THE COMMITTEE ON TAKEOVERS AND MERGERS

IS A COMMITTEE OF THE

SECURITIES AND FUTURES COMMISSION

AND IS RESPONSIBLE FOR ADMINISTERING THE

HONG KONG CODE ON TAKEOVERS AND MERGERS

DECISION OF THE
COMMITTEE ON TAKEOVERS AND MERGERS
IN THE MATTER OF
JADEMAN (HOLDINGS) LIMITED

HONG KONG

10 OCTOBER, 1990

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Notice of Hearing and Allegations

The Committee on Takeovers and Mergers (the "Committee") met on 17 and 18 September, 1990 (the "Hearing"), to consider allegations made by Anglo Chinese Corporate Finance, Limited ("Anglo Chinese") on behalf of Jademan (Holdings) Limited ("Jademan" or "the Company"). The notice convening the Hearing (the "Notice of Hearing") referred to the submission dated 31 July, 1990 received from Anglo Chinese on behalf of Jademan, containing a number of allegations. The Notice of Hearing informed the parties that the Committee intended to consider whether :

(i) the following parties (the "Alleged Concert Party") had acted in concert to consolidate control of Jademan within the meaning of the Hong Kong Code on Takeovers and Mergers (the "Code") :

- Mr Tony Wong Chun Loong ("Mr Wong")
- Ms Sally Aw Sian ("Ms Sally Aw")
- Companies controlled by Ms Sally Aw (hereinafter referred to as the "Sing Tao Group" and together with Ms Sally Aw, referred to as the "Sing Tao/Aw Interests") and, if so,

(ii) whether the members of the Alleged Concert Party should be required to make a mandatory offer pursuant to Rule 33 of the Code for all of the shares of Jademan not already owned by them and, if so,

(iii) the price at which such offer for the shares should be made.

The Hearing conducted by the Committee was convened pursuant to Procedural Rule 4 of the Code. The Committee has the power to regulate its own procedures in respect of any hearing, and the Notice of Hearing appended details of the procedures to be adopted. The procedures were aimed at preserving the informality and the privacy of Committee proceedings, whilst ensuring an efficient and expeditious consideration of the allegations.

Procedural Rules

In establishing procedures, the Committee was concerned to have regard to the rules of natural justice and to ensure that all parties to the proceedings were treated fairly.

All parties were advised that they could bring with them to the Hearing any advisers they wished and that such advisers would be permitted to be present throughout the Hearing. Opening and closing submissions could be made by a party or its financial adviser. Any party wishing to present its case in some other manner was required to seek the prior consent of the Committee Chairman, which consent would only be given in exceptional circumstances. All of the parties accepted and followed the established procedures.

The procedures adopted by the Committee permitted all parties to be present throughout the Hearing to hear all evidence and to view all written documentation submitted to the Committee. However, where it appeared that there might be commercial sensitivities, the Committee reserved the right, in exceptional circumstances, to receive evidence in the absence of some, or

all, of the parties involved. The Committee decided to hear the evidence of the Canadian Imperial Bank of Commerce ("CIBC") and of Mr Tony Zie, accompanied by his legal adviser from Herbert Smith, in the absence of all of the parties for the reasons stated later in this decision.

Written Submissions

Prior to the Hearing, the Committee and the parties to the proceedings received copies of written submissions from :

- Anglo Chinese on behalf of Jademan;
- Peregrine Capital Limited ("Peregrine") on behalf of Ms Sally Aw and the Sing Tao Group;
- Lovell White Durrant on behalf of Ms Sally Aw; and
- Mr Wong.

In addition to the above written submissions, the Committee and the parties to the proceedings received, from time to time, written material from the Securities and Futures Commission (the "SFC" or "Commission") containing, among other things, correspondence between the Commission and the parties. This documentation was obtained by Corporate Finance staff of the Commission in the course of preliminary inquiries into the allegations on behalf of the Chairman and during the course of the Hearing.

Parties and Advisers

The Committee heard oral submissions and questioned parties on all relevant matters pertaining to the allegations. The parties were also given the opportunity to call witnesses, to question the other parties and to raise any matters which they considered had not been dealt with adequately by the Committee.

The Committee heard evidence from representatives of CIBC concerning the loan arrangements between CIBC and the Sing Tao/Aw Interests in the absence of the parties. The evidence of CIBC was considered to be commercially sensitive.

The Committee also decided to hear evidence from Mr Tony Zie and his solicitor, Mr Parkes of Herbert Smith, on a peripheral matter. This related to statements made concerning Mr Zie, Mr Lam Kin Ming and Tabor Incorporated (collectively "Tabor") that Tabor may have incurred an obligation to make a mandatory offer for Jademan as a result of the Tabor Agreements referred to in Appendix I. Much of Mr Zie's evidence concerned legal advice given to him which raised issues of professional privilege. The evidence given by Mr Zie and Mr Parkes was not relied upon by the Committee in any way in reaching its decision.

Chronology of Events

Attached hereto as Appendix I is a memorandum containing a description of the chronology of events (the "Chronology") which is relevant to the matters in issue. Unless otherwise defined, capitalized terms used in this decision shall have the meanings ascribed to them by the Chronology.

Preliminary Issue - Appointment and Removal of Jademan Directors

Before proceeding to hear opening submissions from the parties on 17 September 1990, the Committee, at the request of Anglo Chinese, proposed to consider whether, in the light of Rule 33(6) it should determine whether the Alleged Concert Party should be permitted to exercise its voting rights on resolutions for the removal of the existing directors and appointment of new directors to the Jademan board before a determination was reached on the issues which were the subject of the Hearing (the "Issues"). Peregrine requested that consideration by the

Committee of the exercise of voting rights and the application of Rule 33(6) be deferred until 18 September 1990. The Committee concluded that it would defer hearing oral submissions on this issue until 18 September 1990 on the basis that a decision on the appointment of directors would follow from a decision on the Issues. The decision on the Issues would effectively clarify the parties' positions regarding exercising their voting rights under the Code.

In the event, the hearing was concluded on 18 September 1990 and the Committee determined on 19 September 1990 that a concert party did exist and that a mandatory offer pursuant to Rule 33 should be made. That being so, the Committee concluded that Rule 33(6) of the Code became operative. Rule 33(6) requires that :

> **Except with the consent of the Committee, no nominee of the offeror or persons acting in concert with it shall be appointed to the board of the offeree company, nor shall the offeror and persons acting in concert with it transfer, or exercise the votes attaching to, any shares held in the offeree company, until the offer document has been posted.**

Therefore, in accordance with Rule 33(6) of the Code, the Alleged Concert Party members were not permitted to exercise the voting rights attaching to their shares, except with the prior consent of the Committee, until an offer document was posted.

