HCMP 1702/2008

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO 1702 OF 2008

IN THE MATTER of Styland Holdings Limited

and

IN THE MATTER of Section 214 of the Securities and Futures Ordinance, Cap 571

BETWEEN

SECURITIES AND FUTURES COMMISSION	Plaintiff
and	
KENNETH CHEUNG CHI SHING	1st Respondent
YVONNE YEUNG HAN YI	2nd Respondent
STEVEN LI WANG TAI	3rd Respondent
MIRANDA CHAN CHI MEI	4th Respondent
STYLAND HOLDINGS LIMITED	5th Respondent

Before : Hon Barma J in Court
Dates of Hearing : 12 – 14, 19 January 2011
Date of Judgment : 7 March 2012

J U D G M E N T

A.1 INTRODUCTION

1. Styland Holdings Limited ("Styland") is a company incorporated in Bermuda, whose shares have been listed on the Hong Kong Stock Exchange since late 1991. On 21 April 2004, its shares were suspended from trading. As at the commencement of the trial of these proceedings, its shares remained so suspended, although the suspension has subsequently been lifted.

2. On 4 September 2008, the Securities and Futures Commission ("the SFC") commenced these proceedings under section 214 of the Securities and Futures Ordinance (Cap 571) ("the Ordinance") seeking various orders under sections 214(2)(b), (d) and (e) of the Ordinance against the Respondents.

A.2 THE RESPONDENTS

3. The 1st Respondent, Kenneth Cheung Shi Shing ("Kenneth Cheung") is the founder of the group of companies that has become known as the Styland Group, of which Styland is the ultimate holding company. He was a director of Styland from its incorporation until 18 June 2002, and was its chairman and an executive director. He is also a major shareholder of Styland, holding (together with the 2nd Respondent) a beneficial interest in some 21.38% of its shares as at the date of the petition. In Styland's annual reports between 1999 and 2002, he was said

to have had over 27 years' experience in corporate management and trading businesses, and to be responsible for the Styland Group's policy and management.

4. The 2nd Respondent, Yvonne Yeung Han Yi ("Yvonne Yeung") is the wife of Kenneth Cheung. She was also a director of Styland, having been an executive director since 1991. Although she was still a director of Styland when these proceedings were commenced, she had ceased to be a director by the time of the trial. She also had shareholdings in Styland. Although her personal shareholdings were much smaller than those of Kenneth Yeung, as at the date of the petition, she (together with him) had an interest in 21.38% of its shares. In Styland's annual reports to which I have referred, she was described as having extensive experience in trading businesses and business management, and as having responsibility for the Styland Group's policy, administration, personnel and management, as well as overseeing its investment activities.

5. The 3rd Respondent, Steven Li Wang Tai ("Steven Li") was an executive director of Styland between 1991 and 2003. He, too, is a shareholder of Styland, holding a small amount (less than 0.1%) of its shares. In Styland's annual reports, he was said to have extensive experience in the garment and textile businesses (which formed a major part of the Styland Group's businesses), and as being responsible for the Styland Group's policy and trading business.

6. The 4th Respondent, Miranda Chan Chi Mei ("Miranda Chan"), was an executive director of Styland since 1993. Like Yvonne Yeung, she remained a director of Styland at the time that these proceedings were brought, although she too resigned her directorship

before the trial began. Like Steven Li, she had a small shareholding in Styland, and also had a small shareholding in one of its associated companies. Styland's annual reports described her as having extensive experience in the trading and securities business, and as being responsible for the Styland Group's credit and risk control.

7. The 5th Respondent is Styland itself. It was joined as a party in order that it might take the benefit of and be bound by certain of the orders that might be made if the petition were successful.

A.3 THE TRANSACTIONS COMPLAINED OF BY THE SFC

8. In its petition, the SFC makes complaints in respect of a large number of transactions that Styland entered into between 1999 and 2001, when each of the 1st to 4th Respondents was a director of the company. These transactions are as follows:-

(1) A number of transactions relating to Inworld Holdings Limited ("Inworld"), namely:-

(a) The subscription on 5 July 1999 by Iwana Company Limited ("Iwana"), one of Styland's subsidiaries, for 36 shares in Inworld at a price of HK$20,000,000.

(b) The granting on 3 May 2000 by Iwana of a loan facility of HK$105,000,000 to Kevin Ngai, a shareholder and director of Inworld, and a nephew of Yvonne Yeung, against the security of 101 shares in Inworld owned by Kevin Ngai.

(c) The sale on 15 May 2000 by Iwana to Kevin Ngai and Joyview International Limited ("Joyview"), the other shareholder of Inworld, of 10 of the Inworld shares for

which Iwana had subscribed, at the same price per share that Iwana had paid for them.

(d) The purchase on 31 August 2000 by Iwana of a further 46 shares in Inworld from Kevin Ngai for HK$107,781,438.36 (the consideration for the purchase being set off against the amount then owing by Kevin Ngai to Iwana under the loan facility mentioned in sub-paragraph (b) above).

(e) The making of shareholder's loans totalling HK$13,558,847 by Iwana to Inworld between 13 November 2000 and 10 September 2001.

(2) The acquisition on 13 January 2000 by Global Eagle Investments Limited ("Global Eagle"), one of Styland's indirectly wholly owned subsidiaries, of a 40% interest in Cyber World Technology Limited ("Cyber World") from Zelma's Company Limited ("Zelma") for HK$148,000,000.

(3) The acquisition on 31 August 2000 by Styland Infrastructure Limited ("Styland Infrastructure"), a wholly owned subsidiary of Styland, of a 31% interest in Kippton Limited ("Kippton") for HK$46,581,430.60; the purchase on 31 August 2000 by Simplex Inc. of a debt of HK$15,835,008.40 owed by Kippton to one of its shareholders; and the acquisition on 28 September 2000 by Styland Infrastructure of a 4.68% interest in Sheng Da Investment Holding (Hong Kong) Limited ("Sheng Da"), a company which was beneficially owned as to 51% by Kippton, which held an interest in a toll expressway on the Mainland.

(4) The sale on 30 October 2000 by Iwana of 15 shares in Gold Cloud Agents Limited ("Gold Cloud") to Companion Marble (BVI) Limited ("Companion Marble"), and the payment on or about 22 August 2002 by Iwana of a commission of HK$3,000,000 to Kenneth Cheung allegedly for his introduction of Companion Marble as the purchaser and for assisting with the negotiation of the terms of the transaction.

(5) Two transactions involving West Marton Group Limited ("West Marton"), namely:-

(a) The acquisition on or about 10 October 2000 by Data Store Investments Limited ("Data Store"), another indirectly wholly owned subsidiary of Styland, of 90% of the shares in West Marton from a Mr Fu Chin Keung ("Raymond Fu") for HK$120,000,000; and

(b) The disposal on 10 August 2001 by Data Store of a 30% interest in West Marton to Kevin Ngai (as to 10%) and Joyview (as to 20%) for a total of HK$21,000,000.

(6) The acquisition on about 7 September 2001 by Ever-Long Investments Holdings Limited ("Ever-Long") and Iwana (both wholly owned subsidiaries of Styland, of a 35% interest in Well Pacific Investments Limited ("Well Pacific") for a total consideration of HK$61,500,000.

9. The complaints made in relation to these transactions are, in broad terms, that :-

(1) In breach of their fiduciary duties to Styland, Kenneth Cheung and Yvonne Yeung obtained (either personally or through companies beneficially owned by them) financial benefits totalling some HK$85,950,000 as a result of the transactions identified in paragraphs 8(1)(b), 8(2), 8(3) and 8(4) above.

(2) In breach of their duties to act with reasonable care, skill and diligence in relation to the affairs of Styland, each of the Respondent directors had seriously mismanaged Styland and its subsidiaries by causing the Styland Group to make the investments in Inworld, Cyber World, West Marton and Well Pacific, resulting in the Styland Group incurring losses of over HK$300,000,000 in respect of these investments within a period of about three years.

(3) In breach of their duties to act with reasonable care, skill and diligence in relation to the affairs of Styland, each of the Respondent directors had persistently failed to ensure that Styland complied with the requirements of the Listing Rules governing Styland's listing on the Stock Exchange.

(4) In breach of their duties to act with reasonable care, skill and diligence in relation to the affairs of Styland, each of the Respondent directors had failed to make proper disclosure to the shareholders of Styland that most of the transactions complained of were with or involved individuals and companies whose connections with Kenneth Cheung and Yvonne Yeung raised questions as to the *bona fides* of such transactions.

10. Each of these alleged breaches of duty is said to involve breaches of one or more of sections 214(1)(a), (b), (c) and (d) of the Ordinance.

A.4 DISPOSAL OF PROCEEDINGS AGAINST 3rd RESPONDENT

11. The SFC's claims against Steven Li were disposed of by way of the Carecraft procedure. On 23 November 2010, Au J made an order disqualifying Steven Li from acting as a director of any company for a period of six years (thus placing the complaints established against Steven Li in the middle bracket of periods of disqualification (for a period of between 6 and 10 years), which is appropriate for serious cases of misconduct by directors, although not so serious as to merit a disqualification period falling within the top range (in which periods of disqualification of between 11 and 15 years are ordered). Steven Li admitted all of the facts alleged in the petition, that, on the basis of those facts, the business and affairs of Styland had been conducted in a manner falling within sections 214(1)(b), (c) and (d) of the Ordinance, and that he was at least partly responsible for the conduct of Styland's business and affairs in such a manner. Accordingly, Steven Li took no part in this trial. In what follows of this judgment, references to the "Respondent directors" are intended as references to some or all of Kenneth Cheung, Yvonne Yeung and Miranda Chan, as the context requires.

A.5 THE EVIDENCE AT TRIAL

12. At the trial, the SFC was represented by Mr Jat Sew Tong SC and Mr Mike Lui. Its evidence consisted of affidavits from Karen Smyth, an employee in its enforcement division, and witness statements of Li Sui

Hang and Chu Ching Kei, who were involved in aspects of the transactions complained of. Although these witnesses were tendered for cross-examination, each of the Respondents taking part in the trial indicated that they did not seek to cross-examine them. Accordingly, their affidavits and witness statements were admitted in evidence without challenge. The SFC also relied on a substantial quantity of documentary evidence, consisting largely of internal documents of Styland.

13. Kenneth Cheung and Yvonne Yeung were represented by Mr Paul Shieh SC and Ms Phoebe Man. Although each of them had made substantial affirmations in opposition to the petition, they elected not to give evidence at the trial. As a result, neither their affirmations nor records of their interviews were admitted as evidence for the purposes of these proceedings, in accordance with directions given at an earlier stage by which such materials were only to be received in evidence if the witnesses were made available for cross-examination.

14. Miranda Chan was represented by Mr Brian Wong. Like Kenneth Cheung and Yvonne Yeung, she elected not to give any evidence at the trial, and her affirmation evidence in opposition to the petition was therefore similarly excluded from consideration.

15. Finally, Styland itself was represented at the trial by Mr Dennis Law. Pursuant to the order of Kwan J (as she then was) made on 17 December 2008, its role was limited to making submissions on the question of whether any orders should be made for payment to be made to it, or requiring it to take proceedings against any of the Respondent directors, pursuant to sections 214(2)(b) or (e) of the Ordinance.

16. As Kenneth Cheung, Yvonne Yeung and Miranda Chan chose not to make themselves available for cross-examination with the consequence that their affirmations and records of interview did not form part of the evidence for these proceedings, and called no other witnesses and tendered no other evidence, there was no evidence in their favour for the purposes of this trial.

A.6 EFFECT OF THE RESPONDENT DIRECTORS' FAILURE TO GIVE EVIDENCE

17. Mr Jat submitted that in these circumstances, it was open to the court to draw all reasonable inferences against the Respondent directors from the evidence before it, and that the court should do so if satisfied that such evidence raised a prima facie case which called for an answer, because where a defendant might be expected to be in a good position to answer the allegations made against him, his silence could turn a prima facie case into a strong case against him (see e.g. *Gibbs v Rea* [1998] AC 786 at 798H-799E, *R v IRC ex p T.C. Coombs & Co* [1991] 2 AC 283 at 300F-G). Further, Mr Jat submitted that in the face of a defendant's failure to give evidence when he could reasonably be expected to do so, the court should not too readily accede to suggested explanations or constructions of the evidence before it when the defendant has not himself put forward such explanations. On the other hand, Mr Jat accepted that where there was a credible explanation for a defendant's not giving evidence in his own defence, the effect of his silence as a factor against him might be reduced or even nullified. Mr Shieh did not dissent from these propositions.

