in April 2001, he had

provided the \$8 million deposited into the savings account in the name of Mr Marcel Cheung at Wing Lung Bank on 28 April 2001. Also, he accepted that he had caused two payments of \$2 million to be made from the joint account he had with his wife to the same account of Mr Marcel Cheung on 26 June and 13 August 2001, followed by a further payment of \$1 million on 21 August 2002. In addition, other material received by the Tribunal established that a cheque dated 8 March 2002 drawn on the joint account of Mr Measure Hung and Ms Beryl Yeung in favour of Mr Marcel Cheung for the sum of \$1 million was deposited into Mr Marcel Cheung's Wing Lung Bank account on 9 March 2002.

The use of those funds.

294. It is apparent from the account statements that those monies were used to make settlement for purchases of Mobicon shares in the accounts in the names of Mr Marcel Cheung and Ms Yu, in particular in the account in the latter's name at Ever Long, in which over 8 million shares had been accumulated by the end of February 2003 but also at HT Securities, in which account the original allotment of 7 million Mobicon shares was reduced by 2 million shares almost immediately but thereafter built up by purchases and then maintained in 2002-2004 at a level of 6,034,000 Mobicon shares.

Matched trading between accounts in the name of Mr Marcel Cheung at Golden Fountain : Ms Yu at Ever Long [May 2001-March 2003].

295. Exhibit 62 [**Appendix 1**] is a schedule, describing matched trades of over 5.8 million Mobicon shares between the Ever Long account in the name of Ms Yu and the account in the name of Mr Marcel Cheung at Golden Fountain, in the period in and between May 2001 and March 2003. The Tribunal readily accepts Ms Yu's evidence that she knew nothing whatsoever about share trading and that she did not conduct any of the trades in accounts in her name. We reject as absurd the testimony of Mr Marcel Cheung that one of the early

matched trades, in May 2001, was done in order to give Ms Yu the benefit of dividends on those shares and in order to enable him to practise his trading skills.

296. We accept the Presenting Officer's submission, and Mr Chan's concession on behalf of Mr Alvan Yeung, that these trades between husband and wife made no economic sense whatsoever. As noted earlier, when required, payments for purchases of Mobicon shares in the accounts in the name of Ms Yu were made by cheques drawn on Mr Marcel Cheung's Wing Lung Bank account. Accordingly, on occasions monies in the Wing Lung Bank account of Mr Marcel Cheung were used to settle purchases of Mobicon shares in the Ever Long account in the name of Ms Yu for purchases of shares bought from his accounts. Of course, transaction costs were incurred when the trades occurred, as they did, on the open market. Also, it is to be noted that purchases and sales between the accounts were made within a narrow price range eliminating any real profit or loss between the accounts arising from the transactions. We are sure, and so find, that the matched trading was performed in order to give a false or misleading appearance of active trading in the shares of Mobicon. The issues that arise are : for whose benefit was that done? who caused or was a party to or connived with those engaged in that conduct?

The sell-off of shares in the accounts in the name of Ms Yu in March/April 2003 and the purchase of most of those shares in accounts in the names of Mr Alvan Yeung, Mr Laurence Tam and Mr Simon Chan.

297. It is to be noted that the total of more than 14 million shares held in the accounts in the name of Ms Yu at the end of February 2003 was reduced by the sale of about 5.5 million shares in the account in her name at Ever Long by the end of March 2003. Those sales reduced the holding of Mobicon shares in her name alone, disregarding shares held in her husband's name, from above 7% to below 5% of the issued share capital of Mobicon. On 1 April 2003, the

Ordinance came into force, which legislation required, inter alia, notification in respect of holdings of 5% and greater of the issued share capital of a listed company.

The circular flow : funds/shares.

298. The disposal of that substantial tranche of shares was to accounts in the names of Mr Alvan Yeung, Mr Laurence Tam and Mr Simon Chan and, in respect of the former two accounts, was funded by the provision of \$3 million to each of Mr Alvan Yeung and Mr Laurence Tam from the joint account of Mr Measure Hung and Ms Beryl Yeung on 26 March 2003 and, in respect of Mr Alvan Yeung in addition \$338,084.60 in a cheque drawn on the account of Mr Marcel Cheung. \$6 million of the more than \$6.7 million proceeds of the sale of shares in March 2003 in the account in the name of Ms Yu was transferred to the joint account of Mr Measure Hung and Ms Beryl Yeung on 4 and 7 April 2003. The balance of over \$727,000.00 was deposited into the same account in the name of Mr Marcel Cheung from which monies had been paid earlier to make settlement for purchases of Mobicon shares in the Ever Long account in the name of Ms Yu.

299. We are sure that the arrangements necessary for the sales and purchases of those Mobicon shares were put in place primarily to reduce the holding of Mobicon shares in accounts in the name of Ms Yu and Mr Marcel Cheung to below a notifiable level. That much is undoubtedly to be inferred from the table compiled by Mr Alvan Yeung entitled “Position at 6.4.2003” [**Appendix 5**], which was sent to Mr Measure Hung, in which the percentage of the various holdings as against the issued capital was actually calculated, it being noted that as of that date Mr Laurence Tam held 4.9% and Mr Marcel Cheung and his wife 4.8% of the issued share capital of Mobicon. We note that in cross examination by the Presenting Officer Mr Measure Hung was asked and responded thus :

- “Q. Did you know that there was a problem when the regulation changed that the holdings in the name of Marcel Cheung and his wife, Ms Yu, would now become notifiable? Did you know that?
A. I heard Alvan Yeung mentioned this case.”.

Nevertheless, he went on to deny, in effect, that there was a problem indicating that disclosure was the answer to the problem.

Beneficial ownership.

300. Having regard to all the evidence, in particular the provenance of the funding made available for the purchase of the shares in the first place, namely the joint account of Mr Measure Hung and Ms Beryl Yeung, and its return to that source, and in light of our other findings, described subsequently, we are sure that Mr Measure Hung and Ms Beryl Yeung were the beneficial owners of the Mobicon shares held in the Ever Long account in the name of Ms Yu. We are sure that both Mr Measure Hung and Mr Alvan Yeung knew that the transfer of shares necessarily involved matched trading and also gave a false or misleading impression of active trading in the shares of Mobicon. As Mr Alvan Yeung conceded in his second witness statement, that was the result of effecting the trades between colleagues on the open market as opposed to trading off market. Of course, we are mindful of the fact that the sales in March 2003 were prior to the commencement of the relevant provisions of the Ordinance and the specified period stipulated in the Amended Notice.

Trading between those accounts within the specified period in April 2003.

301. We note that there was such matched trading of 420,000 and 470,000 Mobicon shares between the Golden Fountain account of Mr Marcel Cheung and the Ever Long account of Ms Yu on 1 and 2 April 2003 respectively, namely after the SFO came into force. Also, on and between 7 and 10 April 2003 there was matched trading of 330,000 Mobicon shares between the

accounts of Mr Marcel Cheung (as a seller) and Mr Simon Chan at Ever Long (as a buyer).

FUND FLOW.

302. On various occasions during the oral testimony the Tribunal received from the Presenting Officer schedules describing the flow of funds into and out of accounts in which trading in Mobicon shares was conducted.

(i) The account in the name of Mr Marcel Cheung at Wing Lung Bank.

303. Exhibit 31 [**Appendix 2**] is a schedule describing the receipt of large sums of money into the account in the name of Mr Marcel Cheung with Wing Lung Bank in the period on and between 28 April 2001 and 8 April 2003. On 28 April 2001, the account received a deposit of a cheque in the sum of \$8 million drawn on the joint account of Mr Measure Hung and Ms Beryl Yeung. In the period June 2001 to August 2002 by 4 cheques a further sum of \$6 million was deposited into that account from that joint account. Of course, on 24 April 2001 the sum of \$7 million from the same account had been deposited in the securities account of Ms Yu. Accordingly, in a period of less than a year and a half accounts in the name of Mr Marcel Cheung and his wife had received \$21 million from Mr Measure Hung and Ms Beryl Yeung. In April 2003, from the proceeds of the sale of Mobicon shares in the account in the name of Ms Yu \$6 million was returned to that joint account.

(ii) The account in the name of Mr Simon Chan at Wing Hang Bank

304. Volume 11A of the material received by the Tribunal, describes the receipt into the account in the name of Mr Simon Chan with Wing Hang Bank of over \$5 million from the joint account of Mr Measure Hung and Ms Beryl Yeung and M-Bar in the period in and between March 2003 and November 2004.

(iii) Fund flow : between the account in the name of Mr Marcel Cheung at Wing Lung Bank and that in the name of Mr Simon Chan at Wing Hang Bank.

305. Exhibit 34 [**Appendix 3**] is a schedule that describes the flow of monies to a total of over \$1.96 million from the account in the name of Mr Marcel Cheung with Wing Lung Bank to the account in the name of Mr Simon Chan with Wing Hang Bank in the period in and between March and November 2003. Those monies were used in settlement of purchases of Mobicon shares in the securities accounts in the name of Mr Simon Chan.

(iv) Fund flow : between the account in the name of Mr Marcel Cheung at Wing Lung Bank and and that in the name of Mr Laurence Tam at HT Securities.

306. Exhibit 33 [**Appendix 4**] is a schedule that describes the flow of monies to a total of over \$1.25 million from the account in the name of Mr Marcel Cheung with Wing Lung Bank to the account in the name of Mr Laurence Tam with HT Securities in the period in and between January 2002 and February 2003. Those monies were used in settlement of purchases of Mobicon shares in the account in the name of Mr Laurence Tam with HT Securities.

(v) Fund flow : between the account in the name of Mr Marcel Cheung at Wing Lung Bank and that in the name of Mr Alvan Yeung at HT Securities.

307. In April 2003, a cheque in the sum of \$338,084.60 drawn on the account in the name of Mr Marcel Cheung with Wing Lung Bank was deposited in the account in the name of Mr Alvan Yeung with Hantec in settlement of the purchase of Mobicon shares.

