

TAKEOVERS AND MERGERS PANEL

Shun Ho Resources Holdings Limited ("Shun Ho") (formerly Standard-Lloyds Limited) Decision

Introduction

1. The Takeovers and Mergers Panel ("the Panel") met on 4 to 6, 21 and 22 October 1993 to continue enquiries into a complaint referred to it concerning a possible breach of Rule 33 of the former Hong Kong Code on Takeovers and Mergers ("the former Code") in relation to Shun Ho and to enquire into other matters referred to it by the Executive to the Panel ("the Executive"). The original enquiries were commenced by the Committee on Takeovers and Mergers ("the Committee") on 11 and 12 December 1991 pursuant to enquiries by the Corporate Finance Division of the Securities and Futures Commission ("SFC") into a complaint from Lu, Lai and Li, solicitors, instructed by General Nominees Limited ("General Nominees").
2. The complaint alleged that Mr William Cheng Kai Man ("Mr Cheng") might have been obliged to make a bid of at least \$0.6355 per share in Shun Ho ("Share") because of a sale of 5,564,000 Shares to him on 3 September 1990 by General Nominees, which brought Mr Cheng's shareholding in Shun Ho to above 35%. The complaint also pointed to the artificiality of the option arrangements between Mr Cheng and {X1} ("{X1}") in March 1991, by virtue of which it was alleged Mr Cheng deliberately triggered an obligation to make a bid for Shun Ho shares at a price below market levels.
3. The Committee's hearings on 11 and 12 December 1991 focussed on the matters in 1990 and 1991 which were relevant to the complaint and were adjourned for further investigations to be made by the Executive and other staff of the SFC. The subsequent investigations centred around links between the events complained of and certain unusual share trading in Shun Ho through Ms Geraldine Wong Pui Ching ("Ms Wong"), a dealer's representative employed by K S Kam & Co, in November 1988, when Royle Corporation Limited ("Royle") (the corporate vehicle of Mr Cheng) acquired a 34.5% stake in Shun Ho.
4. The Panel was asked to determine whether:
 - (a) Mr Cheng, Royle, Ms Wong and K S Kam & Co were concert parties and thus incurred an obligation to make a general offer under Rule 33 of the former Code in November 1988 when 9,682,000 Shares were entered in the books of K S Kam & Co as having been acquired by Ms Wong purportedly on behalf of customers, or in March 1989 when Ms Wong claimed to have repurchased these Shares from the same customers, which increased the combined shareholding of the alleged concert party from 34.5% to 42.6%;

- (b) further and in the alternative, Mr Cheng, Royle and {X2} ("X2"), the managing director of Shun Ho, incurred an obligation to make a general offer under Rule 33 of the former Code on or about 3 September 1990 by acquiring 5,564,000 Shares, which increased their combined shareholding from 34.5% to 36.9%;
- (c) further and in the alternative, Mr Cheng, Royle and {X1}, Executive Director of Mansion House Securities Ltd, were concert parties and thus incurred an obligation to make a general offer under Rule 33 of the former Code on 11 February 1991, the day on which {X1} acquired 1 million Shares, which increased their combined shareholding from 34.97% to 35.4%; and
- (d) Mr Alan Chuang ("Mr Chuang"), the controlling shareholder of the Chuang group of companies including General Nominees, and Mr Cheng were concert parties by reason of the matters referred to in (b) above.

Background

- 5. On 12 December 1991, the Committee adjourned the hearing so that further enquiries could be made. On completion of these enquiries, the Executive prepared a draft paper for the Panel. A copy of this draft paper was sent to Mr Cheng, Ms Wong and K S Kam & Co for their comments on 23 November 1992. The draft paper was amended to take account of these comments and sent simultaneously to the Panel, Mr Cheng, Ms Wong, K S Kam & Co, {X2}, {X1} and Mr Chuang on 9 August 1993. These parties were invited to make submissions to the Panel and given the opportunity to be present during the hearing.
- 6. Prior to the Panel hearing on 4 October 1993, the Panel and the parties to the proceedings received written submissions from Lu, Lai and Li on behalf of General Nominees and Mr Chuang; Carey and Lui on behalf of Mr Cheng; S K Lam, Steven Cheng & Co on behalf of Ms Wong; K S Kam & Co; and, on the date of the hearing, Carey & Lui on behalf of {X2}.