18. Here, having regard to the documentary and other evidence gathered by the SFC and arrayed against the Respondent directors, I am satisfied that in relation to each of the transactions complained of, the situation is one that calls for an explanation by them, such that the court should accept that evidence and on the basis of it, make findings adverse to them, having regard to their silence in the face of the evidence. This is particularly the case when, as here, no explanation for their failure to give evidence has been advanced. There was no suggestion that either Kenneth Cheung or Yvonne Yeung were unable to attend to give evidence on their own behalves, and Miranda Chan in fact attended the first two days of the trial before electing not to give evidence in her own defence. This strongly suggests that they simply have no satisfactory answers to offer to the SFC's allegations, which are amply supported by the documentary evidence to which I have been referred.

19. Although Mr Shieh did not dispute these propositions, he submitted that it was nonetheless open to him to make certain submissions on behalf of his clients on the basis of the material that was before the court. In summary, he suggested that :-

(1) The investments complained of as having proven to be disastrously unsuccessful should be viewed against the then background of market optimism in and great enthusiasm for investments in companies involved in information technology and exploitation of the internet – i.e. the "dot com" boom of the late 1990s and early 2000s, and the fact that the shareholders of Styland had given its directors a mandate to invest in such businesses. It would, Mr Shieh submitted, be wrong to approach such investments with the benefit of hindsight, after the dot com bubble had burst.

(2) The fact that investments had turned out to be unsuccessful, or even that they had resulted in significant losses was not of itself evidence of negligence or mismanagement on the part of the directors.

(3) As to the allegation that Kenneth Cheung and Yvonne Yeung had personally (whether directly or through companies beneficially owned by them) received funds emanating from Styland or its subsidiaries, there was no allegation in the petition that they had in some way conspired with the other parties to the transactions to divert part of the funds expended on such transactions to themselves.

(4) The alleged infringements of the Listing Rules were neither clear cut, nor (if established) particularly serious.

(5) So far as the making of orders for the payment of compensation, or requiring Styland to take proceedings against the directors for such compensation, are concerned, this should not be done having regard to the fact that most (though not all) of the transactions complained of were eventually ratified by the resolutions of a majority of Styland's independent shareholders present and voting at a Special General Meeting convened on 29 April 2009.

A.7 THE STATUTORY PROVISIONS

20. Before considering each of the transactions complained of in more detail, it is convenient to set out the terms of the relevant provisions of the Ordinance. These are sections 214(1) and (2).

21. Section 214(1) provides that:-

"Where, in relation to a corporation which is or was listed, it appears to the Commission that at any relevant time the business or affairs of the corporation have been conducted in a manner :-

(a) oppressive to its members or any part of its members;

(b) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members;

(c) resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or

(d) unfairly prejudicial to its members or any part of its members,

the Commission may, subject to subsection (3), by petition apply to the Court of First Instance for an order under this section."

22. Section 214(2) provides that:-

"If, on an application under this section, the Court of First Instance is of the opinion that the business or affairs of a corporation have been conducted in a manner described in subsection (1)(a), (b), (c) or (d), whether through conduct consisting of an isolated act or a series of acts or any failure to act, the Court may :-

(a) make an order restraining the carrying out, or requiring the carrying out, of any act or acts;

(b) order that the corporation shall bring in its name such proceedings as the Court considers appropriate against such persons, and on such terms, as may be specified in the order;

(c) …

(d) order that a person wholly or partly responsible for the business or affairs of the corporation having been so conducted shall not, without the leave of the Court :-

(i) be, or continue to be, a director, liquidator, or receiver or manager of the property of the business, of the corporation or any other corporation; or

(ii) in any way, whether directly or indirectly, be concerned, or take part, in the management of the corporation or any other corporation,

for such period (not exceeding 15 years) as may be specified in the order;

> (e) make any other order it considers appropriate, whether for regulating the conduct of the business or affairs of the corporation in future, or for the purchase of the shares of any members of the corporation by other members of the corporation or by the corporation (and, in the case of a purchase by the corporation, for the reduction accordingly of the corporation's capital), or otherwise."

23. I turn now to consider each of the transactions complained of in more detail.

B.1 STYLAND'S INVESTMENT IN INWORLD

B.1(1) Subscription for 36 shares in Inworld

24. On 5 July 1999, Iwana entered into a written agreement to subscribe for 36 shares in Inworld at a consideration of HK$20,000,000. This represented a subscription price of HK$555,555.56 per share. The agreement provided that the purchase price was to become payable on completion, which was to occur on or before 15 May 2000, when the shares would be issued to Iwana.

25. Inworld was a BVI company which had been incorporated on 11 July 1997, some two years before the subscription agreement. Its shareholders were Kevin Ngai (Yvonne Yeung's nephew) and Joyview, a company owned by a Mr Alan Chan Wai Lun ("Alan Chan"). Its directors were Kevin Ngai and a Mr Yick Chong San ("C S Yick"). At the time the subscription agreement was entered into, Inworld had not commenced business, and appeared to have no significant assets or liabilities. The only material which appears to have been available to the Respondent directors at the time consists of a business plan and discounted cash flow projections provided to them by Kevin Ngai and Alan Chan. There is no evidence of the Respondent directors having taken any steps to

verify or assess the reliability of such information, whether by engaging suitable professional advisers or otherwise.

26. Shortly before the making of this agreement, on 30 June 1999, Inworld had granted its existing shareholders, Kevin Ngai and Joyview, options to subscribe for 51 and 23 shares in Inworld respectively, at a subscription price of US$1 per share. This arrangement was known to Iwana and to the Respondent directors, as the grant of these options was expressly mentioned in the subscription agreement between Iwana and Inworld. These options were eventually exercised in June 2000, but not in full - Kevin Ngai took up 50 of the 51 shares to which he was entitled, while Joyview took up 14 of the 23 shares to which it was entitled.

27. Although completion had yet to take place, just over 80% of the consideration was paid to Inworld prior to the scheduled completion date. The payments were effected by two wholly owned subsidiaries of Styland – Styland (Hong Kong) Limited ("Styland HK") and Styland Finance Company Limited ("Styland Finance") on behalf of Iwana. At the time of the payments, all of the Respondent directors were directors of both Iwana and Styland HK, while all of them other than Kenneth Cheung were directors of Styland Finance.

28. The investment in Inworld pursuant to the subscription agreement was not disclosed to the shareholders of Styland until it was eventually mentioned in an announcement made by Styland on 3 June 2003, at the request of the Stock Exchange.

29. The SFC contend that in respect of this transaction, the directors were in breach of their duties of care and skill, in failing to have carried out any proper due diligence in respect of the investment – in

particular by failing to assess adequately or at all the achievability of the business plan presented to them by Kevin Ngai and Alan Chan.

30. The SFC contend also that the directors were in breach of such duties in failing to have questioned the value or desirability of the investment in the light of the fact that the stake in Styland that was being acquired was at risk of being significantly diluted as a result of the granting of the options to subscribe for additional shares to Kevin Ngai and Joyview.

31. Finally, the SFC contend that the directors were in breach of such duties by reason of the failure to disclose the transactions to Styland's shareholders on a timely basis, in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules, as Kevin Ngai was a connected person vis-a-vis Styland, by virtue of the fact that he was the nephew of Yvonne Yeung (see Rule 14.03(2)(a)(ii) of the Listing Rules).

32. So far as the first point is concerned, the only documentation that appears to have been provided by Inworld in respect of their business and its prospects prior to the subscription agreement into was a business plan which provided basic information as to the corporate structure of Inworld, together with an eight page summary of its business strategy and model, revenue model, target markets and long term plans. It was accompanied by a 35 page "valuation" of Inworld, which consisted of a revenue projection covering the years from 2000 to 2006. At the time when the subscription agreement was entered into, Inworld's business was still in its infancy and was not fully operational. However, the revenue projection forecast that after making a profit of some HK$17 million in 2000, profits would increase substantially to some HK$122 million in 2001, HK$163 million in 2002 and HK$200 million in 2003, after which

growth in profit would moderate, but still increase steadily and reach HK$257 million odd by 2006. Various assumptions were stated in relation to expenditure, but while detailed figures as to expected income streams for the various divisions of Inworld's proposed operations were provided, these were no more than assumptions, with no apparent justification for the assumed figures being put forward.

33. Mr Shieh (whose submissions in respect of the allegations of breach of duty in respect of all the transactions were adopted by Mr Wong for Miranda Chan insofar as they concerned her, although Mr Wong also made some other submissions of an exculpatory nature which I shall deal with after considering each of the transactions complained of), submitted that, while the directors were to be expected to exercise reasonable care and skill in the management of the affairs of Styland, it could not be said that the directors had fallen short of the standards to be expected of them in making this investment, having regard to the then "dot com" boom and prevailing market sentiment in favour of investments in information technology and internet companies, and the expectations of Styland's shareholders that the company would invest in such sectors. He suggested that whether or not to make the investment was a matter of business judgement for the directors, and that it was not fair to criticise them on the basis of hindsight, simply because the investment ultimately turned out to be loss-making.

34. I would accept that the fact that an investment turns out to be unprofitable is not, of itself, evidence of negligence or lack of proper care on the part of the directors who resolved to embark upon it. However, in the present case, the information presented by the directors in respect of Inworld, which was very much a start-up business, was on the face of it

extremely limited. As I have noted, the business plan and valuation/profit forecast were produced by Inworld, and there is no evidence (as none of the directors came forward with any) as to what, if any, steps the directors took to try to ascertain whether or not the projected revenues were realistically achievable, whether by seeking further information and substantiation for the forecasts from Inworld, by discussing them with the directors of Inworld, or by seeking the assistance of qualified professional advisers to assess them.

35. Similarly, while it is fair to say that the business environment in the late 1990s and early 2000s was one in which there was considerable excitement over the prospects of companies in the information technology field, and particularly those with a business based on making use of the internet as a platform for delivering services, the fact is that this was an entirely new area for Styland, in relation to which its management had no particular experience or expertise. It was therefore all the more important for the directors to have borne these limitations in mind, and to have obtained qualified professional advice for the purpose of considering such investment opportunities as they might be minded to take up. As I have noted, this was not done.

36. I am therefore satisfied that, in embarking on this investment with only the business plan and valuation/profit forecast (such as it was) to go on, the Respondent directors fell short of the standards of skill and care to be expected of them.

37. I should also refer in this context to two valuations which Styland subsequently obtained. The first was dated 13 July 2000, and was provided by Kevin Ngai in relation to the loan to him which is discussed below. This valuation suggested that Inworld was worth over

between HK$635 and 715 million. The second valuation was obtained by Styland for disclosure to its shareholders in connection with a special general meeting at which shareholder approval was sought in respect of various of the transactions complained of. This valuation was dated 11 September 2003 and attempted to assess the value of Inworld as at 30 June 1999 and 3 Mary 2000 (i.e. at around the time of the subscription agreement, and at around the time of the agreement to make the loan to Kevin Ngai). It suggested that Inworld was worth some HK$60 million as at the time that the subscription was agreed upon, and some HK$400 million as at the time the loan to Kevin Ngai was agreed. I do not think that either of these valuations can lead to a different conclusion in relation to the Respondent directors' breach of their duties of skill and care in relation to the decision to enter into the Inworld subscription agreement. Neither was available to the Respondent directors at the time, and could not have been relied upon by them in deciding to enter into the subscription agreement. Moreover, the later valuation, rather than providing comfort for the shareholders as to the commercial good sense of the investment in Inworld, suggests that even on the basis of the valuation, the price paid for the Inworld shares acquired by Styland was at a premium (and not a discount, as suggested by the valuers and the company), for reasons connected with the second of the SFC's criticisms of this transaction, to which I now turn.

38. The SFC also complains that the directors were in breach of their duty of skill and care in failing to have taken into account the risk of dilution of Styland's stake in Inworld as a result of share options which had been granted by Inworld to Kevin Ngai and Joyview to subscribe for additional shares in Inworld at par value, i.e. US$1 per share (see paragraph 26 above). These options, granted by Inworld to Kevin Ngai

and Joyview on 30 June 1999, were referred to in the subscription agreement which Iwana entered into with Inworld on 5 July 1999, under which Iwana was to subscribe for 36 new shares in Inworld, representing 36% of Inworld's share capital after the allotment of the new shares. However, having regard to the share options, which entitled Kevin Ngai to subscribe for up to 51 new shares, and Joyview to subscribe for up to 23 new shares, there was a risk that up to 74 new shares could be issued for a nominal amount, resulting in a potential dilution of Iwana's shareholding in Inworld from 36% to just over 20% if the options were fully exercised. In the event, the options were not fully exercised – Kevin Ngai subscribed for 50 new shares, and Joyview for 14, which would have had the effect of reducing the proportion of Iwana's shareholding in Inworld from 36% to just under 22% had Iwana continued to hold all of the 36 shares to be issued to it (as it happens, as a result of another transaction of which complaint is made, Iwana divested itself of 10 of the shares it acquired, by selling them to Kevin Ngai and Joyview immediately after completion of the subscription, so that its stake in Inworld was in fact even smaller).