(vi) Fund flow : between the account in the name of Mr Simon Chan at Wing Hang Bank and that in the name of Ms Vicky Fan at Phillip Securities.

308. In February and March 2004, cheques drawn on the account of Mr Simon Chan with Wing Hang Bank to a total of over \$1.2 million were used in settlement of purchases of Mobicon shares in the account in the name of Ms Vicky Fan with Phillip Securities.

The repayment of dividends.

309. There is no dispute that during the period 1 April 2003 to 25 May 2005 dividends accruing to various holdings of Mobicon shares, net of expenses, in the accounts in the names of Mr Marcel Cheung, Ms Yu, Mr Laurence Tam, Mr Simon Chan, Mr Alvan Yeung, and Ms Vicky Fan were paid from those accounts into the M-Bar savings account. A consistent exception to that pattern of behaviour is to be found in respect of a parcel of 3.5 million shares held in the accounts in the name of Mr Laurence Tam and in respect of an even more substantial parcel of Mobicon shares held in the account in the name of Ms Yu with HT Securities. It is to be noted that in the e-mail of 12 April 2003, in which Mr Alvan Yeung described the “Share position - 6.4.2003” [**Appendix 5**], Mr Laurence Tam and Mr Marcel Cheung are described as having “personal” shareholdings of 3.5 and 6.66 million shares of Mobicon respectively. Dividends were received pro rata in respect of the 3.5 million shares held in the name of Mr Laurence Tam and in respect of the shareholding held in the account in the name of Ms Yu with HT Securities. In the case of Mr Laurence Tam, such dividends were specifically excluded from the calculation for purposes of repayment, whereas the dividends received in respect of the shares held in the account in the name of Ms Yu at HT Securities were not the subject of demands for repayment, for example see the attachment “Final Dividend: 4/03-3/04” to the e-mail from Mr Alvan Yeung to Mr Measure Hung and Ms Beryl Yeung,

dated 8 September 2004 [**Appendix 6**]. The issue that arises is : why was the repayment of these dividends sought and made on a regular basis?

The mechanics of the repayment of dividends.

310. It is clear on all the evidence that a number of people were involved in the mechanics of the operation.

(i) Mr Alvan Yeung was involved in e-mail correspondence with the various account holders and with Ms Ivy Ho in respect of the fact of the receipt of dividends in the account holders' securities accounts and the monies due in consequence to Mr Measure Hung and Ms Beryl Yeung and paid to M-Bar. Also, he made detailed schedule reports to Mr Measure Hung and/or Ms Beryl Yeung of the calculation of individual and total repayments. In order to make the calculations necessary to compile schedules of shareholdings and dividend repayments, it is clear that it was necessary for Mr Alvan Yeung to have access to detailed information about trading within those accounts. He accepted that he was provided with such information, including contract notes and monthly statements. That admission was confirmed by attachments to e-mails of which he was author, for example informing Mr Marcel Cheung of a dividend payment made into his Golden Fortune account, together with his attachment of a contract note in respect of Ms Vicky Fan's Phillip Securities account in another e-mail.

(ii) Ms Ivy Ho acted as a conduit between Mr Alvan Yeung from whom she received instructions on the one hand and on the other hand the account holders, from whom she demanded repayments of dividends, and Mr Measure Hung and Ms Beryl Yeung to whom she passed information about the repayment of dividends on a regular basis.

(iii) For her part, Ms Vicky Fan was involved, not only as an account holder returning dividends to the M-Bar account but also in making records in the savings account passbook itself indicating the nature of the payment and its provenance.

Was there an incentive scheme?

311. Mr Measure Hung and Mr Alvan Yeung, together with some of the account holders themselves, have sought to explain away the fact of the repayment of dividends and the flow of monies from an account in the name of one employee to an account in the name of another as the operation of the negative element of the so-called incentive scheme. The repayment of dividends to the account of M-Bar Limited was explained away as having been necessitated by the failure of Mobicon to reach a threshold profit level of \$35 million per year. The movement of funds from an account in the name of one employee to that of another was explained away sometimes as being the re-allocation of rewards previously granted from one employee to another.

312. The Tribunal has no hesitation whatsoever in rejecting those accounts. We are satisfied that they are a wholly fanciful invention thought up after the events to explain the movements of monies in an attempt to divert the Tribunal from the otherwise obvious conclusion that the beneficial ownership of the shares lay, not with the account holders in whose names the shares were held but with Mr Measure Hung and Ms Beryl Yeung by whom funding for the acquisition of the shares had been provided.

The absence of any documentation evidencing the existence or operation of an “incentive scheme”.

313. By contrast to the careful calculations of dividend payments and repayments evidenced in the e-mails and attached schedules, the corresponding

“noting up” of re-payments in the M-Bar savings account bankbook and the obvious care with which Ms Beryl Yeung compiled her own handwritten record of accounts of bank transactions no documentation whatsoever evidencing the existence or operation of the incentive scheme has been put before the Tribunal by either the Specified Persons or the alleged recipients of “awards” or “forfeitures”. The significance of the absence of such material is to be judged in the context of the evidence that the incentive scheme involved several employees and lasted several years during which tens of millions of dollars of payments were made. We reject Mr Measure Hung’s testimony that the absence of documentary records of the incentive scheme or payments made under it was to be explained by an overriding need for secrecy. We are satisfied that the total absence of any contemporaneous documentation reflecting the existence or operation of the incentive scheme is explicable only on the basis that the scheme did not exist.

Mr Measure Hung.

314. Relevant to the credibility of Mr Measure Hung is the fact of the significant inconsistencies between his oral testimony to the Tribunal in respect of the “awards” and “forfeitures” of some of those awards to Mr Marcel Cheung, and the considered account that was given to the SFC in correspondence he authorised specifically from his solicitors in February and March 2006. In a letter of 9 February 2006, his solicitors noted that in the interview conducted by an SFC officer of Mr Measure Hung on 25 January 2006 he had been asked to provide information regarding the awards he had given to selected employees “....under his incentive scheme since the listing of Mobicon on the Hong Kong Stock Exchange”. The letter went on to state that the figure provided by Mr Measure Hung was a “ballpark figure” of the amount of the awards. In respect of Mr Marcel Cheung, the information provided stipulated the aggregate of the awards as being “about HK\$1 million”. In a letter dated 13 March 2006, again

authorised specifically by Mr Measure Hung, his solicitors stated that that award had been made to Mr Marcel Cheung in March 2002. In addressing the issue of forfeiture of awards made to employees, his solicitors went on to identify Mr Laurence Tam as the only employee subjected to forfeiture of any part of an award.

315. By contrast, in his oral testimony Mr Measure Hung identified cheques drawn on his joint account with his wife to a total of \$5 million, two of \$2 million in June and August 2001 respectively and one in August 2002 in the sum of \$1 million, as being awards to Mr Marcel Cheung. Furthermore, he testified that the payment of a total of \$6 million on cheques drawn on Ms Yu's bank account in April 2003 was a repayment of monies that Mr Marcel Cheung was required to make. Finally, Mr Measure Hung sought refuge in explaining his inconsistent accounts by claiming that these monies paid to Mr Marcel Cheung were not part of the incentive scheme.

316. The Tribunal is satisfied that the changing seascape of explanations forthcoming from Mr Measure Hung arises from the fact that there was no incentive scheme and his various accounts are false. In reaching that determination the Tribunal has also had regard to the extraordinary ratio between the aggregate salary and bonuses received by Mr Marcel Cheung, namely about \$800,000.00 - \$900,000.00, and the aggregate of the payments made to bank and securities accounts under his control in the period April 2001 to August 2002, namely \$21 million. Furthermore, the payment of \$1 million on 21 August 2002 was made almost 2 months after the announcement by Mobicon of 25 June 2002 that its profits attributable to shareholders for the year ended 31 March 2002 had plunged from \$35.3 million to \$4.4 million. On Mr Measure Hung's account this \$1 million payment was part of a total payment of \$6

million paid to Mr Marcel Cheung on his undertaking to increase profits of Mobicon by 15 to 20% per annum.

Mr Alvan Yeung.

317. Relevant to the credibility of Mr Alvan Yeung is the assertion that he made to the SFC officer in his fourth record of interview, namely that he had used about half of the \$3 million given to him as a bonus to buy Mobicon shares and that with the remaining \$1.5 million he had bought other stocks. There is no dispute that in fact all of the money was used to buy Mobicon shares. We are satisfied that assertion to the SFC was a lie.

318. Also, relevant to his credibility is his admitted participation in February and March 2005, together with Ms Ivy Ho, in correspondence and draft announcements sent to the SEHK addressing the issue of the identity of the holders of the “public float” and, in particular, the assertion to the SEHK, first made on 4 February 2005 but repeated on 7 February 2005, that shareholders holding their shares through the Central Clearing and Settlement Systems :

“... could not be identified by the company.”.

319. Given Mr Alvan Yeung’s sustained and contemporaneous involvement in the mechanism by which dividend payments made in respect of holdings of Mobicon shares held in the accounts in the names of various employees and Ms Yu were calculated and paid to M-Bar the assertion, to which he was a party, was extraordinary. More particularly, as he accepted in cross-examination by the Presenting Officer, in late January 2005 he had been the author of e-mails requesting re-payment of the interim dividend paid on Mobicon shares for the financial year 2004-5, directly to Ms Vicky Fan and Mr Marcel Cheung and indirectly through Ms Ivy Ho to those persons and Mr Simon Chan. By an e-mail dated 25 January 2005 Mr Alvan Yeung had informed Mr Laurence Tam of

the receipt of a dividend payment in respect Mobicon shares in an account in his name by enclosing an attached “Notice of Dividend” from HT Securities in which the quantity of Mobicon shares upon which the dividend was paid was described as being 8 million. Clearly Mr Alvan Yeung was possessed of relevant information at that very time, which gave the lie to the assertion made to the SEHK. These false assertions made to the SEHK were in respect of accounts in the names of colleagues such as Mr Laurence Tam, Mr Simon Chan, Ms Vicky Fan and Mr Marcel Cheung and his wife, between which accounts there had been matched trading, in respect of which Mr Alvan Yeung had played various roles.