The Concert Party Allegation

This allegation involved a consideration of the following definitions and provisions of the Code :

General Principle 1

Any person engaged in takeover or merger transactions should observe the spirit as well as the precise wording of the General Principles and the Rules. Since it is impracticable to devise detailed rules to cover all circumstances, the spirit will apply in areas or circumstances not explicitly covered by any General Principle or Rule.

General Principle 3

When control of a company is acquired, it is normally required that, as soon as practicable thereafter, the controlling shareholder(s) should extend to other shareholders of the same class an offer on terms no less attractive than the highest price paid for shares purchased by the controlling shareholder(s) within the six months prior to acquiring control. If there is more than one class of equity share capital, a comparable offer should be made to holders of the other classes of shares. If a general offer is not made, it should be clearly demonstrated to the satisfaction of the Committee that to make such an offer would be unnecessary or unreasonable, or that there are other circumstances which would justify such an offer not being made. Reference in this regard should be made to Rule 33 hereof.

Acting in concert

Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition by any of them of securities in a company, to obtain or consolidate control (as defined below) of that company.

Without prejudice to the general application of this definition the following persons will be presumed to be persons acting in concert with other persons in the same category unless the contrary is established :

a company, its parent, subsidiaries and fellow subsidiaries, and their associated companies, and companies of which such companies are associated companies, all with each other. For this purpose ownership or control of 20% or more of the equity share capital of the company, combined with the ability to exercise a significant influence over the company, will be regarded as the test of associated company status.

Control

Control shall be deemed to mean a holding, or aggregate holdings, of shares carrying 35% or more of the voting rights of a company, irrespective of whether that holding or holdings gives de facto control.

Rule 33(1)

Further to General Principle (3) hereof except with the consent of the Committee, where

(a) any person acquires, whether by a series of transactions over a period of time or not, shares which (taken together with shares held or acquired by persons acting in concert with it) carry 35% or more of the voting rights of a company; or

(b) any person who, together with persons acting in concert with it, holds not less than 35% but not

> more than 50% of the voting rights and such person, or any person acting in concert with it, acquires in any period of 12 months additional shares carrying more than 5% of the voting rights,
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> such person shall extend an offer on the basis set out below to the holders of any class of share capital which carries votes and in which such person or persons acting in concert with it hold shares. In addition to such person, each of the principal members of the group of persons acting in concert with it may, according to the circumstances of the case, have the obligation to extend an offer. A comparable offer shall be extended to the holders of any other class of equity share capital whether such capital carries voting rights or not.

The Committee also considered the Practice Notes used in conjunction with the Code and, in particular, noted paragraph 2 of Practice Note 2 which reads :

> PRACTICE NOTE 2(2)
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> Shareholders coming together to act in concert
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> Acting in concert requires the co-operation of two or more parties. Where a party has purchased shares without the knowledge of other shareholders or potential shareholders, but subsequently joins together with other shareholders to co-operate to obtain or consolidate control of a company and their existing shareholdings amount to 35 per cent or more of that company, the Committee would not normally require a general offer to be made under Rule 33. Such parties having once joined together, however,

the provisions of Rule 33 would apply so that

(a) if the combined shareholdings amounted to less than 35 per cent of that company, an obligation to make an offer would arise if any member of that group bought further shares so that the total shareholdings reached 35 per cent, or

(b) if the combined shareholdings amounted to between 35 per cent and 50 per cent of that company, no member of that group could buy shares which would result in the purchases of the group amounting to more than 5 per cent of the company in any 12 month period without incurring a similar obligation.

Evidence

The Committee received evidence of a complicated series of events occuring between early in 1989 until August 1990.

Investment by the Sing Tao Group in Jademan

The Committee noted the original acquisition by Endellion Limited of 169,256,000 shares and 374,202,000 warrants of Jademan representing 29.6% and 50.28% of the issued share capital and 1998 warrants respectively. In evidence presented by Ms Sally Aw and other representatives of the Sing Tao Group, the Committee learned that Endellion's investment in Jademan was acquired during February to April 1989 with the intention of gaining a shareholding that could be used to exert significant influence over Jademan in order to realise synergies between the operations of the Sing Tao Group and of Jademan that management believed could be achieved.

According to its written submission and evidence presented at the Hearing by Peregrine, a representative of the Sing Tao Group

had approached the financial advisers to The Spaceman Limited ("Spaceman"), during the Spaceman offer for Jademan, with a proposal that Sing Tao step into Spaceman's shoes as offeror. The approach was rejected. Later, during June/July 1989 (Peregrine was unsure of the precise date) discussions took place between the Sing Tao Group and Standard Chartered Bank ("SCB") regarding the possibility of the Sing Tao Group redeeming 110,818,000 shares, representing 19.4% of the issued capital of Jademan, which were beneficially owned by Mr Wong and pledged to SCB as collateral for loans advanced to Mr Wong. Nothing materialized from these discussions because, according to Peregrine, SCB subsequently informed the Sing Tao Group that Mr Wong had presented them with satisfactory redemption proposals of his own. Peregrine also gave evidence that discussions had also taken place during this period between the Sing Tao Group and James Capel, another secured lender to Mr Wong, but never proceeded as far as those held with SCB. The Committee deduced from these events an intent on the part of the Sing Tao Group to obtain control of Jademan early in 1989.

The Committee heard evidence from Peregrine that the rationale for the original investment by the Sing Tao Group in Jademan was that the Sing Tao Group had substantial trading experience in the publication business and had made its investment with a view to acquiring a strategic holding in Jademan through which its influence could be brought to bear on the publication business of Jademan.

When questioned by Anglo Chinese, Peregrine responded that the influence sought by the Sing Tao Group was representation on the Jademan board.

Ms Sally Aw, in response to a question by the Committee concerning the time discussions first took place with Mr Wong about representation for the Sing Tao Group on the Jademan board replied :

> **"We have never had any discussions with Mr Wong regarding this. Before we got the business, how can we discuss with Mr Wong? How are we going to? We started purchasing because there was a synergy between Sing Tao's operation and Mr Wong, that is why we thought we would buy the block. But before we got control, I mean, not really control, we run the business, we cannot talk of any other business that we can work with at this stage. Until we can really sit down and talk, we haven't discussed anything with Mr Wong at all."**

The accumulation of Jademan shares and warrants by the Sing Tao Group ceased on 20 April, 1989, the date that Jademan's shares and warrants were suspended from trading on the Stock Exchange. The suspension of Jademan's shares and warrants and the subsequent appointment of an Inspector by the Financial Secretary to examine the Company's affairs effectively interrupted the Sing Tao Group's plans regarding its investment in Jademan.

The Tabor Agreements

The Committee, although it did not consider it to be an issue central to the Hearing, nevertheless examined the position of Tabor in relation to the Tabor Agreements to fully acquaint itself with the background to this matter.