39. Given that the share options were expressly referred to in the subscription agreement, the directors must have known of them. However, when the subscription agreement was eventually disclosed to Styland's shareholders, the company presented it as an acquisition of a 36% stake in Inworld, and thus an acquisition at a discount to the valuation of Inworld as at June 1999 that was put forward by Styland in September 2003. This approach suggests that either the directors were unaware of the dilutive effect of the option, or that had chosen to ignore it in seeking to justify the price paid for the stake in Inworld under the subscription agreement. If the former were the case, the conclusion must follow that

the directors had fallen even further short of the standards of skill and care to be expected of them than is suggested by their failure properly to assess the value of Inworld when causing Styland to enter into the subscription agreement. On the other hand, if the latter is the case, not only would the directors appear to have sought subsequently to mislead the company's shareholders, but also, the inadequacy of their efforts to assess the value of Inworld would be so much the greater. I am therefore satisfied that this aspect of the complaint serves only to confirm that the directors were in breach of their duty of skill and care owed to Styland in the way in which they went about this investment.

40. Finally, the SFC complains that Styland failed to make the necessary disclosure and obtain the necessary shareholder approval required pursuant to the Listing Rules in respect of this transaction. The SFC contends that as Kevin Ngai was Yvonne Yeung's nephew, he was for the purpose of the shareholder approval and disclosure requirements set out in rules 14.23 to 14.32 of the Listing Rules, a "connected person" in relation to her by virtue of rule 14.03(2)(a)(ii) of the Listing Rules, which provides, so far as relevant, that a connected person includes "any relative of a director" of the listed company concerned whose association with the director is such that the Stock Exchange considers that the transaction should be subject to the requirements of rules 14.23 to 14.32. As the Stock Exchange was of the view that his association with Yvonne Yeung made it appropriate that those rules should be complied with, Kevin Ngai was deemed to be an associate of Yvonne Yeung's. As a result, rule 14.26(2) required that shareholder approval of the transaction should have been made a condition of the transaction, and should have been obtained, and rules 14.29(1) and (2) required that the transaction should have been notified to the Stock Exchange, and disclosed to the shareholders.

41. In response to this criticism, Mr Shieh submitted that despite being the nephew of Yvonne Yeung, Kevin Ngai should not be regarded as a connected person, as the concept of a "relative" should not be given an unduly extended definition. He drew attention to the fact that rule 14.03(2)(a)(ii) stated that "relative" includes children, step-children, parents, step-parents, siblings and step-siblings and in-laws, but did not specifically mention nephews or nieces. With respect, I do not see that this suggested construction accords with the language of the rule, which makes clear than any relative of a director is included within its ambit. The fact that certain classes of relatives are expressly identified as falling within its ambit does not lead to the conclusion that all other relatives should be excluded therefrom – on the contrary, by using the word "including", the rule makes it clear that its ambit is not limited to the specified relationships mentioned in the four sub-classes identified.

B.1(2) Loan of HK$105,000,000 to Kevin Ngai

42. The next aspect of the investment in Inworld complained of relates to the making of a loan of HK$105,000,000 to Kevin Ngai pursuant to a loan agreement dated 3 May 2000. The loan was to be secured against 101 shares in Inworld owned by Kevin Ngai (at the time, Kevin Ngai owned 50 shares in Inworld, but had an option to subscribe for a further 51 shares pursuant to the share options granted to him on 30 June 1999).

43. Under the loan agreement, Kevin Ngai warranted that the value of Inworld was at least HK$600,000,000, and undertook to provide an independent valuation confirming this within three months of executing the loan agreement. In the event, the loan was fully drawn down by

29 June 2000, at which time no such valuation had yet been provided. A valuation by Chesterton Petty, in which Inworld's internet portal Inworld.com was valued at between HK$635,000,000 and HK$741,000,000, was eventually provided on 13 July 2000. However, the valuation was based on a discounted cash flow approach utilising financial information and forecasts supplied to the valuers by Inworld, as to the reasonableness or attainability of which the valuers expressed no opinion.

44. The making of the loan to Kevin Ngai was not disclosed to Styland's shareholders until it was announced on 3 June 2003, some three years later, at the request of the Stock Exchange.

45. Further, the SFC have examined the way in which the funds lent to Kevin Ngai were utilised, and have as a result discovered that part of such loan appears ultimately to have been paid to Kenneth Cheung and Yvonne Yeung. The details of the payment trail are as follows:-

(1) On 9 May 2000, the Company made a payment, on behalf of Iwana, of HK$30,000,000 (representing the first tranche of the loan) to Inworld at Kevin Ngai's request. From this receipt, Inworld on the same day made a payment of HK$28,000,000 to a company called Extra Yield Resources Limited ("Extra Yield") of which C S Yick was the sole director. In turn, Extra Yield made a payment of HK$25,000,000 (by way of a cheque signed by both C S Yick and Kevin Ngai) to a company called K C (Investment) Limited, whose directors were Kenneth Cheung and Yvonne Yeung, and whose shareholders were K Y Investment Limited (whose sole shareholder was Kenneth Cheung), holding 99%

of its shares, and Yvonne Yeung, holding the remaining 1%. In this way, a sum of HK$25,000,000 found its way from Styland to a company beneficially owned by Kenneth Cheung;

(2) Further, on 29 June 2000, two subsidiaries of Styland, Styland HK and Crosby Design (Far East) Company Limited ("Crosby") made payments totalling HK$55,000,000 (representing the third and final tranche of the loan) on behalf of Iwana to Inworld. Some days later, on 7 July 2000, Inworld paid HK$9,000,000 to Ebbing Hill Services Limited ("Ebbing Hill"), whose director and authorised signatory was Li Sui Hang, an employee of a subsidiary of Inworld, who worked under the direction of Kevin Ngai. Ebbing Hill in turn made payments totalling HK$8,950,000 the same day to Colindale Enterprises Limited ("Colindale"), whose director and authorised signatory was a Szeto Suet Kwan, an employee in the accounts department of a subsidiary of Inworld. Also on the same day, Colindale paid HK$2,000,000 to Kenneth Cheung, and HK$6,950,000 to UBS AG, which credited this amount to an account of Yvonne Yeung.

(3) Finally, on 30 June 2000, Inworld, having received the HK$55,000,000 referred to in the preceding sub-paragraph, paid HK$25,200,000 to Carmona International Limited, whose director and authorised signatory was Ting Wai Man, who is said to have been a subordinate of C S Yick. On the same day, Carmona paid HK$25,000,000 to Styland Finance (a subsidiary of Styland), which in turn made two payments of HK$4,000,000 and HK$21,250,000 respectively on 5 and

12 July 2000. The first of these payments was made to a Mona Leung Yuk Kit, a former employee of Styland, while the second payment was made to Styland HK, another subsidiary of Styland's.

46. The SFC contend that in respect of this transaction, the directors again were in breach of their duties of care and skill, in failing to have had proper regard to the value of the Inworld shares offered by Kevin Ngai as security. In particular, they caused the loan agreement to be entered into, and the loan to be disbursed, prior to having sight of any independent valuation of Inworld. Moreover, it was important for them to have some basis for thinking that the Inworld shares offered as security would be adequate security, since the value being ascribed to such shares (at least HK$1,039,604 per share, assuming the shares were worth the same as the loan amount) was considerably greater than the price at which Styland had agreed, just under a year earlier, to acquire its shareholding in Inworld (i.e. HK$555,000 odd per share), when Inworld's performance over the period had done little to justify such an increase, as it had incurred a net loss of some HK$4,216,000 between 30 August 1999 and 30 June 2000. The warranty provided by Kevin Ngai did not serve as a substitute for this, as there was no reason to suppose that Kevin Ngai would be in a position to honour that warranty if it should become necessary to enforce it against him.

47. The SFC also contend that in personally receiving a portion of the sale proceeds for their personal benefit, as disclosed by the fund tracing exercise carried out by the SFC, Kenneth Cheung and Yvonne Yeung had acted in breach of their fiduciary duties towards Styland. This complaint is not one that is directed against Miranda Chan.

48. Finally, in relation to this transaction, the SFC contend that the directors were in breach of their duties of skill and care by reason of the failure to disclose this transaction to Styland's shareholders on a timely basis, in breach of Rules 14.26(6)(a), 14.29(1) and 14.29(2) of the Listing Rules, which require the disclosure of loans made to connected persons, having regard to the fact that Kevin Ngai was Yvonne Yeung's nephew, and hence a connected person in relation to Styland.

49. So far as the first of these complaints is concerned, Mr Shieh suggested that this transaction should be viewed in conjunction with the later acquisition by Styland of 45 shares in Inworld from Kevin Ngai at a consideration equal to the amount of the loan plus accumulated interest, and should be regarded as, in effect, a kind of bridging loan. In my view, there is no reason so to view the loan to Kevin Ngai. None of the directors gave evidence to suggest that this was how they viewed the transaction. Moreover, even if the loan and the later share acquisition are viewed as somehow connected, the effect would be not that the loan was a bridging loan, but that it was an advance payment of the price of the shares, at a time when no sale had even been agreed. So regarded, the Respondent directors clearly fell short of the standards of skill and care to be expected of them, as it is difficult to conceive of circumstances in which it might be thought appropriate to pay for shares to be acquired in advance of actually agreeing to acquire them.

50. Moreover, whether the loan is regarded as a loan or an advance payment for a future purchase of shares (which had yet to be agreed), the directors would appear to have proceeded without giving any consideration to the value of Inworld at the time when the loan amount was agreed – other than Kevin Ngai's warranty that Inworld was worth at

least HK$600,000,000, there was no independent valuation to hand, nor was there any evidence that the directors had given any thought to this question. The warranty was, in my view, of no real value – it added nothing by way of security for Styland. This is because it would only become necessary to have recourse to the shares if Kevin Ngai were to default on his obligation to repay the loan – in this situation, if the shares turned out to be worth less than warranted, the warranty would only provide an alternative basis for a claim against Kevin Ngai, but would do nothing to improve Styland's prospects of recovering the amount advanced to him.

51. Finally, it may be observed that the valuation eventually obtained, after the loan had been fully drawn down, was based on financial information and forecasts provided to the valuers by Inworld, in respect of which the valuers expressed no opinion, and could accordingly be of little comfort to directors acting with due care, since it provided no independent assessment of Inworld's value or of the viability of Inworld's business or of the reasonableness or accuracy of its predicted income. In a situation where the directors themselves had no expertise in the areas of business undertaken by Inworld, this was simply insufficient to discharge their duty to exercise due care and skill in the management of Styland's business in the context of making this loan.

52. So far as the second complaint is concerned, Mr Shieh did not challenge the SFC's allegations as to the fund flows arising out of the disbursement of the loan tranches, and the documentation presented by the SFC at trial fully substantiated such allegations. Nor did the directors seek to explain the reasons for such movements of funds flow, or their retention of substantial sums therefrom.

53. However, Mr Shieh submitted that it was not open to the SFC to make this complaint, since the SFC had not gone so far as to plead that the fund movements were part of a conspiracy by the directors (or at least his clients, Kenneth Cheung and Yvonne Yeung) to defraud Styland by causing it to (in this case) make an unnecessarily generous loan (or in other cases, pay an inflated price for an acquisition), with a view to part of Styland's funds being ultimately paid over to them personally.

54. I do not agree. True it is that the SFC does not assert, or seek to prove, the existence of a conspiracy of this kind. In my view, it need not do so. The complaint is that Kenneth Cheung and Yvonne Yeung have in fact enriched themselves at the expense of Styland – that in itself amounts to a breach of their duties to the company. It is not necessary to go further, and to plead and establish that this was done as part of some conspiratorial scheme. Even absent such a scheme, the fact that Kenneth Cheung and Yvonne Yeung received Styland's funds for their own account, without any apparent basis or justification for doing so, gives rise to a claim on Styland's part to recover such payments, on the footing that but for such payments, the amount advanced or paid by Styland for the loan or acquisition in question would have been lower, and that the receipt of such funds by the directors concerned accordingly involves breaches of fiduciary duty on their part, involving a misappropriation of the company's funds for their own use, and causing the company to overpay in respect of the relevant transaction.

55. As for the third complaint in respect of this transaction, the alleged breaches of the Listing Rules by failing to disclose the transaction to the shareholders and obtain the approval of the independent shareholders for the transaction, this raises the same issues as in relation to

the failure to make appropriate disclosure and seek the necessary approval in respect of the initial investment in Inworld, and for the same reasons as in respect of that transaction, I am satisfied that the complaints of the SFC are made out.