Pre-signed blank cheques and books of cheque stubs drawn on the accounts in the names of Mr Simon Chan and Mr Marcel Cheung.

320. A search of Ms Ivy Ho’s desk, during the search conducted by the SFC of the officers of Mobicon on 8 July 2005, revealed blank pre-signed cheques in cheque-books in the accounts of Mr Marcel Cheung with Wing Lung Bank and Mr Simon Chan with Wing Hang Bank together with a number of books of cheque stubs. Ms Ivy Ho accepted that she had made many of the entries in the cheque stubs. There is no dispute that she made out those cheques on the instructions of Mr Alvan Yeung and had done so for a considerable period of time. As noted earlier, those accounts were used, in part, in the flow of funds to other accounts to settle purchases of Mobicon shares. These bank accounts were opened in conjunction with the opening of securities accounts, all of which accounts were opened at the instigation of Mr Measure Hung and Mr Alvan Yeung.

Control of the bank accounts in the name of Mr Simon Chan at Wing Hang Bank and Mr Marcel Cheung at Wing Lung Bank.

321. We reject as untrue the assertions of Mr Marcel Cheung and Mr Simon Chan that they had not surrendered control of those bank accounts. The

uncontested evidence as to the use of the accounts is utterly overwhelmingly against those assertions. Also, it is clear from their respective accounts in evidence, that neither of them had anything like the level of understanding of the use to which the accounts had been put required of a person in control of a bank account. For example, Mr Marcel Cheung denied that he had provided monies with which settlement was made for the acquisition of Mobicon shares in the account in the name of Mr Simon Chan (Day 20, page 30). However, when it was demonstrated to him that his account was the provenance of settlements that were made in the Ever Long account of Mr Simon Chan in April 2003, he asserted that they were part of repayments he had made on Mr Measure Hung's instructions. His initial denial of having made such payments is to be viewed against the fact that there were more than \$1.9 million of such payments. For his part, Mr Simon Chan was unable to explain how it was, in the process of cheques being made out for settlement of purchases of Mobicon shares acquired in the securities account in his name, that Mr Measure Hung became aware of the exact amount to stipulate in the cheque. Conversely, why were payments of more than \$1.2 million made from the account in the name of Mr Simon Chan in settlement of purchases of Mobicon shares in the account in the name of Ms Vicky Fan? We are satisfied that these bank accounts were under the control of Mr Measure Hung and Mr Alvan Yeung acting through Ms Ivy Ho.

Control of trading in the securities accounts in the name of Mr Simon Chan.

322. Mr Alvan Yeung and, to a lesser extent, Mr Measure Hung have made admissions of their part in dealings in, and their control of those dealings, in the securities accounts in the name of Mr Simon Chan. For his part, Mr Simon Chan testified in respect of his Ever Long and Wing Hang Brokerage account that he traded in those accounts on the advice of and through Mr Alvan Yeung. Having regard to all the evidence received by the Tribunal we are satisfied, and so find, that all dealings in the securities accounts in the name of Mr Simon

Chan, other than his HT Securities account, were under the control of both Mr Measure Hung and Mr Alvan Yeung and that, as part of a joint enterprise, they caused trading in Mobicon shares in those accounts as part of an agreement to create a false or misleading appearance of active trading on the SEHK in Mobicon shares.

Beneficial ownership of the Mobicon shares traded and held in the accounts of Mr Simon Chan with Wing Hang Brokerage and Ever Long and the monies held in an account in his name with Wing Hang Bank.

323. Notwithstanding the assertions of Mr Simon Chan and Mr Measure Hung that Mr Simon Chan was the beneficial owner of Mobicon shares traded and held in securities accounts in the name of Mr Simon Chan with Wing Hang Brokerage and Ever Long, having regard to all the evidence, we are sure that the beneficial ownership of those shares lay with Mr Measure Hung and Ms Beryl Yeung, not Mr Simon Chan. In reaching this determination, we have had regard to all the evidence and, in particular, to our rejection of the evidence that there existed and was operated an incentive scheme of which Mr Simon Chan was a beneficiary. Also, we have taken into account the evidence in respect of the provenance of the monies deposited into Mr Simon Chan's Wing Hang Bank account, namely from the joint account of Mr Measure Hung and Ms Beryl Yeung and from Mr Marcel Cheung, who in turn was the beneficiary of monies from those two persons. Furthermore, we have taken note of the use of their bank account in acquiring Mobicon shares not only in securities accounts in the name of Mr Simon Chan but also in the name of others, including Ms Vicky Fan. Finally, we note that dividend payments made in respect of holdings of Mobicon shares in accounts in the name of Mr Simon Chan at Wing Hang Brokerage and Ever Long were the subject of demands for repayment and were paid to the account of M-Bar throughout the specified period, whereas no such demands for

repayments were made in respect of dividends received on Mobicon shares held in the account in Simon Chan's name at HT Securities.

Control and beneficial ownership of securities accounts in the names of Mr Marcel Cheung and Ms Yu.

324. As stated earlier, we accept Ms Yu's evidence that she did not cause any of the dealings that occurred in securities accounts in her name. Similarly, in respect of the related bank accounts we accept that she simply acted on her husband's instructions. We reject Mr Marcel Cheung's evidence that he controlled all of the dealings in the securities accounts in his own name and that of Ms Yu. Those assertions fly in the face of his other uncontested conduct, in particular the fact that he provided Ms Ivy Ho with all the account statements relating to the securities accounts, pre-signed blank cheques on his Wing Lung Bank account and relied upon her to effect settlement for purchases of shares in those accounts. Furthermore, it is clear that the proceeds of the sale of shares in those accounts were made use of to make payments directly to Mr Measure Hung and Ms Beryl Yeung or to other accounts, on the face of it, entirely unconnected with Mr Marcel Cheung or Ms Yu, but indirectly connected to Mr Measure Hung. Finally, the Tribunal has regard to the fact of the consistent repayment, throughout the specified period, to the savings account of M-Bar of dividends received on holdings of Mobicon shares in the accounts in the names of Mr Marcel Cheung at Golden Fountain and Wing Lung Brokerage and his wife Ms Yu at Ever Long, but not the parcel of shares held in the account in the name of Ms Yu at HT Securities, and to Mr Alvan Yeung's role in respect of those repayments, together with the fact that Mr Measure Hung and Ms Beryl Yeung were regularly informed of those events.

325. Whilst we are satisfied that in the period May 2001 until late-March 2003 Mr Measure Hung caused trading in Mobicon shares between accounts in

the name of Ms Yu and Mr Marcel Cheung, intending to create a false and misleading appearance of active trading in those shares on the SEHK, given that conduct was prior to the commencement of the Ordinance we do not find it necessary to make any further findings. However, it is clear from the evidence that commencing with the purchases effected through the account in the name of Mr Laurence Tam at HT Securities on 25 March 2003 from the account in the name of Ms Yu at Ever Long Mr Alvan Yeung played a very significant role. We accept his admission that even prior to obtaining written authorisation to operate trading in the account of Mr Laurence Tam on 31 March 2003 he ordered those purchases to be made. By two cheques drawn on the account of Mr Measure Hung and Ms Beryl Yeung dated 26 March 2003 \$3 million was credited to accounts in the names of each of Mr Laurence Tam and Mr Alvan Yeung. At the same time, he began buying shares in accounts in his own name from the Ever Long account in the name of Ms Yu. That trading continued until early April 2003. He was who produced the schedule attached to the e-mail sent to Mr Measure Hung and Ms Beryl Yeung addressing the percentage of the shareholding of Mobicon shares of the various employees as at 6 April 2003 [Appendix 5]. Clearly, these events were all part of an overall agreement to which we are sure both Mr Measure Hung and Mr Alvan Yeung were parties in which they intended that the sale of shares in the Ever Long account in the name of Ms Yu would create a false or misleading appearance of active trading in the shares of Mobicon.

326. In the result, we are sure that trading in Mobicon shares in the specified period in the accounts in the names of Mr Marcel Cheung at Wing Lung Brokerage and Golden Fountain and in the name of Ms Yu at Ever Long was controlled by Mr Alvan Yeung and Mr Measure Hung and that the beneficial owners of the Mobicon shares held in those accounts from time to time were Mr Measure Hung and Ms Beryl Yeung. Specifically, we find that in early April

2003 Mr Measure Hung and Mr Alvan Yeung, acting together as part of a joint enterprise, caused to be made sales of Mobicon shares in the account in the name of Ms Yu at Ever Long and purchases of some of those shares in the account in the name of Mr Marcel Cheung at Golden Fountain intending to create a false or misleading impression of active trading in the shares of Mobicon on the SEHK.

Beneficial ownership of the Mobicon shares held in the account in the name of Mr Laurence Tam at HT Securities.

327. There is no dispute that the initial allotment of almost 2.7 million Mobicon shares made to Mr Laurence Tam at the IPO in May 2001 was funded by monies provided by Mr Measure Hung. We accept Mr Laurence Tam's evidence that Mobicon shares acquired with additional funds thereafter in that account were acquired with monies provided by Mr Measure Hung. Clearly, not all of the monies came directly from Mr Measure Hung, large payments coming from the account in the name of Mr Marcel Cheung at Wing Lung Bank. Similarly, there is no dispute that the approximately 2.4 million Mobicon shares acquired in that account in late March 2003 were paid for by a cheque for \$3 million drawn on the joint account of Mr Measure Hung and Ms Beryl Yeung. We accept the evidence of Mr Alvan Yeung that, on the instructions of Mr Measure Hung, he gave instructions for the acquisition of those shares and did so prior to the written authorisation of Mr Laurence Tam dated 31 March 2003.