On 4 June 1990, Tabor became sole mortgagee over all of the Mortgaged Shares by redeeming the shares previously mortgaged to James Capel. Tabor had previously, during May 1990 and during August 1989 respectively, redeemed shares from Liu Chong Hing Bank and from SCB. The Committee noted that as sole mortgagee, Tabor was theoretically on June 4 entitled to exercise all of the votes attaching to the Mortgaged Shares, but that on the same day, Mr Wong applied to the Court for an injunction to prevent Tabor from exercising the voting rights attaching to the Mortgaged Shares.

The Sing Tao Group Loan Arrangements with Mr Wong

February 1990

The Committee heard evidence that negotiations between Mr Wong, Ms Sally Aw and the Sing Tao Group first began during February 1990. The subject matter of these negotiations was to consider the terms and conditions upon which the Sing Tao/Aw Interests might be prepared to assist in financing the redemption by Mr Wong of the Mortgaged Shares. The negotiations apparently foundered in mid-February and no agreement was reached.

April 1990

In mid-April 1990, James Capel instituted Court proceedings with a view to realising its security over part of the Mortgaged Shares representing approximately 19.4% of Jademan's issued share capital. In its submissions, Peregrine stated that Ms Sally Aw and the Sing Tao Group determined that their commercial interests would be best served by offering to purchase the James Capel shares. Initial commitments were entered into with Mr Wong on 16 April 1990 for this limited purpose, but Messrs Lam and Zie, and Tabor opposed both the purchase of the James Capel position by Ms Sally Aw and the Sing Tao Group and the redemption by Mr Wong of the shares subject to the James Capel charge.

The 16 April, 1990 commitments were subsequently replaced on 27 April, 1990 by a facility letter, deed of charge and undertaking in relation to voting entered into between Arbus and Mr Wong. Details are included in Appendix I.

The April Facility Agreement was conditional on appropriate variation of the Mareva Injunction, the application for which at first was refused by the Court, but was appealed. Peregrine submitted that during the Court of Appeal hearing, Mr Wong suggested that there would be a better chance of success if the financing were to be put on a basis which matched as far as possible the 10 August 1989 arrangements entered into with Tabor.

Although the April Facility Agreement between Mr Wong and Arbus was subsequently revoked and replaced in its entirety by the June Facility Agreement, the Committee considered that the arrangements were evidence of an understanding or agreement reached between Mr Wong, Ms Sally Aw and the Sing Tao Group to obtain control over Jademan and secure control of its board of directors.

June 1990

The Committee examined the terms and conditions of the June Facility Agreement. The facility letter provided for the loan to be recalled by giving 7 days prior written notice. Mr Wong provided, in the facility letter, an irrevocable and unconditional undertaking to execute the loan and security agreements attached to the letter at such time as the Mareva Injunction against him would permit. A provision of the unexecuted security document stipulated that the voting rights attaching to the Mortgaged Shares would vest in Arbus.

In considering whether the June Facility Agreement was a normal commercial loan between an unconnected borrower and lender at arm's length or evidence of a concert party understanding or agreement, the Committee had regard to the following :

- The Sing Tao Group is not in the business of lending money.

- One of the intentions of Sing Tao was to "protect its investment" which was to be achieved by gaining representation on the Jademan board. The loan was therefore not one negotiated between a lender and a borrower at arm's length simply to earn an appropriate return on the capital in the form of interest income.

- The notice of resolutions to remove all of the existing directors and replace them with the Sing Tao Group nominees was delivered to Jademan on 24 August just 3 days after Mr Wong's redemption of the Mortgaged Shares.

  The Sing Tao Group had not previously made any efforts to remove the incumbent Jademan board or have any of its nominees appointed as additional directors except for brief discussions concerning appointments with the consent of the existing Jademan board. Mr Wong in his submission confirmed that he wanted the existing directors removed and given the relations between Messrs Lam and Zie and Mr Wong and the litigation between Jademan and Mr Wong, the Sing Tao/Aw Interests might reasonably have expected this to have been his position.

- On 29 December, 1989, the Jademan board announced that the Listing Committee of the Stock Exchange had conditionally

approved an application for the resumption of dealings in the shares and warrants of Jademan. One of the conditions imposed upon Jademan was that Mr Wong's involvement in the affairs of Jademan should be restricted to that of chief artist. This condition was reflected in the facility letter forming part of the June Facility Agreement in which Mr Wong undertook that so long as amounts were outstanding under the loan arrangement, he would not, without the prior consent of the Stock Exchange, the SFC and the Court of Appeal, involve himself in any way in the management of Jademan and would discuss with the Stock Exchange and the SFC before any intended appointment of his nominees as directors of Jademan. The Sing Tao/Aw Interests therefore knew that Mr Wong was somewhat restricted in exercising his voting rights in connection with the appointment of his nominees as directors and were also aware that even if he abstained from voting his shares on the resolution to appoint Sing Tao's nominees as directors, they would be in a position to carry the resolution with their original block of 29.6% of the issued shares.

- It appeared that Mr Wong was a poor credit risk and did not have reliable cash flows to meet repayments of principal and interest. The Sing Tao/Aw Interests were aware that Mr Wong had previously stated in Court that he was unable to find any other party prepared to loan him funds to redeem the Mortgaged Shares. They were also aware that Mr Wong, as affirmed in statements made before the Court, was unlikely to have sufficient resources to be able to meet even the interest payments on the loan. In fact, this was the reason cited by Peregrine for allowing Mr Wong to defer interest payments on the loan for the

first six months. When the Committee questioned representatives of the Sing Tao Group and Peregrine as to how they expected Mr Wong to repay the loan, as such it became evident that little consideration had been given to this matter. In the absence of any obvious prospects for Mr Wong to repay either the loan interest or principal, the Committee formed the view that the loan from CIBC to Arbus, which enabled Arbus to finance Mr Wong's redemption, was to be repaid principally from the cash flow of the Sing Tao Group and Ms Sally Aw. This was later confirmed in evidence heard from CIBC. Details of the CIBC financing are not set out for reasons of commercial sensitivity.

- The Committee noted that the June Facility Agreement was entered into by Mr Wong against a background of litigation between himself and Jademan regarding claims made by Jademan for substantial debts alleged to be owed to the Company by Mr Wong. In addition, it was noted that on 4 June, Tabor had technically gained control of the voting rights attaching to the Mortgaged Shares even though Tabor had taken no steps to vote the shares and litigation had been commenced by Mr Wong to prevent Tabor from voting the shares. Tabor had commenced legal action to foreclose on its loan to Mr Wong which would have resulted in Tabor gaining title to the Mortgaged Shares. Mr Wong, as he confirmed during Court proceedings, was unable to find alternative financing to help him redeem his shares.

The Committee therefore considered that under these circumstances Mr Wong had little option but to enter into the June Facility Agreement.

- The loan could be recalled by giving 7 days prior written notice. Given that Mr Wong was apparently in no position to repay the loan, the Committee considered that an unwritten obligation was thereby imposed on Mr Wong to support the wishes of the Sing Tao/Aw Interests. It was further noted that once the security document forming part of the June Facility Agreement was executed, which Mr Wong had provided an irrevocable and unconditional undertaking to do once the Mareva Injunction against him had been appropriately varied, then the Sing Tao/Aw Interests would also have legal control over the voting rights attaching to Mr Wong's shares.