B.1(3) Sale of Inworld shares to Kevin Ngai and Joyview

56. A third aspect of Styland's investment in Inworld of which complaint is made relates to the sale by Iwana of a total of 10 shares in Inworld back to Kevin Ngai and Joyview. On 15 May 2000, the same date as Iwana completed the subscription agreement dated 5 July 1999 so as to acquire 36 shares in Inworld, Iwana sold one such share to Kevin Ngai and nine such shares to Joyview, at the same price as it had paid under the subscription agreement – HK$555,555 per share.

57. Two complaints are made in relation to this transaction:-

(1) The directors were in breach of their duties of skill and care in the management of Styland's affairs in causing it to enter into this transaction, because the transaction was not in Styland's best interests and was uncommercial, having regard to the fact that the price paid was approximately half of the value of just over HK$1,000,000 per share implied by the taking of Kevin Ngai's expected shareholding as security for the loan to him made just twelve days earlier.

(2) The directors were also in breach of such duties by reason of the failure to disclose the sale to Kevin Ngai to Styland's shareholders and seek their approval for it, such disclosure and approval being required because Kevin Ngai was a

connected person by reason of his relationship to Yvonne Yeung.

58. Dealing with the first of these complaints, it must be said that on the face of it, this was an odd transaction. It made little sense for Styland, having just acquired a 36% interest in Inworld, to immediately dispose of part of its shareholding at the same price at which it had acquired it. This was particularly so having regard to the loan which Iwana had agreed to make to Kevin Ngai less than a fortnight earlier, which implied (assuming the security taken for the loan to have been adequate) that the shares were worth much more. It also does not sit well with the suggestion, made in the circulars to shareholders when seeking endorsement of the transactions, that Styland's objective was to obtain a majority interest in Inworld.

59. Mr Shieh suggested that having regard to the investment which Styland had already made in Inworld, and the further investments that it was contemplating making in that company, it was in Styland's interests to accede to the requests of Kevin Ngai and Joyview. However, this submission is, I think, flawed. First, there is no evidential basis to suggest that the directors (none of whom gave evidence) were motivated to enter into this transaction for this reason. Second, Kevin Ngai and Joyview already had share options which, if fully exercised, would have achieved the same result in terms of the number of shares held by them, while resulting in a smaller diminution in Styland's proportionate shareholding in Inworld. In these circumstances, absent any sensible explanation for the transaction, I think that the directors must be regarded as again falling short of their obligations to exercise proper skill and care in the management of the affairs of Styland.

60. So far as the second complaint is concerned, the position in respect of this transaction is no different from that in relation to the entering into of the subscription agreement of 5 July 1999. I am therefore satisfied that by failing to make the necessary disclosures and seek the approval of Styland's shareholders for this transaction, the directors caused Styland to be in breach of rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules, and were therefore in breach of their duties of skill and care in this respect also.

B.1(4) Acquisition of a further 45 shares in Inworld

61. The fourth aspect of Styland's investment in Inworld of which complaint is made relates to Iwana's agreement on 31 August 2000 to acquire a further 45 shares in Inworld from Kevin Ngai for an effective consideration of HK$107,781,438.36, to be satisfied by setting off such consideration against the then outstanding balance of principal and interest owed by Kevin Ngai to Iwana under the HK$105,000,000 loan which Iwana had made to him.

62. The complaints made by the SFC in relation to this transaction are that:-

(1) The directors had again breached their duties of skill and care, as the transaction was not commercially justified, and did not seem to be in Iwana's or Styland's best interests, as the purchase price implied that the value of Inworld was about HK$2,400,000 per share – an amount more than four times the price paid by Kevin Ngai and Joyview some two and a half months previously, and more than double the valuation

implied by the reference to the number of shares taken as security for the loan in the first place.

(2) The directors had again breached such duties by failing, in breach of the Listing Rules, to disclose this transaction to Styland's shareholders, or to seek their consent for it, when such disclosure and approval was required because Kevin Ngai was a connected person for the purposes of the Listing Rules, not just by virtue of his relationship to Yvonne Yeung, but also because he had been appointed a director of another subsidiary of Styland called Styland Datareach Limited on 18 August 2000.

63. As to the first of these complaints, Mr Shieh submitted that having regard to the fact that the purpose of the transaction (according to the circular to shareholders of 11 September 2003) was to enable Styland, through Iwana, to become the largest single shareholder of Inworld, with a view to capitalising on the anticipated listing of Inworld on the Stock Exchange's Growth Enterprise Market (which did eventually happen), the objective of the investment was achieved. Further, he submitted that there was no evidence from the SFC to suggest that the 45 shares were not in fact worth the price paid for them. He submitted that in the light of these factors, it could not be said that the directors had fallen short of the standards of skill and care reasonably to be expected of them.

64. I do not agree. When one looks at the transaction, one is struck by the very high price paid for the Inworld shares, particularly by comparison with the earlier transactions to which I have referred. There had been nothing in Inworld's performance in the past year that provided

any reason for thinking that its value had increased to such an extent. There is no evidence from the directors to show what they took into account in coming to the conclusion that it would be appropriate to acquire these additional shares at this substantially increased price. The only material that they would appear to have had would have been the 13 July 2000 valuation from Chesterton Petty, which, for the reasons discussed in paragraph 50 above, was, in my view, not a satisfactory basis for concluding that the value of Inworld was as its management had asserted it to be. I am therefore satisfied that in relation to this transaction, too, the directors fell short of the standards of skill and care to be expected of them. Whether or not, as a result, Styland had suffered losses for which they should be held responsible is, I think, a separate question, of greater relevance in the context of considering whether or not Styland should be directed to bring proceedings against the directors for this breach of duty. The fact that Inworld was listed on the Growth Enterprise Market is not sufficient to exonerate the directors, as it says nothing about the value of Inworld at the time of the acquisition, or whether the directors had taken appropriate measures to satisfy themselves as to the terms on which the acquisition was made.

65. As to the second complaint, the directors did not dispute that, having regard to Kevin Ngai having become a director of Styland Datareach, he was a connected person for the purposes of the Listing Rules. However, Mr Shieh submitted that the failure to make the necessary disclosure and seek the necessary approval should be regarded as inadvertent, having regard to the fact that Styland Datareach was not a major subsidiary of Styland's so that his becoming a connected person would not have been obvious to the directors. However, none of the directors have come forward to give this explanation as an explanation,

and in these circumstances, I do not think that it should be accepted. In any event, Kevin Ngai was also a connected person for the reasons discussed in relation to the earlier transactions involving Inworld. I am therefore satisfied that in this respect too, the directors were in breach of their duties of skill and care towards the company.

B.1(5) The overall effect of the investments in Inworld

66. The net result of the investments in Inworld was that having paid a total of about HK$120,000,000 to acquire 71 shares in Inworld, Styland suffered a loss of over HK$93,000,000 on the investment, which was written down in its books to HK$16,120,345 by 31 March 2002. Although this was, by any measure, a substantial loss, as will be apparent from my discussion of the allegations above, the fact that such a loss was suffered is not a matter that I have taken into account in concluding that the directors were in breach of their duties to Styland, since it seems to me that in considering this question, the focus is not on what became of the investment after it was made, but on the circumstances in which, and process by which, it came to be made.

B.1(6) Shareholder loans to Inworld

67. Finally, in relation to the investment in Inworld, complaint is made of the fact that between 13 November 2000 and 10 September 2001, Iwana (funded by Styland HK) made shareholder's loans totalling HK$13,558,847 to Inworld, eventually having to write off some HK$5,280,000 of such loans in the course of a reorganisation of the Inworld group.

68. The SFC says that in making such loans, the directors again fell short of the standard of skill and care to be expected of them, because the loan was not the subject of any written loan agreement, and was not secured in any way, notwithstanding that the directors had themselves acknowledged in Styland's 2001 Annual Report that the economic environment for the high technology sector was unfavourable.

69. The justification put forward for the making of these advances was that there had been an agreement with Inworld's other shareholders that further working capital should be injected into Inworld if needed, on the basis of proportionate contributions from each shareholder. As to this, the SFC alleges that notwithstanding such an agreement, there was no evidence to suggest that any of Inworld's other shareholders had in fact provided any further capital injections to it at all.

70. The SFC also alleges that the Respondent directors were guilty of misconduct in failing to disclose the loans to Inworld, or to obtain shareholder approval for them, until well after the event (not until June 2003), notwithstanding that these were required pursuant to Rules 14.26(6)(a), 14.29(1) and 14.29(2) of the Listing Rules by virtue of Inworld's position as a connected party for the purposes of the Rules.

71. So far as the making of the loans is concerned, I do not think that there was serious mismanagement or misconduct by the Respondent directors. Given the substantial investment that had already been made in Inworld, it would, I think, be natural that Styland should seek to preserve the value of its investment by making further funding available if Inworld should need it. The fact that Inworld's other shareholders may have failed to honour their promises to contribute their proportionate shares of such funding does not seem to me to be a sufficient reason for Styland to

withhold such funding if it were required. I therefore do not regard the making of such loans as involving breaches by the directors of their duties of skill and care.

72. However, the making of the loans did constitute connected transactions which called for disclosure and shareholder approval under the Listing Rules. In failing to see to these matters, I am satisfied that the directors were, as in the other cases of failure to make disclosure and seek shareholder approval, in breach of those Rules, and consequently in breach of their duties of skill and care in relation to the management of Styland.

B.2 THE INVESTMENT IN CYBER WORLD

73. On 13 January 2000, Global Eagle Investments Limited ("Global Eagle"), an indirectly wholly owned subsidiary of Styland acquired 40 shares in Cyber World from Zelma's Company Limited ("Zelma") (representing a 40% interest in Cyber World), at a consideration of HK$148,000,000. At the time of the acquisition, Kevin Ngai was a director of Cyber World, while C S Yick was a director and shareholder of Zelma.

74. The SFC allege that the investment in Cyber World was a failure, as Styland had to write off some HK$91,762, 611 of its investment as an impairment loss in the financial year ending on 31 March 2002.

75. In relation to this transaction also, the SFC examined the flow of funds used by Styland to pay Zelma, and has established that part of the payment to Zelma for the Cyber World shares found its way to Kenneth Cheung, and that another part of the payment found its way to Styland

Finance, a subsidiary of Styland. The details of the relevant fund movements are as follows :-

(1) On 21 March 2000, Styland paid HK$39,000,000 to Zelma on behalf of Global Eagle as part of the purchase price. However, the next day, Zelma paid the same amount to Kenneth Cheung. On the same day as this payment was made (22 April 2000), a number of cheques in favour of Styland, totalling HK$35,345,694.94, were drawn on Kenneth Cheung's personal bank account into which the payment from Zelma was credited to pay for his costs of subscribing to a rights issue by Styland.

(2) On 30 March 2000, Styland made a further payment of HK$49,300,000 to Zelma on behalf of Global Eagle. Out of this payment :-

(a) Zelma paid $1,612,624 by cheque to each of Li Sui Hang and Chu Ching Kei, both of whom were employees of one of Inworld's subsidiaries, on 31 March 2000. The same day, each of them paid the same amount to Styland Finance. According to Li Sui Hang, this was done at the direction of Kevin Ngai.

(b) Also on 31 March 2000, Zelma made a payment of HK$16,284,042 to a company called Kingsway Investments Group Limited, which the following day paid a total of HK$5,863,874 to Styland Finance.

(c) Finally, also on 31 March 2000, Zelma paid HK$29,790,710 to a company called Extra Yield Resources Limited (of which C S Yick was the sole

director and authorised bank signatory), which the following day paid a total of HK$4,238,859 to Styland Finance.

No explanation for such payments could be found in the records of the companies concerned. Nor was any explanation provided by any of the Respondents.

76. There are two complaints in relation to this transaction :-

(1) First, that Kenneth Cheung, in breach of his fiduciary duties to Styland, received a personal benefit of HK$39,000,000 as a result of the transaction.

(2) Second, that having regard to the fact that Kenneth Cheung received HK$39,000,000 out of the consideration paid to Zelma, and the fact that over HK$13,000,000 found its way back to Styland Finance, the transaction was not at a proper consideration, and it followed that the Respondent directors were in breach of their duties of skill and care owed to Styland, since they evidently had not taken steps to ensure that the transaction was concluded at a proper price, the price self-evidently having been inflated by at least the amount of the payments to Kenneth Cheung and Styland Finance.