328. It is clear that throughout the specified period demands were made by Mr Alvan Yeung and Ms Ivy Ho for the repayment of dividends received on the balance of Mobicon shares held in the account in the name of Mr Lawrence Tam at HT securities, less those received in respect of 3.5 million Mobicon shares. We note that in an e-mail from Mr Alvan Yeung to Mr Laurence Tam, dated 27 August 2003, in which the repayment of dividends received in December 2002

and August 2003 was calculated, reference was made to the basis of the calculation : “Amount shared for your 3.5 million shares”. Such payments were made from the bank accounts in the name of Mr Laurence Tam to the savings account of M-Bar throughout the specified period.

329. We reject Mr Laurence Tam’s assertion and that of Mr Measure Hung that the monies paid into his accounts, from which Mobicon shares were acquired, were awards under an incentive scheme and that monies used from accounts in the name of Mr Laurence Tam to settle purchases of Mobicon shares in the accounts of others, for example Ms Vicky Fan, were “punishments” or re-allocations of those awards. We reject their assertions that Mr Laurence Tam was the beneficial owner of the Mobicon shares in the HT Securities account in his name. We are satisfied that throughout the specified period, save in respect of 3.5 million Mobicon shares, the beneficial ownership of the balance of the shares held in the HT Securities account in the name of Mr Laurence Tam lay with Mr Measure Hung and Ms Beryl Yeung.

Matched trading in Mobicon shares between the account in the name of Mr Laurence Tam at HT Securities and that of Ms Vicky Fan at Phillip Securities.

330. There is no issue that Mr Alvan Yeung gave instructions for the sale of Mobicon shares in the HT Securities account in the name of Mr Laurence Tam in February and March 2004. We reject Mr Alvan Yeung’s assertion that he did not know at that time that the shares sold on his instructions were bought in the account in the name of Ms Vicky Fan with Phillip Securities. We find, as is described in respect of the account in the name of Ms Vicky Fan, that he caused both the sales and purchases and did so as part of a joint enterprise with Mr Measure Hung to create the false or misleading appearance of active trading in Mobicon shares on the SEHK.

Beneficial ownership of the Mobicon shares held in the accounts in the name of Mr Alvan Yeung at HT Securities and Wing Lung Brokerage.

331. We reject Mr Alvan Yeung's testimony that the \$3 million he received in a cheque dated 26 March 2003 drawn on the joint account of Mr Measure Hung and Ms Beryl Yeung was a payment made under the incentive scheme. We note that those monies were used immediately to acquire Mobicon shares in a newly opened account with Wing Lung Brokerage and an existing account at HT Securities, in which no Mobicon shares had been held hitherto. We are sure that the monies were made available to Mr Alvan Yeung as part of an agreement with Mr Measure Hung to purchase Mobicon shares from the shareholding held in the name of Mr Marcel Cheung and his wife Ms Yu in order to reduce their shareholding of Mobicon shares, in advance of the change on 1 April 2003 of the threshold for notification of a shareholding of 5% or more of the issued capital of a listed company. There is no dispute that throughout the specified period all the dividends received on the shareholding of Mobicon shares in those accounts were paid by Mr Alvan Yeung soon after receipt to the M-Bar account. In all circumstances, we are sure that the beneficial ownership of the Mobicon shares held in those accounts throughout the specified period lay with Mr Measure Hung and Ms Beryl Yeung.

332. In reaching that finding, we have had regard to the submissions made on behalf of Mr Alvan Yeung in respect of his subsequent use of the proceeds of sale of those shares, first in November 2004 to buy Tonic shares and, secondly in May 2007 to purchase real estate. Of the latter event, we note that it occurred well after the fact of the SFC investigation into these matters had become known to the Specified Persons, in particular in consequence of interviews conducted of them. Of the former matter, we note that at the time at which Tonic shares were acquired in November 2004 in the account of Mr Alvan Yeung, Tonic shares were purchased in the Phillip Securities account in the name of Mr Measure

Hung and Ms Beryl Yeung and that Mr Measure Hung said in his record of interview of 16 June 2005 that he had asked Mr Alvan Yeung to make those purchases.

Matched trading between accounts in the name of Mr Alvan Yeung and Mr Simon Chan and Ms Vicky Fan.

333. We accept Mr Alvan Yeung's admission that he caused trading in Mobicon shares to occur during the specified period between securities accounts in his name and that of Mr Simon Chan. However, we reject his assertion that he was not aware of the fact of trading in Mobicon shares that occurred during the specified period between the account in the name of Ms Vicky Fan at Phillip Securities and securities accounts in his name. We find that not only did he know of the counterparty to the trading but that he intended thereby, as he did in his trades with accounts in the name of Mr Simon Chan, to create a false or misleading appearance of active trading in Mobicon shares. We are sure that he conducted himself in that way as part of a joint enterprise with Mr Measure Hung to that end.

Control of the securities account in the name of Ms Vicky Fan at Phillip Securities.

334. It is to be noted at the outset that Ms Vicky Fan admitted that the account opening documentation, which she had signed, for the account opened in her name at Phillip Securities on 30 January 2004 contains significant untruths. The document stated that she had known the account executive, Mr Sunny Ng for over one year, when she had known him for one or two months only, and that she had liquid assets of \$1 million and net assets of \$3 million, when she did not have such assets. Furthermore, although she said that she had not given her password to operate her internet account with Phillip Securities to anyone, she said that she was unable to explain how it was that Mr Alvan Yeung

was able to attach to an e-mail that he sent to Ms Ivy Ho a contract note relating to a purchase of shares in the account in her name with Phillip Securities. For his part, Mr Alvan Yeung explained that fact by saying that he had arranged with Ms Vicky Fan to have e-mail documentation sent to her e-mail account from Phillip Securities forwarded to him. The fact that activities in her securities accounts were known to others is evidenced for example by an e-mail of 27 January 2005 from Ms Ivy Ho asking her to check the receipt of dividends from the holding of Mobicon shares in the account in her name. In common with the other employees holding shares of Mobicon, she repaid dividends received on those holdings to Mr Measure Hung and Ms Beryl Yeung at M-Bar, which issue was the subject of e-mails between Mr Alvan Yeung and Ms Ivy Ho copied to Mr Measure Hung and Ms Beryl Yeung. We reject Ms Vicky Fan's evidence that she placed all the orders, on her initiative, in the account in her name at Phillip Securities.

335. We reject Mr Alvan Yeung's testimony that he did not control dealings in the account in the name of Ms Vicky Fan. In the first place, we are satisfied that his e-mail to Mr Measure Hung of 15 January 2004, in which he had indicated that he would like to open a new securities account for Mr Marcel Cheung at Phillip Securities "for more flexible operations" but invited the suggestion of another "choice of candidate?" is connected to the opening two weeks later of the account at Phillip securities in the name of Ms Vicky Fan. No account was opened at Phillip Securities in the name of Mr Marcel Cheung. It is to be noted that soon after the account was opened in the name of Ms Vicky Fan it was used to buy shares that were sold from the account controlled by Mr Alvan Yeung in the name of Mr Laurence Tam at Hantec and paid for by cheques drawn on the account in the name of Mr Simon Chan with Wing Hang Bank on the instructions of Mr Alvan Yeung to Ms Ivy Ho.

336. We are satisfied that Mr Measure Hung and Mr Alvan Yeung controlled the dealings in the account in the name of Ms Vicky Fan. It is not necessary for us to determine who it was who placed the oral instructions to Mr Sunny Ng at Phillip Securities for dealings in the account in the name of Ms Vicky Fan at Phillip Securities. Neither of them was a satisfactory witness, in particular in respect of the operation of the account. We are sure that Mr Measure Hung together with Mr Alvan Yeung, acting in pursuance of a joint enterprise, caused those instructions to deal in Mobicon shares to be given to Mr Sunny Ng, intending thereby to create a false or misleading appearance of active trading in the shares of Mobicon.

Motive in Mr Measure Hung and/or Mr Alvan Yeung to create a false and misleading appearance of active trading in Mobicon shares on the SEHK in the specified period.

337. At the outset, the Tribunal notes that in identifying a Specified Person as culpable of market misconduct is not necessary that the Tribunal determines the motive for that misconduct. However, the Tribunal has considered two specific areas of evidence potentially relevant to the issue of motive.

(i) Fujikon/Mobicon shares : asset swap.

338. The compelling inference to be drawn from the series of e-mails in September 2003 describing calculations of costs and benefits of the acquisition and holding of, on the one hand, Fujikon shares and, on the other hand, Mobicon shares is that the e-mails were describing Mobicon shares held in the names of others of which Mr Measure Hung was the beneficial owner. We note that it was Mr Shek's opinion that the computations appeared to relate to the fund flow of two total return swaps. We do not accept Mr Alvan Yeung's testimony and

that of Mr Measure Hung that the table entitled “Position as at 30.9.2003” and accompanying correspondence did not relate to total return asset swaps.

339. However, not only is the provenance of the Mobicon shares wholly unexplained but also no such shares have been identified in any way. The Tribunal has not received any explanation let alone oral testimony from the counterparty to the e-mail traffic with Mr Alvan Yeung. Furthermore, in light of the fact that the e-mails address the “Position as at 30.9.2003” the Tribunal has had regard to the material before it of trading in Mobicon shares in the period prior to that date. It is clear that there is no such trading that is in any way relevant to that issue.

(ii) Economic motive for the conduct.

340. We accept the submissions of the Presenting Officer that, taken as a whole, the evidence does not directly establish the motive of the Specified Persons. However, we do not accept his submission that :

“... a reasonable inference is that the motive was economic...”.

341. The unchallenged evidence is that the holding of Mobicon shares that Mr Measure Hung and Ms Beryl Yeung held through M2 Bar was not pledged or mortgaged to secure bank loans. We accept Mr Brewer’s submission that Mobicon's borrowings in 2003 were modest and that when they increased in subsequent years they did so against increased cash balances and profits. There is more force in his additional suggestion that the level of trading in Mobicon shares was a matter of “face” to Mr Measure Hung.