The Committee therefore concluded that the June Facility Agreement was not a normal commercial loan, but a transaction which evidenced an understanding or arrangement to act in concert to obtain control of Jademan.

The Committee's Determination

On the evidence presented, the Committee decided that Ms Sally Aw, the Sing Tao Group and Mr Tony Wong had arrived at an understanding to actively co-operate to obtain or consolidate control (as defined in the Code) of Jademan and that control of Jademan passed to the Sing Tao/Aw Interests when the voting rights attaching to the Mortgaged Shares were recovered from Tabor.

Practice Note 2(2)

Practice Note 2 expands Rule 33 and contains various examples which are intended to illustrate how the Committee interprets Rule 33 in certain circumstances and the manner in which it interprets the Code definition of "acting in concert".

Paragraph 2 of Practice Note 2 deals with a particular situation where parties have purchased shares without the knowledge of each other but later "join together" and co-operate to obtain or consolidate control of a company. It should be noted that Paragraph 2 envisages that it is possible for parties to act in concert even though the act of co-operation is not accompanied by an acquisition of shares.

The Committee determined that the relationship between the Sing Tao/Aw Interests and Mr Wong was a case to which paragraph 2 of Practice Note 2 applied in the sense that they had purchased their shares independently and subsequently joined together. The Sing Tao Group acquired 29.6% of Jademan shares between February and April, 1989. Mr Wong owned approximately 42% of the shares in Jademan, which he had acquired some time previously.

Subsequently the Sing Tao/Aw Interests agreed to advance monies to Mr Wong to enable him to redeem charges on the Mortgaged Shares. The Committee concluded that the reason the Sing Tao/Aw Interests advanced monies to Mr Wong was, amongst other things, to allow Mr Wong to redeem the Mortgaged Shares and then exercise the voting rights to those shares in favour of a resolution requisitioned by the Sing Tao Group to remove the existing directors of Jademan and have them replaced by nominees of the Sing Tao Group. This would permit the Sing Tao Group to control Jademan and thereby "protect its investment".

The Committee considered that there was sufficient evidence to find that the Sing Tao/Aw Interests and Mr Wong had co-operated to obtain control of Jademan.

"Control" was not achieved by the Alleged Concert Party until 21 August 1990 when Mr Wong recovered the voting rights to the Mortgaged Shares. "Control", as defined in the Code, is not achieved until there is a holding of shares, or in the case of a concert party, a combined holding of shares, carrying 35% or more of the voting rights of a company. Until 21 August 1990, although there was a joining together of the parties in the sense that the Sing Tao Group and Mr Wong had reached an understanding or agreement to co-operate, Mr Wong was unable to exercise voting rights over the Mortgaged Shares. The Sing Tao Group itself had less than 35% of shares carrying voting rights. On 21 August 1990 the Mortgaged Shares were redeemed by Mr Wong as a consequence of which he could freely vote them thereby allowing the Sing Tao Group and Mr Wong to "control" shares carrying more than 70% of the voting rights of Jademan.

The Committee noted that under Practice Note 2 paragraph 2, it would "not normally" require a general offer to be made under Rule 33 where two shareholders come together to act in concert. The Practice Note allows the Committee the discretion to require, consistent with the General Principles, an offer to be made in certain circumstances where shareholders have come together to act in concert even in the absence of an "acquisition". The discretion may be exercised in a case that is not normal. The Committee considered that all of the circumstances of this case, including the circumstances whereby control was obtained by the Sing Tao/Aw Interests, were far from normal and that the Sing Tao/Aw Interests should be required to make a general offer pursuant to the provisions of General Principle 3 and Rule 33 of the Code.

Rule 33(1)(a) contemplates an "acquisition" of shares in excess of the 35% threshold triggering a general offer, where the

"acquirer", and persons acting in concert with it, previously held shares carrying less than 35% of voting rights. Rule 33(1)(b) contemplates an "acquisition" of shares in excess of the 5% creeper by a person who with other persons acting in concert already holds shares carrying between 35% and 50% of the voting rights. It may be arguable that on a strict legalistic interpretation of Rule 33, the transaction in this case does not come within either limb in that there has not been any "acquisition" of shares by any of the parties and there cannot be said to have been a pre-existing holding carrying between 35% and 50% of the voting rights attaching to the Jademan shares because Mr Wong could not exercise his voting rights prior to 21 August 1990. Even if this is the correct view, the Committee nevertheless believes that the spirit of the Code, and in particular General Principle 3, should be applied in this case since control of Jademan is being acquired and, in its view, all the circumstances of this case make it one that is clearly <u>not normal</u>. These circumstances include the original acquisition by the Sing Tao Group, the charges against Mr Wong, the original controlling shareholder of Jademan, resulting in his resignation from the board, the substitution of Messrs Lam and Zie, and the falling out between Messrs Lam and Zie and Mr Wong which resulted in acrimonious litigation between them. These circumstances lead to the unusual situation where the two largest shareholders of Jademan, who between them held in excess of 70% of the shares and voting rights, were effectively excluded from representation on the board. Through the June Facility Agreement, which the Committee concluded was not a normal commercial loan transaction, the Sing Tao Group which is the second largest shareholder of Jademan was able to achieve its long standing objective of assuming control of Jademan and appointing its nominees who would comprise all or the majority of the board.

Practice Note 2(2) clearly reserves to the Committee the discretion to require a mandatory offer to be made where two shareholders join together to cooperate to obtain or consolidate control of a company, even in the absence of an acquisition, where the circumstances of the case are not normal. The Committee found this to be such a case and therefore exercised its discretion to require a mandatory offer to be made. Control has been acquired and, in accordance with General Principle 3, the new controlling shareholder should extend an offer to the public shareholders of Jademan.

As noted above, the Committee focused in particular on the June Facility Agreement. The Committee was concerned to identify the reality of control of the Mortgaged Shares and examined whether the Sing Tao/Aw Interests were able to exercise control over Mr Wong's shareholding.