77. The movements of funds were established by the documentary evidence put forward by the SFC, and there was no suggestion that the SFC's allegations were incorrect. I am therefore satisfied that Kenneth Cheung did receive the amount of HK$39,000,000 out of the consideration paid by Styland for the Cyber World shares, and in doing so was in breach of his fiduciary duties to Styland, for the same reasons as I

have explained in relation to the payments received by him (directly or through companies controlled by him) in respect of the loan made by Iwana to Kevin Ngai.

78. I agree with Mr Jat that it follows from this that the inference can be drawn that the price paid for the interest in Cyber World was overstated, and that it can and should further be inferred that the Respondent directors failed, in breach of their duties of skill and care, to ensure that the price paid in respect of the investment was an appropriate one.

B.3 ACQUISITION OF ADDITIONAL SHARES IN KIPPTON AND INVESTMENT IN SHENG DA

79. As at 2000, Styland was (through its subsidiary Styland Infrastructure) the owner of a 49% interest in Kippton, which in turn owned 51% of Sheng Da, a company involved in the development and operation of a toll expressway in the PRC. In September and August 2000, Styland Infrastructure agreed to acquire a further 31% of Kippton's issued share capital for HK$46,581,430.60, while on 31 August 2000 another wholly owned subsidiary of Styland, Simplex Inc., acquired a debt of HK$15,835,008.40 owed by Kippton to another of its shareholders. Thereafter, at the end of September 2000, Styland Infrastructure acquired 4.68% of the share capital of Sheng Da for a total of HK$18,608,092.00.

80. As with the loan made by Iwana to Kevin Ngai, and the payment by Styland to Zelma of the consideration for the acquisition of the interest in Cyber World, a fund tracing exercise carried out by the SFC by reference to the books and financial records of the companies concerned has revealed that part of the consideration for these transactions found its

way to Kenneth Cheung, and that other parts of the consideration found their way back to companies in the Styland Group. The investigations by the SFC show that :-

(1) On 31 August 2000, Zelma (from whom Styland had acquired Cyber World) paid HK$43,800,000 to Styland Finance by cheque, which Styland Finance did not present for payment until 14 September 2000. Thereafter, on 18 September 2000, Styland Finance paid HK$43,750,000 to Styland HK.

(2) Meanwhile, on 6 September 2000, Styland HK made a payment of HK$54,416,439 to a company called Elephant Tusk Holdings Limited ("Elephant Tusk"), which was the nominated payee in respect of the Kippton share acquisition. Elephant Tusk's sole director and authorised bank signatory was Li Sui Hang, the employee in the Inworld who (as we have seen) was involved in other fund movements following acquisitions by the Styland Group. Having received this amount, Elephant Tusk made a payment of HK$19,526,339 to West Marton on 7 September 2000, of which HK$19,526,000 found its way to Zelma immediately afterwards by two separate payments – one from West Marton directly and another from West Marton via a company called Cyber Cycle Consultants Limited, of which Kevin Ngai was a director and authorised bank signatory). Elephant Tusk also made another payment of HK$19,969,045 to a company called Balaton Development Limited, whose authorised bank signatory was Alan Chan, the beneficial owner of Joyview. This payment was made on 7 September 2000, and was

immediately followed by a payment of HK$19,000,000 to Zelma.

(3) Thus, the payment by Zelma to Styland Finance referred to in sub-paragraph (1) above appears to have been substantially funded out of the payments made for the acquisition of the further interest in Kippton.

(4) Further, on 28 September 2000, Styland HK made a payment of HK$16,108,092 on behalf of Styland Infrastructure to Elephant Tusk, this time as nominated payee in respect of the Sheng Da acquisition. Two days later, on 30 September 2000, Elephant Tusk paid HK$15,980,000 to a company called Key Success Enterprises Limited, whose director and authorised bank signatory was Kevin Ngai. In turn, on 3 October 2000, Key Success paid HK$10,000,000 to KC (Investment) Limited, a company beneficially owned by Kenneth Cheung.

81. Having regard to these payments, the SFC contends that Kenneth Cheung was again guilty of a breach of his fiduciary duties to Styland by reason of his receipt of HK$10,000,000 out of the consideration paid by Styland for the acquisition of the interest in Sheng Da. Once again, the fund movements are not disputed by Kenneth Cheung, who has provided no explanation for them. I am therefore satisfied that in this respect, too, he was guilty of the breach of fiduciary duty complained of.

82. The SFC also alleges that the transaction by which the additional interest in Kippton was acquired was one which required to be disclosed to the shareholders of Styland pursuant to Rules 14.13(1) and (2) of the Listing Rules, as the audited consolidated net assets of Kippton

exceeded 15% of the audited consolidated net assets of Styland, so as to trigger the need for disclosure under those rules. In breach of those rules, the transaction was not disclosed at the time, and disclosure was only made in September 2003 at the request of the Stock Exchange, along with disclosure in respect of the other transactions of which disclosure was requested. That this involved a breach of the Listing Rules is not disputed by the Respondent directors.

B.4 SALE OF SHAREHOLDING IN GOLD CLOUD AND PAYMENT OF COMMISSION TO KENNETH CHEUNG

83. On 30 October 2000, Iwana sold 15 shares in Gold Cloud to Companion Marble (BVI) Limited ("Companion Marble") for a consideration of HK$38,000,000. Although there is no criticism of the commercial aspects of this transaction, Companion Marble was a connected person in relation to Styland, as it was an associate of a substantial shareholder of Kippton, in which Styland also had a significant indirect shareholding. The transaction was therefore a connected transaction, which required to be notified and disclosed to the shareholders, and shareholder approval to be obtained. However, in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules, these steps were not taken, and the transaction was not notified to the shareholders of Styland until September 2003, when this was done at the request of the Stock Exchange. The SFC therefore contends that there was, in this respect, a further breach of the Listing Rules for which the Respondent directors were responsible. The Respondents do not dispute that there was in this respect, a breach of the Listing Rules.

84. Further, nearly two years after the transaction took place, on about 22 August 2002, Iwana paid Kenneth Cheung HK$3,000,000 as a commission in respect of this transaction, ostensibly for having introduced Companion Marble to Iwana and for assisting in the negotiation of the transaction. At the time of the transaction, Kenneth Cheung was a director of Styland and of Iwana. However, he had resigned as a director of both companies by the time that the decision was taken to reward him for his alleged assistance.

85. Two complaints are made by the SFC in relation to this payment :-

(1) It is alleged that the payment was a connected transaction, as it involved a payment to a substantial shareholder of Styland, and hence required disclosure to the shareholders of Styland pursuant to Rule 14.25(1) of the Listing Rules. Despite this, the payment was not the subject of disclosure until about a year later, on 20 August 2003. There was no suggestion on behalf of either Yvonne Yeung or Miranda Chan that this was otherwise than a breach of the Listing Rules, and I accordingly find, as against them, that this complaint is established.

(2) The SFC also says that the payment to Kenneth Cheung was made in breach of duty on the part of the directors, as there was no justification for the payment. In support of this allegation, the SFC draws attention to the following matters: that there was no evidence of any agreement (whether written or oral) between Kenneth Cheung and Styland for the payment of such a commission; that the payment was not

resolved upon until some two years after the transaction had been concluded, whereas if it had been a payment which had been agreed upon, or thought to be justified, it is to be expected that it would have been paid at or around the time of the successful completion of the underlying transaction; that as a connected person in relation to Styland, Companion Marble would have been known to the company, and hence would not have required an introduction; that as Kenneth Cheung was a director of Styland at the time that the alleged services were performed, there was no reason why the services (if any) should be remunerated by an additional payment; and that there is no record of Kenneth Cheung having in fact done anything to merit the payment. In answer to these allegations, Mr Shieh was able only to suggest that the SFC had not put forward any evidence to suggest that Kenneth Cheung had not done anything to justify the payment being made. Again, given that Kenneth Cheung has chosen not to give any evidence in these proceedings, it seems to me that having regard to the circumstances relied upon by the SFC, it is appropriate to conclude that the payment was one that had no proper justification.

B.5 INVESTMENT IN WEST MARTON, AND DISPOSAL OF PART OF SUCH INVESTMENT

86. The next transaction of which complaint is made relates to Styland's investment in West Marton. On 5 August 2000, Data Store Investments Limited ("Data Store") an indirect wholly owned subsidiary of Styland, agreed to acquire 54 shares (representing 90% of the issued

share capital) in West Marton from Fu Tsin Man ("Raymond Fu") for a total consideration of HK$120,000,000. Raymond Fu was a high school classmate of both Kevin Ngai and Alan Chan (the beneficial owner of Joyview), and had previously been an employee of Inworld. A formal sale and purchase agreement was subsequently entered into on 10 October 2000.

87. At the time that the acquisition was agreed, West Marton had three wholly owned subsidiaries, one of which, New Great China Technology Holdings Limited ("New Great China") was represented by Raymond Fu to be worth about HK$323 million, although West Marton itself was not trading profitably at that time. The only material which the directors of Styland had when making the decision to invest in West Marton was a business plan and profit forecast provided by Raymond Fu, which was not the subject of independent professional consideration. It would seem from what is said about this transaction in the circular to shareholders of 11 September 2003 that the directors also had regard to the price that Iwana had paid for its acquisition of shares in Inworld.

88. Some 10 months later, on 10 August 2001, Data Store disposed of 18 of the 54 shares in West Marton, selling 6 shares to Kevin Ngai for HK$7,000,000 and 12 shares to Joyview for HK$14,000,000, thereby incurring a loss of HK$19 million (as the shares sold had been acquired for HK$40,000,000). In addition, at about the same time, the remaining investment in West Marton (a 60% shareholding acquired for HK$80,000,000) was written down in value to HK$24,000,000, after which there was a further write down to HK$8,000,000 as at 31 March 2002. Thus, apart from the loss on the sale of part of the shareholding, further losses of HK$72,000,000 were recognised in respect

of the investment in West Marton some 18 months after it was first acquired.

89. In relation to the investment in West Marton, the SFC makes two complaints. First, it is alleged that there was a further breach of the listing rules and failure to make proper disclosure or seek shareholder approval in respect of the disposal of part of the shareholding to Kevin Ngai and Joyview, which was required because both Kevin Ngai and Joyview were connected persons of Styland at the time of the sale to them. Despite this, disclosure of the transaction was not made until a year later, on 8 August 2002. It is not disputed that in these circumstances, there was a breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules, and I accordingly find this complaint to be made out. There is, however, no complaint of any breach of the Listing Rules in relation to the initial investment (although this was not in fact disclosed to the shareholders until well after the event), as the vendor, Raymond Fu, was not a connected person vis-à-vis Styland.

90. It is also alleged that the directors were guilty of serious mismanagement in relation to the investment in West Marton, having regard to their failure to obtain any independent professional valuation of West Marton before entering into the transaction, and having regard to the substantial losses which were incurred in respect of the investment within a fairly short time scale.

91. As to this allegation, Mr Shieh again submitted that having regard to the general market sentiment in favour of investments in information technology and internet companies, the directors should not be regarded as having fallen short of the standard of skill and care to be expected of them. He also submitted, as he did in relation to the Inworld

investment, that the fact that a loss was suffered was not of itself evidence of negligence on the part of the directors.

92. As I have indicated in relation to the Inworld transactions, I accept the latter submission. However, it seems to me that the directors were in this instance nonetheless well short of the level of skill and care that they could be expected to bring to bear in the management of Styland's affairs – given their own inexperience in the fields of business in which they were causing the company to invest, it was important for them to obtain independent professional advice or valuations in order to properly consider the merits of the investments. This they did not do. It was plainly insufficient for them to rely only on a business plan provided by the vendor of the shares as evidence of their value – at the very least, the business plan should have been the subject of suitable professional scrutiny. But this was not done. To have regard to the price that the Styland Group had paid for Inworld (which itself had not been properly considered, for the reasons which I have explained in relation to that transaction) was nothing to the point. Other than the fact that both Inworld and West Marton were to carry on internet related businesses, there was no reason why the value of the former should have any particular bearing on the value to be ascribed to the latter.

93. In these circumstances, I am satisfied that in this respect too, the Respondent directors fell well short of the standards that could be expected of them, and were accordingly in breach of their duties of skill and care owed to Styland.

B.6 INVESTMENT IN WELL PACIFIC

94. The final transaction of which complaint is made relates to the acquisition of a 35% interest in Well Pacific. By an agreement dated 29 August 2001, C S Yick agreed to purchase 35% of the issued share capital of Well Pacific for HK$40,000,000, paying a deposit of HK$500,000 in respect of the acquisition. Just over a week later, by a deed of novation dated 7 September 2001, C S Yick assigned to two wholly owned subsidiaries of Styland, Ever-Long and Iwana, his rights under the agreement he had entered into on 29 August 2001 for a consideration of HK$22,000,000. As a result, through its subsidiaries, Styland acquired a 35% interest in Well Pacific for HK$61,500,000 (the HK$22,000,000 paid to C S Yick under the novation agreement, plus HK$39,500,000 representing the balance of the purchase price of the shares payable under the initial acquisition agreement which had been novated to the two subsidiaries).