Procedures

- 7. The hearing conducted by the Panel was convened in accordance with section 16 of the Introduction to the Code on Takeovers and Mergers ("the Code"). The Panel may direct its own proceedings and may make any enquiries it thinks relevant and appropriate. The parties were advised of the procedural rules applicable to the Panel hearing in advance. These procedures were aimed to preserve the informality and privacy of Panel proceedings, whilst ensuring an efficient, expeditious and fair consideration of the issues.
- 8. In establishing its procedures for the hearing, the Panel was concerned to have regard to the rules of natural justice and to ensure that all parties to the proceedings were given a fair hearing. One of the procedures was that the parties were permitted to bring with them to the hearing any advisor they wished, call any witnesses they felt necessary and to make brief oral submissions. The Executive and every party was entitled to make an opening submission, question any witness called and make a final submission. Opening and closing

submissions were able to be made by the parties, their financial advisors or solicitors. However the balance of the case had to be presented by the parties or their financial advisors only.

9. Carey & Lui on behalf of Mr Cheng raised objections prior to the hearing regarding the propriety of Mr Stephen Clark sitting on the Panel. Three reasons were given. The first was that Mr Clark, as a member of the Takeovers Committee, on 9 April 1991 had questioned the result of which Royle announced on 8 April that it would make a general offer at 40 cents per Share. The second reason was that Mr Clark's firm, Anglo Chinese Corporate Finance Limited, had been given a non-exclusive mandate by Mr Cheng in July 1993 in relation to Shun Ho. The third reason was that Mr Cheng might wish to call Mr Clark as a witness in the hearing to question his reasons for writing the letter of 9 April.
10. On 8 September 1993, Carey & Lui was informed that in accordance with the "Guidelines on Conflicts of Interests of Members of the Takeovers and Mergers Panel and the Takeovers Appeals Committee" the Chairman of the Panel had ruled that Mr Clark should not be disqualified from sitting on the Panel.

The hearing

11. The Panel, after hearing oral submissions from the parties, questioned Ms Wong, {X3}, {X1}, Mr Chuang, Mr Cheng and called Mr Alan Lam of Alan Lam & Norris Yang (solicitors for Mr Cheng in earlier relevant transactions) to give evidence on matters associated with the complaint and directed further enquiries on matters arising from it. The parties and the Executive were also given the opportunity to ask further questions.
12. No witnesses were called by the parties or the Executive at this hearing.

The provisions of the former Code

13. The former Code set out the General Principles which constituted acceptable standards of commercial behaviour and which governed takeovers and mergers in Hong Kong prior to April 1992. One of the fundamental principles was stated in 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."

14. The enquiry of the Panel focussed on Rule 33 of the former Code which provided that: "..... 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)
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."

15. Rule 33 applied also to persons acting in concert in order that the requirements of the Code might not be easily circumvented. The former Code provided that:

"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."

16. Moreover, General Principle 1 of the former Code provided that:

"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."

Chronology of events

17. In January 1973 Shun Ho was incorporated under the name of Standard-Lloyds to carry on business of finance and investment. It became listed in February 1973 and changed its name to Shun Ho on 21 December 1990.

18. On 4 June 1987, Dartmonth Limited ("Dartmonth"), the corporate vehicle of Mr Alec Soon, had a 73.7% shareholding of Shun Ho. The Shun Ho Group's operations then concentrated on property, service apartment leasing and share investment.

19. On 3 November 1988, Shun Ho advised the Stock Exchange of Hong Kong Limited ("SEHK") that on 2 November 1988, Dartmonth had agreed to sell 40 million Shares (representing 34.5%) and 31 million warrants (representing 41.4%) in Shun Ho to Royle. Dartmonth and Mr Alec Soon were to retain 14,008,000 Shares (12.08%) and Mr Soon was to remain on the board. The letter also stated that upon completion of the agreement, two of the existing directors of Shun Ho would resign and four additional directors would be appointed by Royle. The Office of the Commission for Securities and Commodities Trading ("OCS") was subsequently advised by Shun Ho that the sale to Mr Cheng was at an effective price of \$1.21 per Share.