In reaching the conclusion that it did exercise such control, the Committee was guided by the following facts :

(i) On the 20 April, 1989 dealings on the Stock Exchange in Jademan shares and warrants were suspended thereby preventing the Sing Tao Group and Ms Sally Aw from acquiring further Jademan shares to obtain control of Jademan;

(ii) During February, 1990, negotiations between the Sing Tao Group and Mr Wong, whereby the Sing Tao/Aw Interests would finance Mr Wong's redemption of his Mortgaged Shares, foundered;

(iii) In April 1990 the Sing Tao/Aw Interests offered to purchase the 110,818,000 shares, representing 19.4% of

Jademan's issued share capital, which were mortgaged to James Capel. This straightforward acquisition failed on 16 April 1990, and the April Facility Agreement arrangements were subsequently effected on the 27 April, 1990;

(iv) The April Facility Agreement contained arrangements whereby Mr Wong, upon redemption of his shares, would transfer 96,818,000 Jademan shares to a new company, Newco. Sing Tao Capital Choice Limited ("STCC") would transfer 103,073,311 shares of Jademan to Newco resulting in Newco holding a total of 199,891,311 Jademan shares representing approximately 35% of the total issued share capital of Jademan. The shares in Newco were to be beneficially owned as to 48.44% by Mr Wong and 51.56% by STCC (i.e. in the ratio of their original contribution of Jademan shares). This arrangement, if completed, would have enabled STCC to exercise control over the Jademan shares owned by Newco as well as retaining beneficial ownership over shares representing approximately 11.6% of Jademan's issued share capital;

(v) The June Facility Agreement was not a normal commercial loan transaction. The Sing Tao/Aw Interests in making available the loan to Mr Wong appeared not to be very concerned about the credit risk or Mr Wong's ability to repay the loan or to make interest payments on the loan. This is clearly apparent from the fact that Mr Wong's poor financial status was the principal reason for deferring the interest payments for the first 6 months. The Sing Tao/Aw Interests were also aware through statements made by Mr Wong that he was not in a position to service the loan;

(vi) The June Facility Agreement was a vehicle through which the Sing Tao Group arranged to protect its existing investment in Jademan, by gaining representation on and control of the Jademan board which it could not achieve without Mr Wong's shareholding. Prior to Mr Wong redeeming these Mortgaged Shares, the Sing Tao Group had made no efforts to remove the incumbent Jademan board; and

(vii) The June Facility Agreement permitted the Sing Tao/Aw Interests to recall the loan at any time prior to the final repayment date of 31 December 1992 by giving 7 days prior written notice. This, in effect, enabled the Sing Tao/Aw Interests to obtain possession of the Mortgaged Shares at any time they wished knowing that Mr Wong would probably not be in a position to repay the loan.

The aforementioned factors all tend to indicate that the June Facility Agreement was not a simple commercial loan.

In the opinion of the Committee these were appropriate circumstances for it to exercise its discretion to require a mandatory offer to be made in the case where shareholders have come together to act in concert.

Rule 33(1)

The Committee therefore reached the conclusion that a concert party existed and that a mandatory offer was required to be made in accordance with the Code without the necessity of addressing the question of whether there had been an "acquisition" of securities for the purposes of the definition of acting in concert or whether a concert party member had "acquired" shares for the purposes of Rule 33. However, the Committee decided that, in any event, given all the circumstances of this case,

the June Facility Agreement did result in an "acquisition" for the purposes of both the definition of acting in concert and Rule 33. In arriving at this decision, the Committee had regard, among other things, to Practice Note 2(5).

Practice Note 2(5) of the Code deals with a sale of part only of a shareholding and provides that a mandatory offer obligation may be triggered where a person purchases less than 35%, but the vendor is acting in concert in such a way as to effectively allow the purchaser to exercise a significant degree of control over the shares retained by the vendor.

> **5. Vendor of part only of a shareholding**
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> **Shareholders sometimes wish to sell part only of their shareholding or a purchaser may be prepared to purchase only part of a shareholding. This arises particularly where a purchaser wishes to acquire just under 35 per cent, thereby avoiding an obligation under Rule 33 to make a general offer. The Committee will be concerned to see whether in such circumstances the vendor is acting in concert with the purchaser in such a way as effectively to allow the purchaser to exercise a significant degree of control over the retained shares, in which case a general offer would normally be required. A judgement on whether such a significant degree of control exists will obviously depend on the circumstances of each individual case, but, by way of guidance, the Committee would regard the following points as having some significance:**
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> **(a) there would be less likelihood of a significant degree of control over the retained shares if the vendor was not an "insider";**

(b) the payment of a very high price for the shares would tend to suggest that control over the entire holding was being secured;

(c) if the parties negotiate options over the retained shares it may be more difficult for them to satisfy the Committee that a significant degree of control is absent. On the other hand, where the retained shares are in themselves a significant part of the company's capital (or even in certain circumstances represent a significant sum of money in absolute terms) a correspondingly greater element of independence may be presumed;

(d) it would be natural for a vendor of part of a controlling holding to select a purchaser whose ideas as regards the way the company is to be directed are reasonably compatible with his own. It is also natural that a purchaser of a substantial holding in a company should press for board representation and perhaps make the vendor's support for this a condition of purchase. Accordingly, these factors, divorced from any other evidence of significant degree of control over the retained shares, would not lead the Committee to conclude that a general offer should be made.

Therefore, under Practice Note 2(5), one is considered for the purposes of Rule 33 to "acquire ..... shares which ..... carry 35% or more of the voting rights of a company" when one purchases under 35% of the shares but is able to "exercise a significant degree of control" over other shares so that the reality of control is that the purchaser has acquired in excess of 35% of the voting rights.

The Committee considers that it is accepted practice amongst the financial and professional advisers in Hong Kong who are involved regularly on Code matters to treat the acquisition of voting rights or effective control over voting rights as the essential element when determining whether "control" of a company has changed hands. One must interpret the Code so that the exercise of a significant degree of control over shares or voting rights, without the attendant ownership of shares, falls within the ambit of the definition of "control" in the Code and as being an "acquisition" for the purposes of Rule 33 and the definition of acting in concert. To do otherwise would defeat the whole purpose of the Code and render it unworkable.

Principal Concert Party Members

The Committee, having found that Ms Sally Aw and the Sing Tao Group should be called upon to make a mandatory offer, then considered whether Mr Wong was a principal member of the Concert Party and therefore should also be required to make the offer.

The Committee considered that the understanding among the parties to co-operate was not a usual case of co-operation because the circumstances suggested that Mr Wong, although the largest shareholder of Jademan, would be excluded from participation in control of Jademan. Mr Wong was effectively, therefore, a powerless member of the concert party. In reaching this determination, the Committee noted the following :

- By entering into the June Facility Agreement, Mr Wong effectively agreed to exclude himself from the management of Jademan and to permit the board of Jademan to be composed exclusively of Sing Tao nominees.

- The Mareva Injunction against Mr Wong would have restricted him from making a mandatory offer even if required to do so under the Code.

- Mr Wong, as affirmed in statements made before the Court, was unlikely to be in a position to be able to service the Arbus loan. In fact, this was the principal reason cited by Peregrine for allowing Mr Wong to defer interest payments on the loan for the first six months. Upon entering into the June Facility Agreement, Mr Wong was placed in a position in which Arbus could demand repayment of his loan with no apparent prospect of his being able to meet that demand.