(III) CONCLUSION

342. We accept the evidence of Mr Shek, as set out in exhibits SKP-34 and SKP-35 of his statement [**Appendices 7 and 8**], in respect of the matched trades between accounts in the name of Mr Simon Chan, Mr Alvan Yeung, Mr Laurence Tam and Ms Vicky Fan in the period 1 April 2003 to 25 May 2005. In addition, as identified earlier we find that there was matched trading in 890,000 shares of Mobicon in April 2003 between the account in the name of Mr Marcel Cheung with Golden Fountain Securities and the account in the name of Ms Yu with Ever Long. Finally, in the same month of April 2003 we find that there was matched trading in 330,000 Mobicon shares between the account in the name of Mr Marcel Cheung with Wing Lung Bank and that in the name of Mr Simon Chan at Ever Long. It follows that those trades involved no change of beneficial ownership, so that the deeming provision of section 274(5) of the Ordinance arises. However, the Tribunal has not placed any reliance whatsoever on that provision in reaching its determinations.

343. We have determined that Mr Measure Hung and Mr Alvan Yeung, as part of a joint enterprise, caused that matched trading to be done and did so with the intention of creating a false or misleading appearance of active trading in Mobicon shares on the SEHK. We are sure that Mr Measure Hung and Ms Beryl Yeung were beneficial owners of the shares traded between those accounts in the specified period. It follows that those trades involved no change of beneficial ownership, so that the deeming provision of section 274(5) of the Ordinance arises. However, the Tribunal has not placed any reliance whatsoever on that provision in reaching its determinations.

Section 274(6) of the Ordinance.

344. We have found that one purpose behind the sale of shares in the account in the name of Ms Yu at Ever Long in March and, directly relevant to our

considerations, early April 2003 was to reduce the shareholding in her account, together with the combined holding with her husband, below 5% of the issued share capital of Mobicon. However, as we have found, there was more than one purpose involved, in particular that they were possessed of another purpose, namely their intention to create a false and misleading appearance of active trading in Mobicon shares on the SEHK. It follows that they are unable to avail themselves of the provisions of section 274 (6) of the Ordinance.

Active trading.

345. In making our repeated determinations set out above that in causing the trading as there described to take place Mr Measure Hung and Mr Alvan Yeung intended to create a false or misleading appearance of “active trading” in Mobicon shares on the SEHK we were mindful of Mr Shek’s testimony that “Mobicon was an inactively traded stock” in the period on and between 1 April 2003 and 31 May 2005. Nevertheless, against that background, having regard to the volume and number of matched trades, described above, caused by Mr Measure Hung and Mr Alvan Yeung the Tribunal was satisfied that their intention was to create a false or misleading appearance of “active trading” in Mobicon shares on the SEHK.

Other Misconduct.

346. In light of our findings as to the beneficial ownership of Mobicon shares in the accounts described earlier it is to be noted that a duty of disclosure may have arisen under the former Securities (Disclosure of Interests) Ordinance and the Ordinance. Furthermore, dealings may have occurred during “closed” periods.

CHAPTER 6

MISCELLANEOUS

Representation.

(i) Presenting Officer.

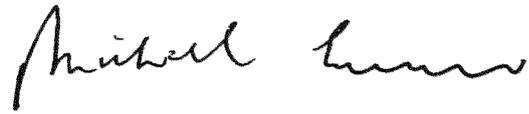
347. From the hearings on and after 14 October 2008 Mr Andrew Bruce, SC appeared as Presenting Officer with Mr Edwin Choy as Assistant Presenting Officer. Prior to that date Mr Edwin Choy was the Presenting Officer. Mr Bruce appeared alone on the hearings from 13 January and thereafter.

(ii) Mr Measure Hung.

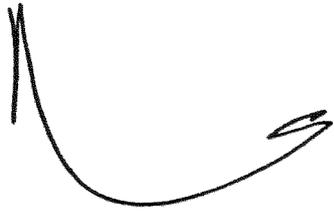
348. Mr Kevin Patterson appeared as counsel for Mr Measure Hung on the instructions of Messrs Chiu & Partners at all hearings of the Tribunal until 30 October 2008. On the hearings of 21 - 24 and 27 October 2008 he appeared with Mr John Brewer. From 30 October 2008 until the end of the hearings leading to this Report Mr Brewer appeared alone.

(iii) Mr Alvan Yeung.

349. At various times in the proceedings Mr Alvan Yeung was represented by either Mr Nicholas Cooney or Mr Derek Chan alone or together on the instructions of Messrs David Lo and Partners.



The Hon Mr Justice Lunn
(Chairman)



Mr Malcolm A Barnett
(Member)



Ms Susan Wong
(Member)

Dated 19 February 2009

CHAPTER 7

A DETERMINATION OF THE AMOUNT OF ANY PROFIT GAINED OR LOSS AVOIDED IN THE SALE OF MOBICON SHARES

A. The LAW.

The Tribunal's determination of the identity of persons engaged in market misconduct.

350. Part I of the Report dated 19 February 2009 the Tribunal determined that Mr Hung Kim Fung, Measure and Mr Yeung Kin Kwan, Alvan were culpable of false trading in the shares of Mobicon in the period 1 April 2003 and 25 May 2005, in that they intended the trading in those shares that they caused to occur have the effect of creating a false or misleading appearance of active trading in Mobicon shares on the Stock Exchange of Hong Kong, contrary to section 274(1)(a) of the Ordinance.

351. In those circumstances, section 252(3)(c) of the Ordinance requires the Tribunal to determine -

“the amount of any profit gained or loss avoided, if any, as a result of the market misconduct.”.

352. As the Chairman directed differently constituted Tribunals in respect of trading in the shares of *Sunny Global* and *QPL* respectively the Ordinance gives no guidance as to how that calculation is to be made. However, the proper construction and ambit of the terms “... profit gained or loss avoided” in the context of their use in section 23(1)(b) of the repealed Securities (Insider Dealing) Ordinance, Cap 395, namely “...as a result of the insider dealing”, was considered by the Court of Final Appeal in the *Insider Dealing Tribunal v Shek*

Mei Ling [1999] 2 HKCFAR 205. Of those phrases, Lord Nicholls of Birkenhead noted (page 210 B-D) :

“To be within the scope of a financial order there must be a ‘profit’ that is ‘gained’ by the person in question, whether the insider dealer or someone else, and it must have been gained ‘as a result of the insider dealing’. A comparable limitation applies to ‘loss avoided’.”.

353. Section 257(1)(d) of the Ordinance empowers the Tribunal to make an order, in respect of a person identified as having engaged in market misconduct pursuant to section 252(3)(b), namely :

“...that the person pay to the Government an amount not exceeding the amount of any profit gained or loss avoided by the person as a result of the market misconduct in question.”.

B. THE DETERMINATION.

Submissions.

354. The Presenting Officer and counsel for the Specified Persons were unanimous in their submissions to the Tribunal that there is no evidence that there was any “...profit gained or loss avoided as a result of the market misconduct”.

The Tribunal’s Determination.

355. The Tribunal has no hesitation in accepting the unanimous submissions of counsel and determining, as required by section 252(3)(c) of the Ordinance, that no profit was gained or loss avoided as a result of the market misconduct it has identified as having occurred in Part I of the Report.

CHAPTER 8

ORDERS

(I) SUBMISSIONS.

The Presenting Officer.

Costs orders - section 257(1)(e) and (f).

356. The Presenting Officer invited the Tribunal to make orders of costs and expenses in favour of the Government and the SFC, pursuant to section 257(1)(e) and (f) respectively. As to the Government, he sought an order in respect of payments made to the Presenting Officer and the Assistant to the Presenting Officer as barristers briefed in the conduct of these proceedings and in respect of three Government counsel, as solicitors assisting in the conduct of these proceedings, together with clerical staff assisting them, they being costs and expenses reasonably incurred by the Government in relation or incidental to the proceedings, in total being \$2,480,405.90 [**Appendix 9**]. The costs sought in respect of the three Government counsel were calculated on the basis of their respective years of practice at the upper band applicable to the taxation of costs in the High Court on a “party and party” basis. The Presenting Officer submitted that the cost of the Tribunal itself should be added to and encompassed within the order in favour of the Government.

357. As to the SFC, he sought an order of \$113,508.00 [**Appendix 10**] being costs and expenses reasonably incurred by the Commission in relation or incidental to the investigation of the market misconduct before the matter was referred to the Tribunal by the FS and in relation or incidental to the proceedings themselves.

Costs orders - section 260(1)(a).

358. On the direction of the Tribunal the Presenting Officer made enquiries of witnesses whose attendance had been required at the proceedings if they sought any order of costs for that attendance. In the event, no witness sought such an order.

The apportionment of orders as to costs.

359. Having submitted that the market misconduct of which the Tribunal has found both Specified Persons culpable required their joint involvement, and noting the senior positions each of them occupied within Mobicon, the Presenting Officer invited the Tribunal to apportion costs against the Specified Persons equally.

Submissions on behalf of the Specified Persons.

A. Mr Measure Hung.

Costs and expenses orders in favour of the Government and the SFC.

360. Mr Brewer did not oppose the application for an order of costs and expenses in favour of the SFC. However, he did oppose the making of an order of costs in favour of the Government insofar as it included a claim in respect of the three Government counsel calculated on the basis of fees and costs of and incidental to the conduct of proceedings and the appearance of a legal officer before the Tribunal.