95. In coming to the decision to take up this investment, the directors again did not seek any independent professional advice as to the value of Well Pacific. However, they did have available to them a limited review report provided by the vendors of the shares, which had been prepared by Messrs Grant Thornton. This report was undated and described itself as a limited review of the businesses of Well Pacific's PRC subsidiaries. Although it was based on audited accounts in respect of such subsidiaries, it did not contain any valuation of Well Pacific itself.

96. Moreover, in relation to this transaction also, the SFC has discovered that the fund flows arising from it show that HK$19,886,658.45 of the consideration paid for the Well Pacific acquisition found its way back to Styland Finance. As to this, the SFC provided documentary

evidence to show that some HK$19,975,714 of the consideration for the acquisition was paid by Ever-Long to Mona Leung (who had earlier featured in the fund flows arising out of the HK$105,000,000 loan by Iwana to Kevin Ngai), who in turn paid a total of HK$19,900,000 to two companies, Detailed Decision Corporation and Profits Return Limited, both of which had as an authorised bank signatory a Mr Jerry Yip, a non-executive director of Styland between July 1999 and March 2003. These companies in turn made payments to Styland Finance, totalling HK$19,886,658.45.

97. Finally, it should be noted that this investment, too, was unsuccessful, as Styland made a provision of HK$21,500,000 in respect of its investment in Well Pacific as at 31 March 2002, and a further provision of HK$14,400,000 in respect of the investment as at 31 March 2003.

98. The complaint in respect of this transaction is that the directors once again fell short of the duties of skill and care to be expected of them in respect of their conduct of the business of Styland. The SFC suggests that the directors failed to carry out adequate due diligence when considering the investment, as they failed to obtain independent professional advice in relation to the value of Well Pacific, relying instead on the limited review provided by the vendors of the shares. The SFC also suggests that the fact that a sum of over HK$19,880,000 was channelled back to the Styland Group is an indication that the transaction was overpriced.

99. I accept these submissions. The fact that C S Yick had agreed to acquire the interest in Well Pacific for a substantially lower price very recently suggests that the price that the directors agreed to pay was an excessive one, particularly in the light of the movements of funds after the

transaction, that appear to show this overvalue having been channelled back to the Styland . Further, the failure to seek independent professional advice as to the value of Well Pacific (rather than simply relying on the information provided by the vendors) was, I think, negligent, given the directors' lack of experience in the areas of business to be operated by Well Pacific and its subsidiaries, and also in the light of the generally unsuccessful other investments made in this field up to this point, although the fact that the Grant Thornton review was apparently based on a review of audited accounts of the subsidiaries of Well Pacific, as opposed to figures provided entirely by the vendor, as in the case of the investments in Inworld and West Marton, makes the breach a somewhat less glaring one.

100. Further, in relation to the contention that the Respondent directors fell short of their duties of skill and care, Mr Jat made the point, which I think is a valid one, that the unexplained fund movements in respect of a number of the transactions with which these proceedings are concerned, frequently involving Kevin Ngai, Alan Chan/Joyview, C S Yick, other employees of Inworld, and persons associated with the Styland Group, which resulted in significant parts of the price paid for the investments returning to the Styland Group, is a matter that gives rise to concern as to the reasons for which such transactions were entered into, and is a further indication of the lack of skill and care exercised by the Respondent directors.

B.7 THE POSITION OF MIRANDA CHAN

101. Apart from adopting the submissions of Mr Shieh in answer to the SFC's complaints in relation to the individual transactions, Mr Wong, submitted that Miranda Chan's role within the Styland Group was very

different from that of Kenneth Cheung and Yvonne Yeung, and that this should lead to a different conclusion, so far as she was concerned, in respect of the allegations by the SFC. He suggested that it was possible to discern from the annual reports of the Styland Group that her role was more in relation to the textiles business and securities business, in respect of neither of which was there any complaint. He also suggested that Miranda Chan was not primarily responsible for investment decisions and was justified in relying on her fellow directors in respect of such decisions. In the circumstances, he suggested that she should not be found to have been guilty of misconduct such as would justify the making of orders against her under section 214(2) of the Ordinance.

102. However, as Miranda Chan did not give evidence at the hearing, her evidence in this respect is not in fact before the court. In any event, I do not think that these matters would provide any reason for deciding that she should not be held responsible for the matters complained of (other than those involving allegations of personal benefit, which are not made against her). As a director of Styland, she was just as much under an obligation to exercise skill and care in the conduct of the company's business, and to ensure that it complied with its obligations under the Listing Rules, as any other director, even if her particular area of responsibility for operational matters might have been somewhat more restricted. At best, these submissions go to the question of what penalty should be imposed, rather than providing a basis for escaping responsibility altogether.

B.8 OVERALL CONCLUSIONS IN RESPECT OF TRANSACTIONS COMPLAINED OF

103. Drawing these complaints together, I accept the SFC's submission that in respect of the personal benefits obtained by Kenneth Cheung from the loan by Iwana to Kevin Ngai, and the Cyber World and Kippton/Sheng Da transactions, and the payment of the alleged commission in relation to the sale of Gold Cloud was conduct amounting to defalcation towards Styland and its shareholders within the meaning of section 214(1)(b) of the Ordinance. It could, I think, also be characterised as misfeasance or misconduct within the meaning of the same subsection, and as conduct that was unfairly prejudicial towards Styland's shareholders within the meaning of section 214(1)(d). The same is true of the personal benefit obtained by Yvonne Yeung out of the loan to Kevin Ngai These are matters for which Kenneth Cheung and Yvonne Yeung are responsible.

104. Further, I accept the submission that the failures to exercise due skill and care in connection with the acquisitions of Inworld, Cyber World, West Marton and Well Pacific, whether by failing to obtain proper independent valuations or advice, or by entering into such transactions at overvalues, having regard to the fact that significant portions of the consideration paid for them found their way into the pockets of Kenneth Cheung and Yvonne Yeung, or back to the Styland Group for reasons which have never been explained, constitute misconduct or misfeasance towards Styland's shareholders within the meaning of section 214(1)(b), and that their mismanagement of the company in these respects amounts to unfairly prejudicial conduct within the meaning of section 214(1)(d). These are matters for which each of Kenneth Cheung,

Yvonne Yeung and Miranda Chan are responsible, in respect of the transactions entered into during their respective tenures as directors of Styland.

105. Finally, I am satisfied that having regard to the repeated failures to observe the provisions of the Listing Rules relating to the need to make disclosure, and where appropriate to obtain the approval of the shareholders of Styland for the transactions for which such approval was required, Styland's shareholders were not provided with all the information in respect of its business or affairs that they might reasonably expect, within the meaning of section 214(1)(c) of the Ordinance, and that these are matters for which each of Kenneth Cheung, Yvonne Yeung and Miranda Chan are responsible, in respect of such breaches as occurred during their respective tenures as directors of Styland. I do not think that the breaches of the Listing Rules should be regarded, as Mr Shieh suggested they should be, as minor or insignificant. The breaches of the rules were frequent and persistent, and having regard to the numerous connections and frequent involvement of the same actors in the various transactions which have been examined in these proceedings, they were clearly matters that should have been drawn to the attention of the shareholders.

106. That being so, the court's power to make orders under section 214(2) is engaged. Here, the SFC asks for disqualification orders to be made against each of Kenneth Cheung, Yvonne Yeung and Miranda Chan, pursuant to section 214(2)(d), for orders for compensation to be made against Kenneth Cheung and Yvonne Yeung in relation to the amounts received by them (personally or through companies beneficially owned by them) – HK$79,000,000 in the case of Kenneth Cheung and

HK$6,950,000 in the case of Yvonne Yeung – pursuant to section 214(2)(e) and orders for compensation to be made against Kenneth Cheung, Yvonne Yeung and Miranda Chan in respect of losses (said to exceed HK$300 million) suffered by Styland as a result of entering into the Inworld, Cyber World, West Marton and Well Pacific transactions, also pursuant to section 214(2)(e). In the alternative to the orders for compensation, the SFC suggested that orders should be made pursuant to section 214(2)(b), requiring Styland to bring proceedings against Kenneth Cheung, Yvonne Yeung and Miranda Chan.

C. WHETHER THE BREACHES OF DUTY HAVE BEEN RATIFIED

107. Before coming to the orders that might be made, there is, however, one final point that was made by Mr Shieh and Mr Wong against the making of any orders for compensation against Kenneth Cheung, Yvonne Yeung and Miranda Chan under these provisions. This was the submission that as the independent shareholders of Styland had voted at a meeting convened for the purpose to approve and ratify most of the transactions complained of. That having happened, it was contended that the consequence was that Styland could no longer pursue the directors for compensation on the basis of alleged breach of duty (whether fiduciary or of skill and care) on their part, and that if Styland itself could not bring any claim, it would not be appropriate for the court to make any order for compensation in its favour.

108. The way in which the ratification and approval of Styland's shareholders was sought was as follows.

109. On 3 June 2003, at the request of the Stock Exchange, Styland made an announcement in which it disclosed the initial acquisition of

36 shares in Inworld by Iwana, the loan facility of HK$105 million granted to Kevin Ngai by Iwana, the further acquisition of 45 shares in Inworld by Iwana, the grant of shareholder's loans to Inworld by Iwana, the acquisitions by Styland Infrastructure of the shareholdings in Kippton and Sheng Da, and the sale of the 15 shares in Gold Cloud to Companion Marble. It was stated that the failure to disclose these transactions earlier was inadvertent. The acquisition of Cyber World was also mentioned in the announcement, although it had in fact been disclosed to the shareholders as a major transaction, and approved by them, in 2000. The extent of provisions for impairment losses as at 31 March 2002 in respect of the investments in Inworld (over HK$93 million), Cyber World (over HK$91 million), West Marton (HK$72 million) and Well Pacific (HK$21.5 million) was also mentioned in the announcement.

110. Thereafter, on 11 September 2003, the company convened a Special General Meeting to be held on 29 September 2003, at which (among other things) the shareholders were to be given an opportunity to express their view on and (if thought fit) ratify certain of the transactions entered into. These transactions were those mentioned in the previous paragraph, and the acquisitions of the interests in West Marton and Well Pacific. In a circular to shareholders issued in connection with this Special General Meeting the Respondent directors admitted that they had been in breach of the Listing Rules in failing to disclose the transactions mentioned in the previous paragraph. Information in relation to the transactions, including reports from independent financial advisors expressing the view that the transactions entered into were justifiable, were also provided in the circular.

111. The Special General Meeting was initially adjourned to 29 October 2003. When it was reconvened, it was stated that Styland would appoint an independent committee to investigate the transactions sought to be ratified, and that the meeting would be further adjourned to enable the committee to look into the transactions and prepare a report, which would be provided to the shareholders, after which the shareholders would be asked to vote on the proposed ratifications. Although the independent committee produced a report in February 2004, the adjourned meeting was not reconvened until 29 April 2009, some five years later. This may have been because the company was, in the interim, involved in disciplinary proceedings initiated by the Stock Exchange in connection with the breaches of the Listing Rules which had taken place.

112. Prior to the meeting on 29 April 2009, a further circular was issued to the shareholders, in which the report of the independent committee was provided to the shareholders. The circular also referred to the fact that these proceedings had been commenced, and set out in an appendix to the circular a reproduction of all the allegations of wrongdoing contained in the petition. The circular indicated that the shareholders would be asked to approve and ratify the transactions identified – these did not include the disposal of shares in Inworld and West Marton to Kevin Ngai and Joyview, or the acquisition of Cyber World. Nor did they include the transactions by which part of the consideration for some of the transactions was ultimately paid over to Kenneth Cheung or Yvonne Yeung.

113. Although the allegations made by the SFC in these proceedings were fully set out in the circular, there was nothing in the circular to indicate that the company or the directors accepted that these

allegations were well-founded. On the contrary, the report of the independent committee stated that, having had the opportunity to question (among others) Yvonne Yeung and Miranda Chan (but not Kenneth Cheung), there was (contrary to what I have found to be the case) there was no evidence to show that any of the directors had personally benefitted from the transactions, and (also contrary to the conclusion that I have reached) that the directors had acted consistently with their duties of care and skill in deciding to enter into the transactions concerned. No reference was made in the circular (other than by disclosing the allegations in the appendix) to the fund flows which resulted in significant portions of the consideration for some of the transactions finding their way back to the Styland Group, or to Kenneth Cheung, companies beneficially owned by him, and to Yvonne Yeung. Nor was the involvement of Kevin Ngai, Joyview, C S Yick and individuals associated with them or with Styland itself in the fund flows made known.