- Mr Wong had previously stated in Court that he was not able to find any other party that was prepared to grant him loans to redeem his shares from Tabor. Presumably, therefore, no other party was prepared to advance Mr Wong the required loan on terms initially unsecured and in due course secured solely against his Jademan shares and therefore by implication there were additional benefits which the Sing Tao Group expected to realise when entering into these arrangements.

The Committee therefore concluded that Mr Wong was not a principal member of the Concert Party and was not required to make the offer.

Date that the Mandatory Offer Requirement arose

The Committee determined that the mandatory offer requirement under Practice Note 2 (2) and Rule 33(1)(a) was triggered on 21 August, 1990, the date upon which Mr Wong redeemed the Mortgaged Shares. This was also the date upon which Ms Sally Aw and the

Sing Tao Group effectively came to exercise control over the previously Mortgaged Shares.

Price of the Mandatory Offer

Submissions were received from Peregrine and Anglo Chinese in relation to the price at which any mandatory offer should be made for the shares and warrants of Jademan.

All of the parties to the Hearing were required to provide the Committee with details of any purchases of Jademan shares during the period from 1 December 1989 until the date of the Hearing. On the basis of the evidence so provided, none of the parties had purchased any Jademan shares or warrants during the six month period ended 21 August, 1990.

The Committee rejected suggestions that, due to the absence of a price established by reference to purchases during the preceding six months, shareholders of Jademan should not have an opportunity to receive an offer when control of the company was acquired by the Sing Tao Group. In situations in which it decides that a mandatory offer requirement has arisen, the Committee will, in the absence of any market transactions by the party responsible for making the offer, determine an appropriate method for arriving at an offer price. The Committee, therefore, considered alternative methods of determining the required offer price for Jademan shares :

(i) The Committee considered and rejected suggestions by Peregrine that the price should be determined by reference to the Arbus loan, i.e. by dividing the loan advanced under the June Facility Agreement by the number of shares redeemed. The Committee rejected this option because the quantum of the loan under the June Facility Agreement was

determined by the amount outstanding on the Tabor loan which in turn had been arranged to repay third party financing, and not with a view to valuing a controlling interest for purposes of sale.

(ii) The Committee considered and rejected the suggestion put forward by Anglo Chinese that the price should be determined by applying a premium to the market price to reflect the fact that control had passed to the Sing Tao Group. This option was rejected on the basis that attempting to apply a control premium to a market price was too subjective.

(iii) The Committee determined that the appropriate offer price should be based upon the closing market price on the date upon which the requirement to make a mandatory offer was triggered. This option was adopted on the basis that :

(i) it was reasonable in the absence of any alternative precedent established in prior cases, it being the market price on the date that the mandatory offer arose; and

(ii) note 2(c) to Rule 9.5 of the City Code on Takeovers and Mergers supported its application. Note 2(c) states that :

> **If shares have been acquired by the exercise of conversion rights or warrants, the price will normally be established by reference to the middle market price of the shares in question.**

> In other words where control over voting rights is acquired by the exercise of warrants or conversion rights, the cost of acquisition and subsequent conversion of those warrants or conversion rights is not relevant in computing a mandatory offer price, but instead the offer price is established with reference to the closing market price of the shares on the date of exercise.

Accordingly, the Committee determined that the Sing Tao/Aw Interests should be required to make an offer at 72 cents, the closing market price of Jademan shares on August 21, 1990, for all of the ordinary shares of Jademan not already owned by the concert party comprising Ms Sally Aw, the Sing Tao Group and Mr Tony Wong.

Warrant offer prices

Rules 22(1) and 22(5) of the Code require that :

> **(1) Where an offer is made for part or all of a class of equity share capital and the offeree company has outstanding more than one class of equity share capital or securities which are convertible into equity shares of any class, the offeror must make arrangements to ensure that the interests of the holders of all classes of equity share capital and convertible securities are safeguarded and should make appropriate offers or proposals to such holders.**
>
> **(5) If an offeree company has warrants, options or subscription rights outstanding in respect of any class of equity share capital, the provisions of this Rule apply as appropriate.**

Accordingly, the Committee considered what would be an appropriate offer price for the 1994 and 1998 warrants of Jademan. In reaching its decision, the Committee adopted the reasoning from its recent decision in connection with the takeover offer by Wardley Corporate Finance Limited on behalf of Super Power Resources Limited for the shares and warrants of Evergo International Holdings Company Limited and Chinese Estates Holdings Limited. In that decision, it was determined that the minimum offer price for each class of warrant should be the so called "see-through" price, this being defined for each warrant class as : (i) the sum of the offer price for the ordinary share less the exercise price of the relevant warrant divided by (ii) the conversion ratio for the relevant warrant.

In the case of both the 1994 and the 1998 warrants of Jademan, the calculated see-through prices were negative. The Committee therefore decided that, consistent with the Evergo decision, nominal offers of 1 cent each should be made for both warrant classes.

Other Observations

1. Procedural Rules 2 and 3 of the Code

The Committee noted that the Sing Tao Group and its legal adviser, Deacons, were on notice as early as 3 May, 1990 that Anglo Chinese, acting on behalf of Jademan, believed that the April Facility Agreement if executed would trigger the requirement for a mandatory offer to be made under the Code. The Sing Tao/Aw Interests through Deacons were on 1 August 1990 provided with a copy of the Anglo Chinese Submission dated 31 July 1990 and between 1 August 1990 and 21 August 1990 there was correspondence between Corporate Finance staff of the SFC and Deacons regarding the allegations. The Sing Tao/Aw Interests at no time

since 3 May, 1990 sought to approach the Committee to clarify the consequences under the Code of their financing arrangements with Mr Wong. Given that the Sing Tao/Aw Interests were aware of the Anglo Chinese submission and the intention of the SFC to bring this matter before the Committee for a decision, the Committee questioned why the Sing Tao/Aw Interests, given their assertion that the June Facility Agreement was a normal commercial loan transaction, never attempted to clarify with the Chairman the Code consequences of the June Facility Agreement and Mr Wong's redemption of the Mortgaged Shares.

2. Litigation

In reaching its decision, the Committee in no way seeks to comment on any aspect of the disputes subject to litigation or on the conduct of any person. The Committee only considered the facts and evidence relevant to reaching a decision under the Code on the issues raised in the Notice of Hearing. In reaching the decision that the Sing Tao/Aw Interests should be required to make a mandatory offer the Committee is not implying any misconduct on the part of Ms Aw or the Sing Tao Group, but simply concluding that they had acquired Code control and should be required to provide shareholders with an opportunity to sell their shares.

CHRONOLOGY OF EVENTS

On **10 February, 1989**, Peregrine Brokerage Limited on behalf of The Spaceman Limited launched a hostile bid for all of the shares and warrants of Jademan. The offer failed partly as a result of the accumulation of shares representing 29.6% of the issued share capital of Jademan and 50.3% of the outstanding 1998 warrants by Endellion Limited ("Endellion"). Endellion is owned as to 50% by Ms Sally Aw and 50% by Sing Tao Limited.