361. Mr Brewer invited the Tribunal to note that whereas Mr Bruce had been appointed by the SforJ as the Presenting Officer "...to conduct the proceedings" and Mr Edwin Choy as Assistant to the Presenting Officer, pursuant to section 251(4) of the Ordinance, none of the three Government counsel had been so appointed. He accepted that section 3(1) of the Legal Officers Ordinance, Cap 87 provided that in respect of matters described in section 4(1) legal officers

shall have all the rights of barristers and solicitors. Section 4(1)(a) refers to matters entrusted to, or within the discretion or control or which are required to be discharged by the SforJ. Nevertheless, Mr Brewer submits that Rule 2(1) of the Legal Officers (Fees and Costs) Rules of the Legal Officers Ordinance is relevant. It provides :

“In any proceedings before any court or tribunal with regard to the matters referred to in section 4(1) of the Ordinance the fees and costs of an incidental to the conduct of such proceedings and the appearance of any legal officer shall be governed by Order 62 of the Rules of the High Court.”.

362. Mr Brewer submitted that none of the three Government counsel in question “appeared” in these proceedings, although they may well have attended hearings of the Tribunal. Furthermore, in his submission none of them had the “conduct” of these proceedings. As a result, so he submitted, it was not permissible for a claim for costs and expenses to be made on the basis that they were solicitors fulfilling those functions. Nevertheless, he accepted that a claim for their costs and expenses was permissible, but only on a calculation of their time multiplied by an hourly rate calculated on their actual salary/pension/overheads.

Factors relevant to the making of appropriate orders.

363. In his helpful written submissions Mr Brewer identified a range of factors that he submitted were relevant to the Tribunal in determining the appropriate orders to make in respect of Mr Measure Hung.

(i) The motive for the misconduct.

364. Mr Brewer reminded the Tribunal that it had found that the evidence did not establish directly the motive of the Specified Persons in their market misconduct and, in particular, that it had rejected the submissions that a reasonable inference to be drawn from the misconduct was that the motive was economic. Whilst Mr Brewer acknowledged that in his evidence in respect of

his false trading Mr Measure Hung had expressed a degree of concern about the low level of trading activity, given that his employees had been encouraged to acquire and hold Mobicon shares, Mr Brewer submitted that the primary factor was a desire by Mr Measure Hung to gain respect from his peers. In particular, he pointed to the finding that no profit had been gained or loss had been avoided by Mr Measure Hung or anyone else in consequence of his conduct.

(ii) Damage to Mr Measure Hung's reputation.

365. Mr Brewer invited the Tribunal to have regard to the adverse impact of the Tribunal findings upon Mr Measure Hung's reputation as a mitigating factor. He submitted that Mr Measure Hung had suffered a considerable degree of embarrassment, exacerbated by media reports of the Tribunal's determinations. He suggested that the context in which that degree of embarrassment was to be judged was against a background of the successful establishment of Mobicon from its humble beginnings to a company employing almost 500 employees with a worldwide base of customers operating not only in Hong Kong and the Mainland but also in Malaysia, Singapore and South Africa.

(iii) Positive good character.

(a) Public service.

366. Mr Brewer drew the Tribunal's attention to a range of assistance that Mr Measure Hung had given others in the community over a period of many years as evidencing his positive good character which factor he had invited the Tribunal to take into account. It is to be noted that Mr Measure Hung is the Vice-President of the Hong Kong Semiconductor Industrial Council and has been Vice-Chairman of the Hong Kong Trade Services Council of the Federation of Hong Kong Industries in the period 2003-2009. In the period 2004-2009 he has been a member of the Import/Export/Wholesale Trades

Training Board of the Vocational Training Council. He was director of the Yan Chai Hospital from 2003 to 2009.

(b) Assistance of the community.

367. Mr Brewer invited the Tribunal to have regard to the financial assistance that Mr Measure Hung had made available to secondary and tertiary educational institutions and the steps taken by Mobicon in granting internships to students. In particular, he drew the attention of the Tribunal to a schedule of financial donations made to a wide range of charitable institutions, to a total of about 2½ million dollars, over the period in and between 2003 and 2008.

Submissions as to the apposite orders.

Section 257(1)(a) - disqualification and prohibition orders.

368. Mr Brewer accepted as a strong likelihood that the Tribunal would make an order disqualifying Mr Measure Hung from being a director of Mobicon for a period of time. However, he submitted that given that the duties owed by a director of a subsidiary company do not include duties owed to the public it would not be necessary to disqualify him from being a director of Mobicon's subsidiary companies. Moreover, he submitted that the total exclusion of Mr Measure Hung from participation in the management of the subsidiary companies would impose adverse consequences for the Group, its shareholders and employees disproportionate to Mr Measure Hung's market misconduct and its consequences.

Section 257(1)(b) - "cold shoulder" order.

369. Mr Brewer submitted that it would not be appropriate for the Tribunal to impose an order pursuant to section 257(1)(b), namely a "cold shoulder" order. To do so would inhibit Mr Measure Hung unnecessarily from any future

disposal of his shares in Mobicon, were that required to maintain the requisite holding of Mobicon shares by the public.

Section 257(1)(c) - a “cease and desist” order.

370. Mr Brewer accepted that it would be appropriate for the Tribunal to impose an order pursuant to section 257(1)(c), namely that Mr Measure Hung do not again perpetrate market misconduct. However, he submitted that such an order ought to be restricted to the market misconduct of which Mr Measure Hung had been found culpable, namely “false trading” contrary to section 274(1)(a).

Section 257(1)(e) and (f) - costs and expenses orders in favour of the Government and the SFC.

371. Subject to his submissions in respect of the basis upon which the claim was calculated in respect of part of the costs and expenses sought in favour of the Government, as set out above, Mr Brewer indicated that there was no objection in principle to such orders.

Section 257(1)(g) - recommendation to a body which may take disciplinary action.

372. Mr Brewer informed the Tribunal that Mr Measure Hung was not a member of a body which might take disciplinary action against him.

B. Mr Alvan Yeung.

373. On behalf of Mr Alvan Yeung the Tribunal received a written submission by Mr Derek Chan and oral submissions at the hearing by Ms Catherine Wong.

Mitigating factors.

374. In determining the apposite orders to be made under section 257 of the Ordinance the Tribunal was invited to have regard to three general mitigating factors :

- (i) delay on the part of the authorities in investigating and instituting the proceedings;
- (ii) the consequences of the misconduct on the market and the motive for that misconduct; and
- (iii) the fact of admissions made by Mr Alvan Yeung at the outset of and in the course of the Inquiry.

As to delay.

375. The Tribunal was invited to have regard to the following “milestones” in the chronology of events :

- 13 December 2004 - receipt by the SFC of a complaint regarding Mobicon;
- 13 May 2005 - the commencement of interviews by the SFC of witnesses;
- 26 February 2007 - completion by the SFC of its report and investigation;
- 21 December 2007 - advice by the DoJ to the FS to refer the matter to this Tribunal;
- 8 April 2008 - FS’s notice to the Tribunal.

376. Whilst it was conceded that the investigating authorities required time in an investigation of this nature it was submitted that the time occupied by the various authorities in this investigation prior to the institution of proceedings was unjustified. In support of that submission, Mr Derek Chan drew the Tribunal’s attention to the relatively short period of time, which he described as

“a matter of weeks”, in which the Presenting Officers had investigated and presented evidence in relation to the extended period of time made relevant by the notice of the FS as amended by the Tribunal in the course of the proceedings.

Consequences of delay.

377. It was submitted that in consequence of the unnecessary delay Mr Alvan Yeung suffered the anxiety of waiting almost 3 years before learning that proceedings would be instituted upon being informed of the FS’s Notice in April 2008. It was accepted on behalf of Mr Alvan Yeung that the position taken by the Specified Persons in relation to possible argument as to constitutionality “... had partly contributed to the time taken to start the main hearing of the Inquiry”.

As to the consequences of the false trading and motive.

378. It was submitted that the consequences of the false trading lay at the “lower end of the scale of seriousness”. Whilst it was accepted that the false trading did distort the market for Mobicon shares the Tribunal was reminded of Mr Shek’s evidence that nevertheless those shares remained “inactively traded”. Mr Derek Chan submitted that the methods used to implement the false trading were not particularly sophisticated and suggested that for long periods of time the accounts in which that trading occurred remained inactive.

As to admissions made by Mr Alvan Yeung.

379. Mr Derek Chan submitted that the first witness statement dated 14 October 2008 by Mr Alvan Yeung contained admissions going to the crux of the allegations contained in the original notice of the FS, namely that he had conducted false trading in the account in the name of Mr Simon Chan and that he was culpable of market misconduct thereby. Of the then enquiry period, namely 1 August to 14 December 2004, Mr Alvan Yeung admitted that together with Mr Measure Hung he had caused trading in Mobicon shares between the

account in the name of Mr Simon Chan and that in the name of Mr Alvan Yeung, it being their purpose to create a false appearance of active trading in Mobicon shares.

380. Mr Derek Chan submitted that after the FS's Notice had been amended by the Tribunal on 7 November 2008 Mr Alvan Yeung had made further admissions contained in his statement dated 5 December 2008.

381. Whilst acknowledging that the Tribunal had not accepted all of the evidence of Mr Alvan Yeung, nevertheless Mr Derek Chan invited the Tribunal to take into account the significant admissions that he had made in the course of the proceedings.

Submissions in respect of the apposite orders.

Section 257(1)(e) and (f) - costs and expenses orders in favour of the Government and the SFC.

382. Whilst it was conceded by Mr Derek Chan that, in light of the Tribunal's findings of market misconduct by Mr Alvan Yeung and its rejection of certain parts of his evidence, it was appropriate for orders of costs and expenses to be made in favour of the Government and the SFC, issue was taken in respect of two matters. Firstly, it was submitted that it would not be appropriate to order Mr Alvan Yeung to pay a proportion of the entire costs of these proceedings. Secondly, it was submitted that he ought to pay a lesser proportion of such costs as were ordered than Mr Measure Hung.

383. Of the first matter, it was submitted that the extended length of the Inquiry was due in part to the inadequacy of the investigation by the SFC. In consequence, it was suggested that :

- large amounts of time were taken up in examining witnesses on matters not encompassed in the statements taken from them by the SFC;
- it was necessary to call as witnesses Mr Marcel Cheung and his wife Ms Yu without the benefit of statements taken by the SFC.