20. On 5 November 1988, the OCS referred Shun Ho to the provisions regarding concert parties in the former Code and made enquiries to determine whether Royle would be obliged to make a general offer if Mr Alec Soon retained any shares. These queries were apparently met when Mr Soon and Dartmonth sold all their remaining 14,008,000 Shares on the market, purportedly to parties unrelated either to Mr Soon or Mr Cheng at 85 to 89 cents on 24 November 1988.
21. On 5 December 1988, Shun Ho announced that Dartmonth had sold 40,000,000 Shares representing 34.5% of the issued capital and 31,990,000 warrants, representing 41.4% of the issued warrants on 29 November 1988 to Royle. The press announcement did not disclose the identity of the owner of Royle i.e. Mr Cheng. The trading of the Shares had been very active in the preceding two months and the price had moved from 59 cents in early October to between 81 and 91 cents in November.
22. Between 4 and 11 November 1988, Ms Wong of K S Kam & Co bought a total of 9,682,000 Shares which were booked into the names of Power International Inc, Angela Chan, Barbara Chan, Carol Chan, Diana Chan, Elizabeth Chan, Florence Chan, Gloria Chan, Hilda Chan, Ida Chan and Janet Chan ("the alphabetical Chans") at between 84 to 88 cents. During this same period, companies which had connections with Mr Alec Soon sold 12,442,000 Shares.
23. On 29 November 1988, the representatives of Dartmonth, i.e. Mr Alec Soon, his alternate and Mr Chan Hon Wing, resigned from the board of Shun Ho. The remaining two directors also resigned on 2 December 1988. On the same day, Mr Benny Kwong, representative of Royle, was appointed Chairman of the board. Messrs Eric Man and Albert Hui had been appointed directors on 23 November 1988.
24. On 2 December 1988, Alan Lam Norris Yang confirmed to OCS that neither Royle nor any person acting in concert with it had purchased any Shares apart from the 34.5% from Dartmonth, nor owned beneficially or otherwise any other Shares. There was, however, press speculation on the next day that the Cheng family might make a general offer at \$1.
25. {X2} was appointed a director on 1 March 1990 and Mr Benny Kwong resigned on 5 March 1990. On 6 March 1990 Mr Cheng became director and Chairman of Shun Ho. On 8 June 1990, Shun Ho announced a one-for-one rights issue at 57 cents a Share. The rights issue closed on 3 August 1990 and was over-subscribed by 16.4%.
26. By this time Ms Wong had registered the Shares bought in November 1988 in the names of three Liberian companies (Star King Limited ("Star King"), Lambee Limited ("Lambee") and Wiseplan Limited ("Wiseplan")» and a British Virgin Islands company (Vicksburg Limited ("Vicksburg")». These companies subscribed in full for the rights issue.
27. General Nominees first started buying Shares in February 1989 and had accumulated about 22% by May 1990. In the next two months, it reduced its shareholding to 17% and commenced buying again on 24 July 1990. It

subscribed in full to the rights issue and also purchased a net total of 11,128,000 Shares from 24 July to 10 August 1990. Half of these purchases were alleged by witnesses from the Chuang group to have been made on behalf of Mr Cheng as a result of agreement between Mr Chuang and Mr Cheng to ensure the success of the rights issue. These purchases formed the subject of the complaint from General Nominees.