Subsequently the shares and warrants accumulated by Endellion were transferred to Sing Tao Capital Choice Limited, a company that is owned as to 50% by Ms Sally Aw and 50% by Sing Tao Limited. Sing Tao Limited is a wholly owned subsidiary of Sing Tao Holdings Limited, a company incorporated in Bermuda and listed on the Hong Kong Stock Exchange (the "Stock Exchange") in which Ms Sally Aw, through associated companies, holds approximately 63.9%.

On **20 April, 1989**, trading in the shares and the warrants of Jademan was suspended following the arrest of Mr Wong by the Commercial Crimes Bureau ("CCB") on suspicion of having committed offences arising from his conduct of the affairs of Jademan.

On **21 April, 1989**, following the suspension in trading of the shares and warrants of Jademan, Mr Joseph Tong, a director of Jademan, was appointed as Deputy Chairman of Jademan to deal with all matters relating to the CCB investigation.

On **1 June, 1989** the Financial Secretary, pursuant to his powers under the Companies Ordinance, appointed an Inspector to conduct an investigation into the affairs of Jademan.

On **13 June, 1989**, Mr Wong was charged with various offences of false accounting under the Theft Ordinance and the following day he resigned as chairman of Jademan but remained as chief artist and as the chairman of Tin Tin Publication Development Ltd. ("Tin Tin Development").

On **6 July, 1989**, Mr Tony Zie and Mr Lam Kin Ming were appointed by the remaining directors of Jademan to the board and Mr Tony Zie became chairman and chief executive. Mr Zie was also appointed as joint chairman of Tin Tin Development.

On **12 July, 1989**, Mr Wong entered into a service contract with the company which provided for him to continue as the chief artist, and as a consultant to the Group's comics and magazines operations for a period of 4 years.

On **10 August, 1989**, Tabor International Incorporated ("Tabor"), a company owned and controlled by Messrs Tony Zie and Lam Kin Ming, entered into loan and security agreements with Mr Wong to enable him to repay creditors that were holding as security for loans an aggregate of 225,818,000 shares belonging to him representing 39.5% of the outstanding ordinary share capital of Jademan (the "Mortgaged Shares").

Mr Wong's indebtedness to the creditors holding his shares as security was as follows (rounded to the nearest million Hong Kong dollars) :

Creditor	No. of shares	HK$ 'million
James Capel Far East Limited ("James Capel")	110,818,000	59
Liu Chong Hing Bank ("LCH")	40,000,000	16
Standard Chartered Bank ("SCB")	75,000,000	40
	225,818,000	115

As security for the indebtedness of Mr Wong, James Capel, SCB and LCH each held a first mortgage over Jademan shares of which Mr Wong was the beneficial owner.

The loan and security agreements between Mr Wong and Tabor (collectively the "Tabor Agreements") granted Tabor an option to purchase 129,000,000 shares of Jademan from Mr Wong. The validity of this option has been disputed by Mr Wong.

As part of the Tabor Agreements, Mr Lam Kin Ming assumed Mr Wong's indebtedness to James Capel. The shares mortgaged to James Capel remained charged and deposited with James Capel by way of collateral to secure Mr Lam's indebtedness.

Mr Wong's indebtedness to SCB was discharged when Mr Lam assumed the indebtedness and the mortgage over the shares held as security therefor was also discharged.

Under the Tabor Agreements, Mr Wong was entitled to drawdown funds to discharge his indebtedness to LCH, but he did not do so and remained indebted to LCH until May or June 1990.

The voting rights of the shares mortgaged to James Capel and LCH remained with the respective mortgagees but the voting rights with respect to SCB passed to Tabor.

Apart from the loan under the Tabor Agreements, Mr Wong also allegedly owed large sums of money to the Jademan group for various advances made, and in connection with certain transactions and trading/production arrangements (as more particularly set out on page 8 of the Jademan circular to shareholders and warrantholders dated 29 November, 1989). The directors of Jademan had attempted to negotiate a settlement with Mr Wong of the sums allegedly owing. A settlement agreement was prepared but Mr Wong advised the Jademan board on or about **31 October, 1989** that he refused to sign the settlement agreement.

On **15 August, 1989**, the Inspector appointed by the Financial Secretary made an interim report disclosing a number of financial irregularities in relation to the affairs of Jademan.

On **20 November, 1989**, Tabor demanded from Mr Wong the amounts due under the Tabor Agreements.

On **21 November, 1989**, Mr Wong was removed as joint chairman and director of Tin Tin Development.

On **29 November, 1989**, the Jademan board issued a circular to shareholders explaining events that had occurred since suspension of the Jademan shares on 20 April, 1989. In that circular Mr Lam Kin Ming and Mr Tony Zie confirmed their intention to abide by any ruling of the Committee if it was determined that, after enforcing their security over the Mortgaged Shares, they were required to make a general offer for the remaining shares and warrants of Jademan.

On **19 December, 1989**, Mr Wong obtained an interim injunction order from the Court preventing Tabor from exercising any right of foreclosure, sale or disposal and from exercising the option over Jademan shares purportedly granted to Tabor under the Tabor agreements. This order was granted ancillary to Mr Wong's Court action for recission of the Tabor Agreements.

On **19 December, 1989**, Mr Wong's employment contract was terminated by Jademan on the grounds of breach of contract.

On **2 January, 1990**, the suspension in trading of the shares and warrants of Jademan was lifted and trading re-commenced on the Stock Exchange. The Stock Exchange and the Corporate Finance Division of the Commission agreed to impose certain conditions on Jademan before trading was allowed to re-commence. Amongst others these included :

- Establishment, to the satisfaction of the Commission, of an independent board.

- Receipt of an undertaking from Jademan that it would refrain from entering into any connected party transactions as defined in Chapter 14 of the Rules Governing the Listing of Securities on the Stock Exchange.

- The resignation of Mr Wong from the board of Tin Tin Development.

- Appropriate steps being taken by Jademan to limit Mr Wong's involvement in the affairs of Jademan to that of chief artist.

During **February 1990**, there were negotiations between Mr Wong and the Sing Tao/Aw Interests on the terms upon which the

Sing Tao/Aw Interests might be prepared to assist in financing the redemption by Mr Wong of the shares charged to Tabor. Initial discussion on this financing also involved Peregrine and a proposal under which part of the financing was to be provided by way of loan to Mr Wong from the Sing Tao/Aw Interests (with the assistance of a loan to the Sing Tao/Aw Interests from Peregrine), and part through various loan, purchase and placing arrangements between Peregrine and Mr Wong not involving the Sing Tao/Aw Interests. These arrangements foundered some time in February and no agreement was reached.

On **15 February 1990**, Mr Wong gave notice to Tabor of his intention to redeem the shares mortgaged to Tabor.