114. The circular stated that the transactions in respect of which approval and ratification was sought had been completed, and that the position of the Styland Group in respect of them could not be restored, even if the resolutions proposed for their ratification were voted down. A similar statement had been made in the circular issued on 11 September 2003. The earlier circular also referred to advice from Styland's BVI lawyers, to the effect that a shareholder who had approved of the transactions at a general meeting might be stopped from making a claim against the company in respect of the transaction, and that any rights the shareholder might have to make a claim against the directors in respect of the transactions might be similarly affected by the shareholder's approval of the transactions.

115. In the event, at the meeting on 29 April 2009, holders of 22.78% of the issued shares of Styland voted. Of these shareholders, those holding 16.38% of the issued shares of Styland voted in favour of the resolutions, which were accordingly passed. Kenneth Cheung and Yvonne Yeung, who between them held some 21.38% of Styland's issued shares, did not vote on the resolutions. Shareholders holding in excess of 50% of Styland's shares took no part in the meeting.

116. In answer to the suggestion that the approval of the transactions for which approval was sought at the Special General Meeting of 29 April 2009 constituted an effective ratification of the transactions so as to waive any right of Styland to seek compensation from the directors, Mr Jat contended that:-

(1) In relation to the receipt of funds by Kenneth Cheung and Yvonne Yeung personally, this amounted to a misappropriation of the company's property, which was not capable of ratification by a majority of its shareholders (see *Cook v Deeks* [1916] AC 554 per Lord Buckmaster at pages 563-565; *Aveling Barford Ltd v Perion Ltd* [1989] BCLC 626 per Hoffman J at pages 630i-633c and *Forge v ASIC* (2004) 213 ALR 574 per McColl JA at paragraphs 371-377);

(2) In relation to the allegations of lack of skill and care, ratification by a majority of the shareholders would only be effective if the shareholders were fully informed of all material circumstances relating to the transactions which might affect their decision (see e.g. *Bamford v Bamford* [1970] 1 Ch 212, per Harman LJ at pages 237H-238B). This was not the case here, since the shareholders were not told that

there had been personal benefits obtained by Kenneth Cheung and Yvonne Yeung, and that there had been fund movements resulting in significant parts of the consideration for the transactions finding their way back to the Styland Group. Nor were they told of the involvement of a small number of individuals and companies (i.e., Kevin Ngai, Joyview, C S Yick and employees of theirs, or persons associated with Styland itself) in many of the transactions, either as counterparties, or by being involved in the flows of funds arising out of the transactions.

(3) Further, in order for a ratification to be effective to absolve a director from a breach of duty on his part, it was necessary for the shareholders to be informed of the nature and extent of the breach of duty, and that the purpose of the general meeting was to excuse the director from the breach (see e.g. *Kaye v Croydon Tramways Company* [1898] 1 Ch 358 per Rigby LJ at pages 372-374; *Winthrop Investments Ltd v Winns Ltd* [1975] 2 NSWLR 666 per Samuels JA at 684D-685E and Mahoney JA at 705F-706D; *Forge v ASIC (supra)* per McColl JA at paragraphs 390-402). This, too, was not the case here. There was no proper disclosure of the nature and extent of the breach, since there was no acceptance by the company that the directors had been in breach of duty at all, various materials being put forward to suggest that the transactions were appropriate and justified, and the report of the independent committee being in terms that were exculpatory of the directors. Moreover, it was not made clear to the shareholders that the purpose of the meeting was to excuse the

directors from their breaches of duty in the context of possible proceedings by the company, since it was suggested that nothing could be done to restore the company to its original position, and the shareholders were only told that a vote in favour of ratification might affect such claims as they personally might have against the directors.

(4) The ratification was ineffective because it was too late, not being obtained until 2009, some 10 years after the first of the transactions, and some five and a half years after the possibility of ratification was first mooted (*see Forge v ASIC (supra)* at paragraphs 385-389, per McColl JA).

117. In answer to these points, Mr Shieh submitted that :-

(1) Although the cases cited by Mr Jat did suggest that a misappropriation of company property was incapable of ratification, the better view was that this was not correct, and that misappropriations could be ratified in the same way as other breaches of duty, provided that the ratification was by the appropriate organ of the company – namely the shareholders at a meeting at which the alleged wrongdoers did not take part.

(2) While not disputing the principle that it was necessary for proper disclosure to be made of all material facts for the shareholders' consideration, the ratification was effective as the shareholders had been given full information as to the alleged breaches, since the allegations of the SFC in the petition were drawn to the shareholders' attention by being set

out in full in an appendix to the circular sent prior to the 29 April 2009 meeting.

(3) While not disputing the principle that the nature and extent of the breach, and the intention of absolving the directors from liability for breach of duty needed to be brought to the shareholders' attention, the ratification was effective because the nature and extent of the breaches of duty were made known in the same way, and because it must have been clear to the shareholders that the purpose of the resolutions proposed to be passed at the meeting was to absolve the directors from liability in respect of the transactions.

(4) There was no principle that delay could operate as a bar to ratification.

118. I am of the view that the resolutions passed at the Special General Meeting of 29 April 2009 did not have the effect of waiving such claims as Styland might have against the Respondent directors, so as to absolve them from any liability for their alleged breaches of duty.

119. So far as the misappropriation of funds arising from the receipt by Kenneth Cheung and Yvonne Yeung of part of the funds disbursed by the Styland Group as described earlier in this judgment is concerned, I take the view that the resolutions proposed and passed were not apt to release them from any claims that Styland might have against them in respect of such receipts. The resolutions were directed towards the transactions entered into by Styland, and not towards the receipt of funds by Kenneth Cheung and Yvonne Yeung personally. Even if (contrary to the conclusion which I reach below) such resolutions were effective to absolve them from any liability which might arise out of the

entering into of such transactions, they would not, I think, be effective to absolve them from liability for their receipt, without the knowledge or consent of the company and its shareholders, of part of the proceeds thereof for their own personal benefit. In order to achieve this, it would, I think, be necessary for the fact of such receipts to be disclosed, and specific approval for the retention of such benefits to be sought and obtained. This was not done. On the contrary, the report of the independent committee stated that there was no evidence of any personal benefit having been obtained by them as a result of the transactions. Although the SFC's allegations as to their receipt of such funds were set out, this was clearly on the basis that the validity of such complaints was not accepted, having regard to the conclusions of the independent committee.

120. The passing of the resolutions at the Special General Meeting therefore poses no bar to an order being made requiring Kenneth Cheung and Yvonne Yeung to disgorge such receipts. Nor does it pose any bar to an order being made (if it should be more appropriate to do so) requiring the company to bring proceedings against them for the purpose of recovering such receipts.

121. It is therefore not necessary to express a concluded view on the issue of whether or not such receipts of Styland's funds were capable of ratification at all. I would, however, acknowledge that there is considerable force to the contentions of Mr Shieh in this regard. Mr Shieh's argument was based on the proposition that notwithstanding the authorities cited by Mr Jat on this point, there were a number of authorities and academic opinions in favour of the view that even misappropriations of company property was capable in effect being ratified,

as it was possible for the company, acting by a resolution of its independent shareholders, to resolve not to bring proceedings in relation to such a breach, so as to prevent a fellow shareholder from bringing derivative proceedings on behalf of the company to complain of the wrongdoing (see *Prudential Assurance Co Ltd v Newman Industries Ltd* [1981] Ch 257 per Vinelott J at page 307 and *Smith v Croft* [1988] Ch 114 per Knox J at 183E-185F).

122. This conclusion as to the position in relation to the receipts by Kenneth Cheung and Yvonne Yeung does not, however, apply to the receipt by Kenneth Cheung of the HK$3,000,000 reward for his supposed role in the disposal of the Styland Group's shareholding in Gold Cloud. This was specifically referred to in the circular of 11 September 2003, and I would accept (as I think Mr Jat did) that it was at least arguable that ratification of this payment was sought along with ratification of the transaction itself.

123. But I am also satisfied that the resolutions were not effective to absolve the Respondent directors from their breaches of duty in relation to the entering into of the transactions complained of, and in respect of the commission paid to Kenneth Cheung. This is because I consider that the circulars did not fully disclose all the material circumstances which should have been made known to the shareholders so as to obtain their informed consent to the transactions. Nor was it made clear to the shareholders that the intention was to absolve the directors from any potential claim against them by Styland. In other words, I accept the submissions of Mr Jat recorded at paragraph 115(2) and (3) above.

124. Although Mr Shieh suggested that there had been adequate disclosure by virtue of the fact that the complaints of the SFC had been

brought to the attention of the shareholders by their being reproduced in an appendix to the supplemental circular sent shortly before the 29 April 2009 Special General Meeting, I do not consider that this was sufficient – as I have already stated, the report of the independent committee in effect contradicted the allegations, in stating that despite their investigations (which took place before the presentation of the petition, and which do not seem to have extended to interviewing or asking questions of Kenneth Cheung) they had found no evidence to suggest that any of the directors had personally benefitted from the transactions. There is nothing to suggest that any steps were taken to look into and consider the detailed allegations made in the petition, whether as to the receipts by Kenneth Cheung and Yvonne Yeung, or as to the fund flows, or as to the involvement of Kevin Ngai, Joyview and C S Yick in many aspects of the transactions. Nor was there any indication as to whether or not the allegations in relation to the fund flows had been considered and looked into. On the contrary, the inclusion of the report of the independent committee, made well before the presentation of the petition, without any qualification would give the (wrong) impression that the allegations in the petition were unjustified.

125. Had proper disclosure been made of these matters, they may well have influenced the shareholders in how to vote on the resolutions. It is one thing to say that the shareholders were willing to condone negligence on the part of the directors, but quite another to suggest that they would have done so had they been aware of the personal benefits obtained by some of the directors, and of the other odd features of the transactions.

126. Further, by stressing the fact that the transactions had already been completed, and that the voting down of the resolutions proposed could not restore the company to its original situation was also, I think, misleading, in that this ignored the possibility of Styland being able, not to unwind the transactions, but to obtain compensation for some (at least) of its losses from its directors. Nowhere in the circulars was it pointed out that Styland itself might have claims against the directors, and that the purpose of the resolutions was to absolve the directors from any such claims. To state (as was stated in the supplemental circular) that the shareholders voting in favour of the resolutions might thereby lose their rights of claim against the directors would not suffice. Although Mr Shieh suggested that this must have been intended and understood as indicating that the directors were to be absolved from liability in respect of the entering into of the ratified transactions, it seems to me that by drawing attention to the personal claims of shareholders (such as they might be), attention would be deflected from the possibility that the company itself could also have claims against the directors.

127. For these reasons, I do not think that the resolutions passed were sufficient to absolve the Respondent directors from liability for their breaches of duty in relation to the transactions complained of, and it is not necessary to consider whether such purported ratification was ineffective by reason only of the delay between the transactions and the purported ratification.

D. THE ORDERS SOUGHT BY THE SFC

128. I turn now to consider what orders should be made under section 214(2) of the Ordinance. The SFC seeks the following orders:-

(1) Disqualification orders under section 214(2)(d) against Kenneth Cheung, Yvonne Yeung and Miranda Chan;

(2) Orders under section 214(2)(e) requiring Kenneth Cheung and Yvonne Yeung to repay the amounts received by them (directly or through their beneficially owned companies) as a result of the fund movements that took place after the payments made by the Styland Group in respect of the transactions complained of;

(3) An order under section 214(2)(e) requiring Kenneth Cheung, Yvonne Yeung and Miranda Chan to compensate Styland for its loss and damage arising from the investments in Inworld, Cyber World, West Marton and Well Pacific, the making of loans to Inworld, and the sales of shares in Inworld and West Marton to Kevin Ngai and Joyview, such loss and damage to be ascertained at a separate hearing for their assessment;

(4) Alternatively to (2) and (3) above, an order under section 214(2)(b) requiring Styland to bring proceedings against Kenneth Cheung, Yvonne Yeung for payment of the amounts received by them, and against them and Miranda Chan for damages for the losses suffered by the Styland Group.

D.1 ORDERS FOR DISQUALIFICATION

129. So far as the making of disqualification orders is concerned, it is well established that the purpose of making such an order is not so much to punish errant directors, as to protect the public from companies being run by persons who are not fit to do so, and who pose a danger to creditors of and investors in companies (see *Re Lo Line Electric Motors Ltd* [1988]

BCLC 698, per Browne-Wilkinson V-C at page 703e). Deterrence of similar conduct on the part of directors of other companies is also an objective (see e.g. *SFC v Fung Chiu* [2009] 2 HKC 19 per Kwan J at paragraph 12).