28. On 4 February 1991, Mr Cheng purchased 1,100,000 Shares through his father's stockbroking firm, Richard Cheng Securities, increasing his shareholding in Shun Ho to 34.97%. On 11 February 1991, {X1} also purchased 1,000,000 Shares through the same broker. Both these purchases were at 35 cents, which was below market price. The seller on both occasions was Ms Wong.
29. On 7 March 1991, {X1} granted Mr Cheng a six-month option over 100,000 Shares at 40 cents while selling 500,000 Shares at an average price of 54 cents. {X1} was also appointed a director of Shun Ho that day.
30. On 6 April 1991, Mr Cheng exercised the option, increasing Royle's shareholding to 35.02% and triggering a general offer obligation.
31. On 14 May 1991, the Chairman of the Committee advised Shun Ho that, subject to responses on alternative courses of action from Mr Cheng by 17 May, it would convene a hearing of the Committee about the option agreement and the general offer. The Chairman considered that the option arrangement might be regarded as an artificial transaction and a device to avoid the former Code, and that it might be considered that the offer was not made in accordance with the spirit of the Code. It was indicated to Mr Cheng that unless the offer price was increased to at least the market price a hearing would be convened. On 17 May Shun Ho announced its annual results which revealed a substantial loss. The price of Shares dropped and Royle bought an additional 200,000 Shares at 45 cents and the next day increased the general offer price accordingly.
32. On the first closing date of the general offer, 14 June 1991, General Nominees accepted the offer in relation to 35,000,000 out of its 47,802,000 Shares, enabling the offer to be declared unconditional on 19 June. General Nominees filed its complaint with the Committee on 21 June 1991.
33. A chart on "Daily closing price and trading volume of Shun Ho Resources Holdings Ltd, with relevant events noted" is at **Annexure A**. Analysis of the evidence
34. A considerable body of evidence was put before the Panel. The evidence included eight volumes of box files comprising over a hundred exhibits. Two central issues are whether 5,564,000 Shares were delivered on 3 September 1990 to Mr Cheng in the name of Star King and whether Ms Wong was in 1988 or at any time thereafter acting in concert with Mr Cheng.

Whether the delivery of Shares took place

35. In relation to the first issue, the Panel took into consideration the evidence given to the Committee by Mr Cheng and witnesses from the Chuang Group being Mr Chuang, Mr Bernard Ko, Ms May Li and Miss Ng Lai Ching, together with the documents produced by them. Three members of the Panel were not involved in the 1991 hearing, but had the benefit of a full transcript of the proceedings. The Panel also carefully observed the way in which they gave their evidence at the hearing. Further, the Panel took account of all the relevant evidence produced and the submissions from the parties and the Executive.
36. The Committee was told that in early 1990 General Nominees held roughly 20% of the Shares and that Mr Chuang was rebuffed by Mr Cheng when he sought board representation. Discussions took place about potential corporate transactions between the Chuang group and Shun Ho but none of these came to fruition. Mr Chuang told the Committee that shortly after Shun Ho announced a one-for-one rights issue on 8 June 1990, he had two meetings with Mr Cheng in the Mandarin Hotel. He said that also present were their respective assistants, Mr Ko and {X2} and at that time, Mr Chuang's company, General Nominees, had a shareholding of roughly 20% in Shun Ho.
37. Mr Chuang said that during the first of these meetings, Mr Cheng asked him to support the rights issue. When Mr Chuang indicated that General Nominees had not set aside ready funds for this purpose, Mr Cheng suggested that Shun Ho would purchase a property from the Chuang group in order that it would have sufficient funds for the purchase of the rights issue shares.
38. Correspondence between solicitors on 13 and 16 July 1990 regarding the draft sale and purchase agreement for shares in the company holding the Shouson Hill property was produced. This purchase was to be made by Magnificent Estates Limited ("Magnificent"), a listed company which was part of the Shun Ho group. There was also a letter from the financial advisers dated 19 July 1990, indicating that although the purchase would not fall within the strict definition of a connected transaction, it would affect the rights issue of Magnificent and that the advisers considered it prudent to discuss the transaction with the SEHK beforehand. Nevertheless, on 25 July 1990, Alan Lam & Norris Yang wrote to Lu, Lai Li enclosing the amended draft agreement and referred to 11 August (i.e. the day after announcement of the rights issue results) as the date for signature.
39. Mr Chuang further said that Mr Cheng also asked him to support the share price of Shun Ho throughout the rights issue period by purchasing Shares and he would take care of half of the Shares so acquired; Mr Jacky Chau was subsequently nominated by Mr Cheng to act as scrutineer over the Share purchases. As a result, 11,128,000 Shares, a portion of which were in the form of nil-paid rights, were purchased from 24 July to 10 August 1990. Half of these were delivered on 3 September 1990 to Mr Cheng, who settled the payment by a direct cash deposit of \$3,536,065 into General Nominees' bank account three days later.
40. The Panel noted that one day after the Chuang group commenced these purchases, Mr Cheng's solicitors were giving indications that the property deal would be signed on 11 August 1990, the day after the announcement of the rights

issue results. On the day of the announcement, Mr Cheng's solicitors sought urgent instructions from {X2} regarding amendments of the draft agreement. It was not until 8 October 1990 that they informed Mr Chuang's solicitors that the property deal had fallen through, returning relevant title deeds and documents they had been keeping since 13 July.