On **28 February, 1990**, a world-wide Mareva Injunction was obtained by Jademan against Mr Wong restraining him from disposing or dealing in any way in his assets including his beneficial interests in the shares of Jademan. The injunction was granted ancillary to actions brought to recover sums Jademan alleged were due and owing to it; for damages for breach of fiduciary duties and other relief.

On **16 April, 1990**, arrangements were entered into between Mr Wong and the Sing Tao/Aw Interests to redeem the shares mortgaged to James Capel with an advance of some $56 million by Arbus Incorporated ("Arbus"), a company owned as to 50% by Ms Sally Aw and 50% by Sing Tao Limited.

The arrangement entered into between Mr Wong and Arbus on 16 April, 1990 was replaced by a new arrangement whereby Arbus would advance to Mr Wong $130 million for the purpose of redeeming the Mortgaged Shares. The new arrangement comprised a facility letter dated **27 April, 1990** between Arbus and Mr

Wong as borrower, a deed of charge of the same date between the same parties (together the "April Facility Agreement") and a side letter of the same date containing a voting agreement between Mr Wong and Arbus and Sing Tao Capital Choice Limited (the "Voting Agreement").

Under the April Facility Agreement, Arbus proposed to lend money to Mr Wong to enable him to redeem the Mortgaged Shares. The deed of charge dealt with the voting rights attaching to the Mortgaged Shares which were to be charged as security for the loan and provided that Arbus or its nominee could exercise any voting rights attached to the Jademan shares in accordance with the written instructions of Mr Wong if Arbus was satisfied that the exercise would not contravene any provision of the loan documents. Upon the charge becoming enforceable, Arbus was to become entitled to exercise all voting rights attaching to the Jademan shares.

The facility letter of the April Facility Agreement also set out an arrangement for the establishment of a new company, "Newco". It provided that, once Mr Wong was free to make a transfer of his Jademan shares, he was to transfer 96,818,000 shares, representing 16.95% of Jademan's issued ordinary share capital, into the beneficial ownership of Newco and similarly Sing Tao Capital Choice Limited would transfer not less than 103,073,311, representing 18% of Jademan's issued ordinary share capital, to Newco. Newco was to be beneficially owned in the same proportions in which the number of shares were transferred by Mr Wong and Sing Tao Capital Choice Limited. In other words Newco was to be owned 48.44% by Mr Wong and 51.56% by Sing Tao Capital Choice Limited effectively providing Sing Tao Capital Choice Limited with control over Newco. Clause 6(c) of the facility letter of the April Facility Agreement provided that, if at any

time after release of all the security for the facility letter, the parties were unable to satisfactorily work together in relation to Jademan the parties agreed to "negotiate in good faith to resolve differences contemplating that such a resolution might involve the purchase by one party of the other party's interests in Jademan".

Under the Voting Agreement, Mr Wong agreed that he would exercise the voting rights attaching to the shares to ensure that there would be appointed and maintained as directors of Jademan a number of persons nominated by Arbus sufficient at all times to constitute at least more than half of the total number of the directors of Jademan. Mr Wong also agreed to join in the requisition of any Extraordinary General Meeting of Jademan for the purposes of appointing Arbus' nominees.

The April Facility Agreement was also conditional on Mr Wong successfully obtaining such variation of the Mareva Injunction as may be necessary to enable him to perform his obligations under the agreement.

On **1 June, 1990**, Mr Wong entered into an agreement with Arbus whereby Arbus would advance some $56 million to Mr Wong to enable him to redeem the outstanding charge held by James Capel. This agreement was intended to supersede the April Facility Agreement. The amount of the loan was later increased to $130 million to allow Mr Wong to redeem all of the Mortgaged Shares. The amendment to the amount of the loan was reflected in a new facility letter which was signed between Mr Wong and Arbus on **28 June, 1990** (see below).

Also on **1 June, 1990**, Mr Wong was granted leave to borrow the $130 million from Arbus. On **8 June, 1990**, the Court of

Appeal modified its leave to cover such sum as would be necessary for the redemption of the Mortgaged Shares.

On **4 June, 1990**, Tabor became first mortgagee over all of the Mortgaged Shares by redeeming the shares previously mortgaged to James Capel. Tabor had previously during May 1990 and during August 1989 redeemed shares from Liu Chong Hing Bank and from SCB, respectively. As first mortgagee, Tabor was entitled to exercise the votes attaching to the Mortgaged Shares, but on the same day, Mr Wong applied to the Court for an injunction to prevent Tabor from exercising the voting rights attaching to the Mortgaged Shares.

On **28 June, 1990**, a new facility letter was signed by Arbus and Mr Wong (the "June Facility Agreement") substituting all previous loan and security agreements entered into between the parties. The June Facility Agreement provided that funds would be made available for Mr Wong to redeem all outstanding security over the Mortgaged Shares.

It provided that the funds could be drawn down in four tranches, subject to a minimum redemption of 96,818,000 shares, this being the number of Mortgaged Shares which were not subject to the option agreement forming part of the Tabor Agreements. The borrowing was to be repayable on 7 days prior notice in writing, but in any event repayable no later than 31 December, 1992. The loan was to carry interest at 2.75% over HIBOR thirty day Hong Kong dollar loans, payable monthly in arrears. The agreement provided Mr Wong with an option not to pay interest on the loan for the first six months. The loan was unsecured; however, Mr Wong gave an irrevocable and unconditional undertaking to execute, upon obtaining Court approval for a variation of the Mareva Injunction, a loan agreement and security document forms

of which were attached to the June Facility Agreement. Mr Wong also undertook that as long as money was outstanding he would not, without the prior consent of the Stock Exchange, the Commission or the Court of Appeal, involve himself in any way in the management of Jademan and that he would discuss with the Stock Exchange and the Commission any intended appointment of his nominees as directors of Jademan.

Tenders for redemption of the Mortgaged Shares were made by Mr Wong to Tabor on **28 June, 1990, 10 and 12 July, 1990** and on each occasion, redemption was refused by Tabor.

On **2 August, 1990**, the Court set the terms on which Mr Wong could redeem the Jademan shares subject to the Tabor Agreements and on **21 August, 1990**, Mr Wong proceeded to redeem the Mortgaged Shares from Tabor using loans made available under the June Facility Agreement with Arbus.

On **24 August, 1990**, 3 days after the redemption by Mr Wong of his shares from Tabor, Sing Tao Holdings Limited through its nominee, Horsford Nominees, delivered to the Jademan directors requisitions pursuant to Sections 113 and 115A of the Companies Ordinance.

The requisition pursuant to Section 115A of the Companies Ordinance called upon Jademan to give notice to its members that certain resolutions relating to the removal of all the existing directors of Jademan and the appointment of new directors nominated by the Sing Tao/Aw Interests will be moved at the Annual General Meeting of Jademan to be held on 28 September 1990.

The requisition pursuant to Section 113 of the Companies Ordinance requires the directors of Jademan to convene an

Extraordinary General Meeting for the purpose of passing resolutions to the same effect.