384. Of the second matter, as to the appropriate apportionment of costs between the two Specified Persons, the Tribunal was invited to take into account that :

- establishing the true beneficial ownership of the Mobicon shares was essentially an issue between Mr Measure Hung and the persons in whose names those shares were held in securities accounts;
- Mr Alvan Yeung had made comparatively wider admissions than Mr Measure Hung;
- the Tribunal had determined that beneficial ownership of the Mobicon shares traded to constitute false trading lay with Mr Measure Hung and his wife and that the whole exercise was a “face” exercise for Mr Measure Hung.

The submissions of the Presenting Officer in reply.

An order in respect of costs and expenses in favour of Government.

385. Mr Bruce submitted that the appointment of the Presenting Officer by the SforJ, pursuant to section 251(4) of the Ordinance, to “conduct the proceedings” did not preclude others from assisting him in the conduct of the proceedings before this Tribunal. In particular, the work performed by the three Government counsel in giving assistance, as solicitors, to the Presenting Officer, as counsel, fell within Rule 2(1) of the Legal Officers (Fees and Costs) Rules being in respect of proceedings before the Tribunal and being :

“...fees and costs of an incidental to the conduct of such proceedings...”.

386. Accordingly, Mr Bruce submitted that the basis of the claim for costs and expenses for those three Government counsel was valid.

The submissions made on behalf of the SforJ and the reply made by Mr Brewer.

387. At the conclusion of the oral submissions the Tribunal invited the Presenting Officer to inform the SforJ that it would receive any written submissions that the SforJ wished to make in support of the claim made on behalf of the Government for costs and expenses in respect of the services of the three Government counsel. In the result, the Tribunal received written submissions made on behalf of the SforJ dated 11 March 2009 and a reply to those submissions made by Mr Brewer dated 13 March 2009.

The submissions made on behalf of the SforJ.

388. In the submissions made on behalf of the SforJ, it was accepted that, whilst none of the three Government counsel had been appointed as Assistants to the Presenting Officer, nevertheless their services had been directly connected to these proceedings. It was submitted that the absence of such an appointment was irrelevant to a claim for costs and expenses for their services. The Tribunal was informed of the nature of the services rendered by the three Government counsel :

“... all three of them have throughout the proceedings assisted Mr Bruce and Mr Choy, in effect, as litigation solicitors, undertaking all necessary solicitorial work in preparation for and relating to the general care and conduct of the proceedings, including :

- Obtaining relevant information and materials from the SFC about the case and corresponding with and attending conferences with the SFC;
- Collating relevant materials for the Presenting Officer and the assistant to the Presenting Officer and corresponding with and attending conferences with them;
- Attending upon and corresponding with the two Specified Persons, Mr Hung and Mr Yeung, and their respective solicitors, including negotiations with a view to settlement, in consultation with the

Presenting Officer and the assistant to the Presenting Officer, the SFC and the Financial Secretary...;

- Perusing and collating relevant documents, including witness statements and hearing bundles, and overseeing their duplication;
- Arranging witnesses and potential witnesses to attend the MMT hearings;
- Preparing notices to be issued by the MMT authorising the SFC to exercise the powers specified in section 254(2) of the SFO concerning evidence; and
- Attendances at the MMT hearings (the three directions hearings and all the substantive hearings).”.

389. It was submitted that the work there described fell within the description “...costs and expenses reasonably incurred by the Government in relation or incidental to...” these proceedings. It was contended that the provisions of section 257(1)(e) were not restricted to matters arising out of the Government “conducting” the proceedings but were much wider ambit. Furthermore, it was submitted that the combined effect of section 257(6) of the SFO and Rule 2(2) of the Legal Officers (Fees and Costs) Rules was that the general principles applicable to costs under Order 62 of the Rules of the High Court applied to the circumstances under consideration. In particular, that by operation of Order 62, Rule 28(2) costs are to be assessed on a “party and party basis” and that the three Government Counsel are deemed to have the status of solicitors in private practice. It was contended that there was no need to have recourse to Rule 2(1), which it was suggested was a “red herring” in that the proceedings before the Tribunal clearly fell within section 4(1)(a) and/or (b) of the Legal Officers Ordinance, Cap 87. In construing the relevant statutory provisions the Tribunal was reminded of section 19 of the Interpretation and General Clauses Ordinance, Cap 1.

Mr Brewer’s submission in reply.

390. At the outset, Mr Brewer accepted of the nature of the work described as having been performed by the three Government counsel, that it :

“amounted to solicitorial work in the nature of preparation for, and general care and conduct of, the Proceedings...”.

391. However, Mr Brewer submitted that Rule 2(2) of the Legal Officers Rules :

“... properly concerns conduct and appearance alone, rather than extending to case preparation and the generality of duties contemplated by Part 1 of the First Schedule to O. 62.”.

392. He invited the Tribunal to have regard to the statement of the Attorney-General in moving the resolution that the Rules be adopted in the Legislative Council on 7 October 1953, in which he described the Rules as concerning :

“...fees and costs in both contentious and non-contentious matters in which legal officers of the Government are engaged. These rules provide an effective that in such cases the fees and costs shall be governed by the rules applicable as between private parties, but because legal officers may act as both solicitors and barristers, provision is made for this to be taken into account on taxation.”.

393. Mr Brewer submitted that the word “engaged” and the phrase “in such cases” were to be construed as referring to matters falling within Rule 2(1) of the Legal Officers Rules.

394. In conclusion, Mr Brewer submitted that in the absence of evidence that the three Government counsel were, “... either appointed to conduct the Proceedings or entitled to appear in the Proceedings, the cost of their work ought not to be recoverable and taxed as in the case of solicitors in private practice.”.

(II) A CONSIDERATION OF THE SUBMISSIONS

Costs and expenses in respect of the three Government counsel.

395. The Chairman has directed the Tribunal that the phrase, “costs and expenses reasonably incurred by the Government, whether in relation to or incidental to the proceedings or in relation to or incidental to any investigation of his conduct or affairs carried out for the purposes of these proceedings” in

section 257(1)(e) is of wide compass. Clearly, these proceedings fall squarely within section 4(1)(a) and (b) of the Legal Officers Ordinance and, in consequence, are proceedings in which a legal officer “may act”. As Mr Brewer conceded, the three Government counsel provided relevant solicitorial assistance to the Presenting Officer. By operation of section 257(6) of the Ordinance, Order 62 of the Rules of the High Court applies to the taxation of an order for costs made pursuant to section 257(1)(e) of the Ordinance. Rule 2(2) of the Legal Officers Rules provides that, “... for the purposes of the Rules of the High Court and the application of any other legislative provision as to fees and costs or the practice relating thereto...” legal officers are deemed to have the status of a barrister or solicitor. A claim for the costs of such a legal officer is not restricted to the circumstances set out in Rule 2(1), namely “... the *conduct* of such proceedings and the *appearance* of any legal officer...” [**emphasis added**]. Even if were so restricted, it is clear that the services of the three Government counsel assisted the conduct of these proceedings. In the result, the Chairman has directed the Tribunal that it may, if it so wishes, make an order in respect of the three Government counsel on the basis as claimed, namely for “party and party” costs as solicitors.

Delay.

396. Counsel for Mr Alvan Yeung, but not counsel for Mr Measure Hung, has invited the Tribunal to take into account “unnecessary delay” in the investigation of the matters now before the Tribunal and in the institution of these proceedings as a factor are relevant to the determination of the appropriate orders.

397. It is to be noted that on 18 August 2008, in prospect of the commencement of these proceedings, counsel for both Specified Persons informed the Tribunal that applications for a permanent stay of proceedings

based on delay would be made. However, by letters dated 21 and 28 August 2008 the Tribunal was informed by solicitors acting for Mr Alvan Yeung and Mr Measure Hung respectively that it was not proposed to proceed with those applications. In the event, no such application was made.

398. Mr Alvan Yeung was interviewed by the SFC on no less than five occasions in and between July 2005 and February 2006. Section 183(1)(c) of the Ordinance required of him that he "...answer any question relating to the matters under investigation...". Providing answers that were "false or misleading in a material particular" exposed him to criminal liability. In the first two interviews Mr Alvan Yeung prevaricated and was thoroughly uncooperative. In the third interview, when confronted with the suggestion that on two trading days in August and September 2004 trading was conducted in Mobicon shares between his account and the account in the name of Mr Simon Chan he claimed, in effect, that it was a coincidence. Of course, that is in stark contrast to the position that he took in his statement of 14 October 2008 where he accepted that matched trading between the accounts was false trading intended to create a false or misleading appearance of active trading in Mobicon shares. Furthermore, as noted earlier in the Report (paragraph 317) the Tribunal determined that he lied to the SFC in the fourth record of interview in respect of the extent to which monies given to him by Mr Measure Hung had been used to purchase Mobicon shares. In the fifth and final interview, when confronted with a table setting out the full extent of the matched trading between the two accounts in the period 9 August to 6 December 2004 and asked to give an explanation, once again Mr Alvan Yeung prevaricated, first seeking an adjournment and then, acting on his lawyer's advice, declining to answer the question. In none of the records of interview did he make an admission of false trading in Mobicon shares.

399. The Specified Persons having determined not to proceed with an application for a permanent stay of proceedings based on delay the Tribunal has received no material relevant to the issue other than a “Chronology” prepared and filed by the Presenting Officer on 28 August 2008 and a chronology attached to the Presenting Officer’s closing submission received by the Tribunal on 13 January 2009. Needless to say, that information is in skeleton form. Clearly, the SFC investigators sought legal advice from its own lawyers on several occasions as a result of which more investigations were undertaken. Further, investigations resulted from a referral to an expert witness at the SFC. Also, legal advice was sought by the FSTB from the DoJ on two separate occasions. Although there was a delay of over six months in providing the first of those advices, which on its face was very lengthy, the Tribunal is not in a position to make any determination as to whether or not that was wholly or even largely unjustified.