41. Mr Bernard Ko was the first witness before the Committee. His evidence regarding the discussions between Mr Cheng and Mr Chuang on the rights issue was not in complete agreement with Mr Chuang's evidence. He, however, gave clear evidence regarding the delivery of the 5,564,000 Shares and the subsequent settlement of payment. Mr Ko said that, pursuant to Mr Chuang's instructions, he called Mr Cheng in late August to settle the Shares and that Mr Cheng agreed to do so and promised to ask {X2} to handle the matter. {X2} shortly afterwards told Mr Ko that the nominee purchaser would be Star King and asked for the bank account number of General Nominees in order to deposit cash directly into it. Mr Ko then instructed Ms May Li to arrange for delivery of the scrip to the offices of Shun Ho with a letter to Star King acknowledging receipt. When the letter was brought back acknowledging receipt, it bore a Standard Lloyds' chop. Mr Cheng stated that according to his knowledge the chop on the letter was not a chop ever used by Shun Ho. He suggested that the chop was forged.
42. Mr Ko gave evidence that a few minutes after he got the Star King letter with the endorsement of receipt, he received a telephone call from {X2}. {X2} said that there was something wrong with the letter and he wanted it back. Mr Ko then discussed it with Mr Chuang and agreed to have a certified true copy of the letter made by their solicitors, Lu, Lai Li. About twenty minutes later, the original of the letter was personally collected by {X2}.
43. Mr Ko said that he continued to chase the money, which was deposited in cash into General Nominees' bank account on 6 September 1990 and {X2} personally took the deposit slip to him. This deposit slip was produced and the amount shown thereon as having been deposited in cash on 6 September 1990 corresponded to the exact amount required for the 5,564,000 Shares.
44. Ms May Li also gave evidence to the Committee. She related the instructions she received from Mr Ko and identified the Star King letter as having been prepared by her. This letter was given to Ms Alice Siu to sign and she counted out the 5,564,000 Shares to be delivered. She then gave the scrip together with the letter to Miss Ng Lai Ching to deliver to the offices of Shun Ho.
45. Ms Alice Siu confirmed in a statement that she signed the Star King letter as requested by Ms May Li. She knew that the relevant securities dealing arrangements were made by Mr Ko and discussed with Mr Chuang. She knew the "trading parties" were Mr Cheng and his subordinates.
46. Miss Ng Lai Ching, gave evidence before the Committee and had previously made a statutory declaration regarding the delivery of the 5,564,000 Shares. Her evidence provided details of the delivery. She said that she remembered the date of the delivery because it was the birthday of her sister and the delivery interfered

with her plans to buy her sister a present. She produced the identity card of her sister showing her sister's birthday as 3 September, i.e. the date of the delivery. She had to look up the address on the map as she was not familiar with the particular building the Shun Ho offices were then in. As the boxes containing the scrip were heavy, she had to use a trolley. Miss Ng was questioned by the Committee in detail and cross-examined by Mr Cheng.