130. Although the maximum period of disqualification is 15 years, the practice of the courts has been to divide this potential period into three tiers, designed to reflect the seriousness of the misconduct which has occurred. The lowest bracket of a period of up to five years disqualification is to be used in cases where there has been misconduct, which is not particularly serious. The middle bracket of six to ten years disqualification is to be used in cases of serious misconduct, while the top bracket of more than ten years is reserved for particularly serious cases, including cases of repeat offenders (see *Re Sevenoaks Stationers Ltd* [1991] Ch 164, followed in Hong Kong in *Re Regal Motion Industries Ltd* [2005] 1 HKLRD 461).

131. In the present case, Mr Jat submits that so far as Kenneth Cheung and Yvonne Yeung are concerned, the case should be regarded as being of a particularly serious nature, having regard especially to the fact that they have personally enriched themselves at the expense of the company. Mr Jat also submitted that the way in which they had conducted the affairs of Styland and its subsidiaries was highly unsatisfactory and fell well short of the standards to be expected of them, and had also displayed a serious disregard for their obligations to provide the shareholders with information as required by the Listing Rules. He therefore submitted that a disqualification order falling within the top bracket was justified.

132. Mr Shieh, however, submitted that the failures in relation to the investments should be viewed as less serious, having regard to the general market background of enthusiasm for internet based business investments at the time, and the fact that Styland remained profitable nonetheless, paying regular dividends to its shareholders. He suggested that the failures of disclosure were not particularly serious, particularly as there was no intention to hide the transactions from the shareholders (some announcements in respect of various aspects of the transactions having been made promptly). As to the failure to inform the shareholders of the connected nature of certain transactions he suggested that this was due to a misapprehension as to whether or not Kevin Ngai, as a nephew of Yvonne Yeung, was a connected person, and also contended that the fact that the status of Companion Marble as a connected person for the purposes of the Gold Cloud transaction was far from obvious. He also stressed the fact that Kenneth Cheung and Yvonne Yeung had built Styland into the successful company that it had become. He pointed out also that neither of them had previously been the subject of any disqualification order.

133. In my view, had the complaints against Kenneth Cheung and Yvonne Yeung been limited to those involving mismanagement and failures to comply with the listing rules, the case would have involved serious misconduct, but not so serious as to fall within the top bracket. However, the fact that they received substantial sums (HK$79,000,000 in the case of Kenneth Cheung and HK$6,950,000 in the case of Yvonne Yeung) from the Styland Group's funds takes the case into the top bracket. I do not think that this aspect of the matter can be regarded as mitigated by their efforts to build up the Styland Group, or by the fact that the group has remained generally profitable. The obtaining of personal benefits by directors from company funds, without disclosure and informed consent

from the shareholders is a serious matter, and justifies the making of a lengthy disqualification order, and I consider that disqualification for a period of 12 years would be appropriate.

134. So far as Miranda Chan is concerned, Mr Jat submitted that an order for disqualification in the middle bracket, at least, was called for.

135. Mr Wong, for Miranda Chan, submitted that having regard to the fact that she received no financial benefit from the transactions (unlike Kenneth Cheung and Yvonne Yeung) and to her role in the company (as to which see paragraphs 100 and 101 above) her culpability was significantly less than that of Kenneth Cheung and Yvonne Yeung. I accept that this was the case. However, it seems to me that the failures on her part were nonetheless serious ones. She made no attempt to exercise any independent judgment on the transactions of which complaint is made, or to suggest or insist on appropriate independent advice being received. She was, I think, no less culpable than the other directors in respect of the failure to comply with the Listing Rules. While it might be that her position and role within the group was more limited, it was nonetheless important for her to carry out her responsibilities as a director of the company, and in this she failed.

136. In all the circumstances, I consider that her position is broadly similar to that of Steven Li, against whom a six year period of disqualification was ordered. However, unlike Steven Li, who accepted the allegations against him, and agreed to have the proceedings against him disposed of by the *Carecraft* procedure, Miranda Chan resisted the application throughout and has never accepted that the allegations against her were justified. Taking this into account, it seems to me that the appropriate period of disqualification to be ordered against her would be

just below the mid-point of the middle bracket, and I consider that disqualification for a period of 7 years would be appropriate.

137. The precise terms of the orders to be made are set out at the end of this judgment.

D.2 ORDERS FOR PAYMENT OF COMPENSATION IN RESPECT OF MISAPPROPRIATIONS

138. Turning to the question of an order for repayment by Kenneth Cheung and Yvonne Yeung of the sums obtained by them, although the making of such an order is not expressly mentioned in section 214(2)(e) of the Ordinance, Mr Shieh accepted that as a matter of jurisdiction, the court had power to make such an order as being an "other order as [the court] considers appropriate" under the "or otherwise" limb of that subsection, on the basis that the terms of the provision are very similar to the comparable provisions in section 168A of the Ordinance, in respect of which the Court of Final Appeal has held that the section was designed to provide the court with a high degree of flexibility in terms of the remedies which it might provide, so that in an appropriate case, a order requiring payment to be made to the company could be made pursuant to that section (see *Re Chime Corporation Ltd* (2004) 7 HKCFAR 546).

139. As I am satisfied, for the reasons which I have explained, that all such receipts constituted defalcations and breaches of duty on the part of these directors, and the amount involved is readily ascertainable, it is appropriate to make orders against them requiring them to repay such sums to Styland. I shall accordingly order that Kenneth Cheung is to repay to Styland a total of HK$79,000,000 with interest, and that Yvonne Yeung is to repay to Styland a total of HK$6,950,000 with interest. Interest is to

run from the time of each receipt on the amount so received, at a commercial rate of 1% over the prime lending rate published by the Hongkong and Shanghai Banking Corporation Limited.

140. Again, the precise terms of the order to be made in this respect are set out at the end of this judgment.

D.3 ORDER FOR PAYMENT OF COMPENSATION OR FOR STYLAND TO BRING PROCEEDINGS IN RESPECT OF INVESTMENT LOSSES

141. This leaves the question of compensation for the losses suffered by Styland in respect of the transactions mentioned in paragraph 105 above. As to these, although there is, I think, power to make an order for the payment of compensation pursuant to section 214(2)(e), it seems to me that where the amount of compensation to be paid is not readily ascertainable, the court should not make such an order.

142. Although Mr Jat has suggested that an order for an inquiry as to the loss and damage suffered by the company should be ordered, I do not regard this as the appropriate course to take, since there are many steps that will need to be taken before such an inquiry could be conducted – for example, it will be necessary for the losses to be particularised and quantified, and for evidence as to the quantum of such losses to be obtained, raising questions of discovery and possibly also expert evidence. These are not steps that would be most suitably undertaken by way of an inquiry as to damages prosecuted by the SFC. In general, it seems to me that where there is a need to ascertain the damages that a company has suffered by reason of breaches of duty amounting to misfeasance, misconduct or defalcation, it would be preferable for this to be done, if it is

to be done at all, by making use of the power to order the company to bring proceedings under section 214(2)(b).

143. I turn therefore to consider whether or not such an order should be made. Mr Dennis Law, for Styland, submitted that it should not, and that it should be left to the company to consider whether or not it was desirable to bring such proceedings, in the light of all the circumstances. He suggested that even if it were found that the directors had fallen short of the standards to be expected of them, there were a number of factors that the company should consider before bringing proceedings, such as :-

(1) The long lapse of time between the underlying transactions and any proceedings that Styland might commence;

(2) The likelihood of success and the likely level of damages or compensation that might be achievable;

(3) The ability to enforce any judgment that might be obtained against the directors; and

(4) The costs of any such proceedings.

144. The lapse of time since the underlying transactions were entered into is, I think of some relevance. I would not regard it as a particularly strong reason against the bringing of proceedings in terms of the ability to establish liability in respect of the claims that could be brought, having regard to the fact that this aspect of the matter has been dealt with in these proceedings, to which the directors and the company were parties. However, it is possible that questions of limitation, which have not been considered in these proceedings, might arise, and it will be necessary for the company to consider the likelihood of such a defence being successfully run against it if proceedings were brought.

145. So far as the likelihood of success is concerned, again, it seems to me that the outcome of these proceedings will mean that the directors would have difficulty in contending that they were not in breach of their duties towards Styland. However, the position in relation to the level of damages or compensation that might be recoverable is far less clear. Although Styland clearly incurred substantial losses as a result of having entered upon the investments in Inworld, Cyber World, West Marton and Well Pacific, judging by the impairment losses that it recognised in respect of such investments, it may well be open to the directors to contend that not all of such losses are attributable to their breaches of duty, in that some part of the losses may have been due to a general fall in the market for shares in companies involved in information technology and internet related businesses in the two or three years after the investments were made, for which they should not be held responsible. Further, insofar as a claim against them might be based on having overpaid for the investments on the basis of the fund flows established by the SFC, a not insignificant part of the overpayment would be recovered as a result of the order which I have made requiring Kenneth Cheung and Yvonne Yeung to repay to Styland the sums received by them. Further, in relation to the funds which found their way back to the Styland Group, which again represented a significant proportion of the losses incurred, the repayment of such funds to the group might well mean that the actual losses incurred were considerably further reduced. It is fair to say that the exercise of ascertaining and proving the losses which might have been suffered as a result of the directors' breaches of duty will be a far from simple one.

146. The likelihood of being able to successfully enforce any judgment that might be obtained is also a relevant factor, as is the fact that

the company will have to incur costs in bringing any proceedings against the directors.

147. Taking all of these uncertainties into account, I do not think that it would be appropriate to insist on the company bringing such proceedings. It will therefore be for the company to consider, having obtained legal advice on the matter in the light of this judgment, whether or not it would be in its interests to bring such proceedings, and I do not make any order under section 214(1)(b) requiring it to do so.

E. DISPOSITION AND COSTS

148. I shall therefore make the following orders in respect of these proceedings:-

(1) The 1st and 2nd Respondents shall not, for a period of 12 years to take effect from 21 days after the date of this order, without the leave of the court:-

(a) be, or continue to be, a director, liquidator or receiver or manager of the property or business of any listed or unlisted company in Hong Kong, including the 5th Respondent or any of its subsidiaries and affiliates; and

(b) in any way directly or indirectly be concerned, or take part, in the management of any listed or unlisted company in Hong Kong, including the 5th Respondent or any of its subsidiaries and affiliates.

(2) The 4th Respondent shall not, for a period of 7 years to take effect from the 21st day after the date of this order, without the leave of the court:-

(a) be, or continue to be, a director, liquidator or receiver or manager of the property or business of any listed or unlisted company in Hong Kong, including the 5th Respondent or any of its subsidiaries and affiliates; and

(b) in any way directly or indirectly be concerned, or take part, in the management of any listed or unlisted company in Hong Kong, including the 5th Respondent or any of its subsidiaries and affiliates.

(3) The 1st Respondent do pay to the 5th Respondent:-

(a) The sum of HK$39,000,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 22 March 2000 to the date hereof, and thereafter at judgment rate until payment;

(b) The sum of HK$25,000,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 9 May 2000 to the date hereof, and thereafter at judgment rate until payment;

(c) The sum of HK$2,000,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 7 July 2000 to the date hereof, and thereafter at judgment rate until payment;

(d) The sum of HK$10,000,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 3 October 2000 to the date hereof, and thereafter at judgment rate until payment;

(e) The sum of HK$3,000,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 22 August 2002 to the date hereof, and thereafter at judgment rate until payment;

(4) The 2nd Respondent do pay to the 5th Respondent the sum of HK$6,950,000 with interest thereon compounded annually at the rate of 1% above HSBC's prime rate from 7 July 2000 to the date hereof, and thereafter at judgment rate until payment;

149. So far as costs are concerned, I shall make orders *nisi* that the costs of these proceedings are to be paid by the 1st, 2nd and 4th Respondents to the Petitioner, to be taxed on the party and party basis if not agreed, and that so far as the 5th Respondent is concerned, there is to be no order as to costs.

(Aarif Barma)
Judge of the Court of First Instance
High Court

Mr Jat Sew Tong SC leading Mr Mike Lui, instructed by Securities and Futures Commission, for the Petitioner

Mr Paul Shieh SC leading Ms Phoebe Man, instructed by Fred Kan & Co, for the 1st & 2nd Respondents

Fairbairn Catley Low & Kong, for the 3rd Respondent, absent

Mr Wong Chao Wai Brian, instructed by Simon Si & Co, for the 4th Respondent

Mr Dennis Law, instructed by D S Cheung & Co, for the 5th Respondent