400. The Tribunal is satisfied that those investigating these matters were faced with a range of complexities the resolution of which inevitably required considerable time. In the event, the Tribunal has determined that the market misconduct had involved multiple accounts over a lengthy period of time. In light of his conduct at the interviews, in particular the false and/or misleading answers that he did give in the records of interview it sits ill in the mouth of Mr Alvan Yeung to complain about the length of time taken in this case for the truth to be unravelled by the SFC. In the result, we determine that it is not appropriate in the circumstances of this case to take into account the passage of time prior to the FS’s notice of 8 April 2008 in determining the apposite orders to make in Mr Alvan Yeung’s case.

Admissions by the Specified Persons.

401. The Tribunal notes that although it sat on 30 April 2008, at which date the substantive hearing was fixed for 13 October 2008, and that further hearings

were held on 18 August and 22 September 2008 it was not until it received a letter dated 10 October 2008 from the Presenting Officer that it was first intimated to the Tribunal that the Specified Persons proposed to make various admissions. By a letter of the same date, solicitors acting for Mr Measure Hung informed the Tribunal that at the commencement of the proceedings on 13 October 2008 it was proposed to seek an adjournment "...to prepare, serve and file a statement by Mr Measure Hung containing admissions to his wrongdoing". Earlier in the letter, it was asserted that Mr Measure Hung would admit having participated, together with Mr Alvan Yeung, in the period 1 August to 14 December 2004 in creating a false and misleading appearance of active trading in Mobicon shares, contrary to section 274(1) of the Ordinance to the extent of the matched trades between the accounts in the name of Mr Simon Chan and Mr Alvan Yeung set out in the record of interview of the latter of 18 November 2005. By a second letter of the same date, Mr Measure Hung's solicitors set out references to various paragraphs in the Presenting Officer's Opening which it was said would be admitted by Mr Measure Hung.

402. At the hearing of 13 October 2008 Mr Cooney, on behalf of Mr Alvan Yeung, informed the Tribunal that his lay client proposed to make the same admission of culpability of market misconduct as it had been indicated would be made by Mr Measure Hung. In consequence, the proceedings were adjourned. On 14 October 2008, statements of that date were received by the Tribunal from both Specified Persons. Central to both statements was the assertion that there existed an "Incentive scheme" in which employees of Mobicon were rewarded with cash payments from Mr Measure Hung with which Mobicon shares were purchased. The employees were the owners of the shares. It was accepted that trading in Mobicon shares in the account in the name of Mr Simon Chan was effected by Mr Alvan Yeung.

403. For his part, Mr Measure Hung said :

“I was aware that some of the buying orders traded under the name of Simon Chan (through Mr Alvan Yeung) were matched with selling orders from Mr Alvan Yeung.”.

Later, he admitted that :

“(1) control over dealings in those shares remained with myself (assisted by Mr Alvan Yeung)...(3) the shares were used for the alleged trading by Mr Alvan Yeung in contravention of section 274...”.

404. Of the accounts in the names of Mr Laurence Tam and Ms Vicky Fan, Mr Measure Hung accepted that he had funded the purchase of Mobicon shares and went on to say :

“... I and Mr Alvan Yeung had control over dealings in the shares, however, the shares remain at all times are property of Mr Lawrence (sic) Tam and Ms Vicky Fan.”.

405. For his part, Mr Alvan Yeung was specific and direct in admitting culpability for false trading in the matched trades of Mobicon shares between his account and that in the name of Mr Simon Chan. However, he set out in some detail the reasons for his belief that the shares belonged to Mr Simon Chan. Further, he made no admissions in respect of trading in the shares of Mobicon in the accounts of Mr Laurence Tam or Ms Vicky Fan.

406. Having raised the issue of the appropriateness of the time periods specified in the FS’s Notice on 14 October 2008 the Tribunal proceeded to receive other material and oral testimony. On 7 November 2008, the Tribunal exercised its powers pursuant to section 15 of Schedule 9 of the Ordinance and amended the FS’s notice. The Tribunal sat next on 8 December 2008. Prior to that hearing, Mr Alvan Yeung filed a second statement, dated 5 December 2008. In it, he made further admissions in respect of trading in Mobicon shares in the accounts in the name of Mr Simon Chan and, for the first time, made some admissions about his trading in Mobicon shares in the accounts in the name of

407. For his part, Mr Measure Hung made no further admissions by way of written statement.

408. The Tribunal accepts the force of the submission made by the Presenting Officer of the limited value of the admissions made by the Specified Persons given their assertion in the written statements described above and re-assertion in oral testimony of the existence of an incentive scheme and the contention that beneficial ownership lay with those persons on whose accounts Mobicon shares had been bought. Those issues and the issue of who it was that exercised control over Mobicon shares traded in the names of various employees remained live issues throughout the proceedings. Clearly, they were highly relevant to these proceedings.

409. In the result, the Tribunal determines that the benefit to be afforded to the Specified Persons in consequence of this factor is limited.

Costs and expenses in respect of the three Government counsel.

410. The Tribunal determines that it is appropriate to make an order in respect of the costs and expenses of the three Government counsel on the basis claimed.

The costs and expenses of the Tribunal.

411. In common with the determinations of other Tribunals we are satisfied that it is appropriate to incorporate the costs and expenses of the Tribunal itself

in the order in favour of the Government. A schedule of those costs, \$1,951,237.72, is attached at **Appendix 11**.

Costs and expenses - reduction.

412. The Tribunal does not accept that the costs and expenses incurred in respect of these proceedings is to be reduced for the reasons set out earlier, in particular to reflect the alleged failure of the SFC to investigate matters fully and completely. It was the position taken by the Specified Persons in respect of the matters identified above, namely the existence of the incentive scheme, beneficial ownership and control of trading in Mobicon shares in the accounts in the names of employees that required the Tribunal to invite the Presenting Officer to seek a wide range of material, which the Tribunal received.

Apportionment of orders as to costs and expenses between the Specified Persons.

413. On behalf of Mr Alvan Yeung, Ms Catherine Wong invited the Tribunal to order a lesser proportion of the orders in respect of costs and expenses of the Government and SFC against Mr Alvan Yeung than to be ordered against Mr Measure Hung. However, having indicated that the invitation to the Tribunal was to take a “broadbrush” approach, she declined the opportunity to suggest any parameters to that approach. In light of the fact that the Tribunal has determined that the beneficial ownership of the Mobicon shares that were traded in the false trading lay with Mr Measure Hung and his wife Ms Beryl Yeung and that such motive as there was for that market misconduct lay in benefit that accrued to Mr Measure Hung, rather than Mr Alvan Yeung, the Tribunal determines that it is appropriate to differentiate in the apportionment of costs and expenses between the two Specified Persons. Having regard to all the circumstances, and taking the matter in the round, the Tribunal determines that it is appropriate to apportion those orders as to costs and expenses in the ratio of two thirds to Mr Measure Hung and one third to Mr Alvan Yeung.

General mitigating factors.

414. The Tribunal accepts that neither of the Specified Persons had any pecuniary motive for their false trading. Both are men of previous good character whose reputations are sullied by this misconduct. We take into account the extensive evidence of Mr Measure Hung's "positive" contributions to society.

Other factors.

415. Conversely, the Tribunal has had regard to the extensive period of time over which the market misconduct was committed and the use of multiple accounts opened in the names of vulnerable employees, that is vulnerable to being used.

(III) ORDERS.

416. Pursuant to section 257(1) of the Ordinance the Tribunal makes the following orders :

A. As to Mr Measure Hung.

- (i) pursuant to section 257(1)(a), an order that for a period of two years he shall not, without the leave of the Court of First Instance be or continue to be a director of Mobicon or of any company that is now or becomes a subsidiary of Mobicon;
- (ii) pursuant to section 257(1)(c), he shall not again perpetrate any conduct which constitutes market misconduct;
- (iii) pursuant to section 257(1)(e), that he shall pay the Government \$2,954,429.08; and
- (iv) pursuant to section 257(1)(f) , that he shall pay the SFC \$75,672.00.

B. As to Mr Alvan Yeung.

- (i) pursuant to section 257(1)(a), an order that for a period of two years he shall not, without the leave of the Court of First Instance be a director of Mobicon or of any company that is now or becomes a subsidiary of Mobicon;
- (ii) pursuant to section 257(1)(c), he shall not again perpetrate any conduct which constitutes market misconduct;
- (iii) pursuant to section 257(1)(e), he shall pay the Government \$1,477,214.54;
- (iv) pursuant to section 257(1)(f), he shall pay the SFC \$37,836.00; and
- (v) pursuant to section 257(1)(g), the Hong Kong Institute of Certified Public Accountants be recommended to take disciplinary action against him.

417. Pursuant to section 264(2) of the Ordinance the Tribunal directs the Secretary to file the orders made under section 257(1)(a) with the Registrar of Companies forthwith.

418. Pursuant to section 264(1) of the Ordinance the Tribunal directs the Secretary to give notice to the Court of First Instance to register its orders made pursuant to section 257(1)(a), (c)(e) and (f).

CHAPTER 9

MISCELLANEOUS

Representation.

419. At the hearing on 2 March 2009 Mr Bruce appeared as the Presenting Officer, Mr Measure Hung was represented by Ms Catherine Wong and Mr Derek Chan, and Mr Alvan Yeung was represented by Mr John Brewer.

Corrigendum.

420. As to the above paragraph, Mr Measure Hung was represented by Mr John Brewer and Mr Alvan Yeung by Ms Catherine Wong and Mr Derek Chan.

Acknowledgements.

421. The Tribunal wishes to record its thanks for the assistance it has received in these proceedings from counsel for all the parties.



The Hon Mr Justice Lunn
(Chairman)



Mr Malcolm A Barnett
(Member)



Ms Susan Wong
(Member)

Dated 23 March 2009