47. The solicitor at Lu, Lai & Li, Mr Billy Wu, also gave a statement to the effect that he certified a true copy of the Star King letter. The date on which the certification took place did not appear on the certified true copy and Mr Wu said it was certainly after 3 September 1990. Mr Cheng placed considerable reliance on this point before the Panel as indicating that Mr Ko's story was untrue. The Panel does not, however, consider that Mr Wu's uncertainty as to the exact date of certification is a material issue. It is clear that Mr Wu had seen the original and certified the copy.
48. It is an established fact that General Nominees did purchase 11,128,000 Shares (including subscriptions under nil-paid rights purchased during the period and applications for excess shares) around the time of the rights issue, from 24 July to 10 August. These purchases were confirmed in a statement by an independent witness, Mr Jacky Chau, who at that time was to be the Managing Director of Mansfield Stock Brokerage, a brokerage to be established by the Shun Ho group. It was also established that these purchases were made through Chelac, a broker that General Nominees had not used before and which was nominated by Mr Jacky Chau. The price of the Shares and nil-paid rights rose from 62 cents and 3.5 cents respectively on 24 July to 76 cents and 11 cents on 2 August (the day before the rights issue closed), and the price of Shares fell to 61 cents on 10 August, the day when the results of the rights issue were announced in newspapers.
49. During the hearing, the Panel asked that General Nominees' correspondence sent out at around the time of the Star King letter be examined. It was found that General Nominees kept a log book in which the serial number, date and name of addressee for each outgoing letter were recorded. The Star King letter was duly recorded therein in chronological sequence as GN90215, dated 3 September 1990 and addressed to "Star King Ltd". The secretary of Mr Ko, Ms Rhoda Ser, confirmed in a statement that she typed the letter and also produced her own log book in which the Star King letter was also recorded accordingly.
50. Mr Cheng admitted that he did try to persuade Mr Chuang to support the rights issue and initially went along with Mr Chuang's proposal regarding the Shouson Hill property deal in order not to antagonise him. He denied everything about the price-support operation, delivery of 5,564,000 Shares on 3 September 1990 and cash payment for those Shares. He said that there was no need to support the price of the Shares during the rights issue period as the rights issue was fully underwritten. The rights issue was ostensibly underwritten by DnB Limited as to 65.5% and the balance was to be taken up by Royle as a 34.5% shareholder. In fact the entire 65.5% was sub-underwritten by Mansion House International Ltd, of which {X1} was Managing Director. The sub-underwriting by Mansion House

International Ltd of 75,950,000 Shares represented a commitment of over \$43 million, which appears to be unusually large. Mr Cheng also stated that his relationship with Mr Chuang at that time was "cool and distant" and that Mr Chuang was the very last person with whom he would have chosen to make a deal of this sort.

51. {X2} subsequently gave a statement denying any knowledge of rights issue support or price-support discussions between Mr Cheng and Mr Chuang, of having provided the name Star King to Mr Ko, of the delivery of Shares on 3 September 1990 or of making any settlement of payment regarding such Shares.
52. Before the Panel, both Mr Chuang and Mr Cheng maintained the same position as in the Committee hearing. The Panel has listened carefully to the evidence given by them and observed the way in which they gave their evidence at the hearing.
53. In his response to the Executive Paper and before the Committee and the Panel, Mr Cheng pointed to a number of inconsistencies in the evidence given by the Chuang witnesses and argued that these inconsistencies demonstrated that the evidence was untrue. The first of these related to the original complaint, which was made only after General Nominees had ensured the success of Royle Corporation's general offer for Shun Ho at 45 cents per Share. The complaint made no reference to any agreement between Mr Chuang and Mr Cheng to buy Shares to support the rights issue. That evidence emerged for the first time only during the Committee's hearing in December 1991. Mr Cheng also pointed out that Mr Ko had said he was not present at the meeting between Mr Chuang and Mr Cheng where this agreement was reached, while Mr Chuang had said that he was present. Further, Ms Alice Siu had said that she did not place the orders for the Shares and nil paid rights purchased by Chelac, while both Mr Ko and Mr Jacky Chau had said that she did.
54. The Panel has taken into account the differences between the original complaint and the evidence given by the Chuang witnesses. It noted the inconsistencies between the evidence given by Mr Chuang and Mr Ko and in particular that Mr Ko was unclear about whether he had been present at the discussions between Mr Chuang and Mr Cheng on the rights issue support and any price-support. It has also considered other inconsistencies between the evidence given by Mr Bernard Ko, Ms Alice Siu and Mr Jacky Chau as to who in fact placed the orders for the 11,128,000 Shares. The Panel considers that these inconsistencies are not so significant as to undermine the credibility of the evidence given by the Chuang witnesses, which provided a coherent and detailed account of the purchase and delivery of the shares and was consistent with the documentary evidence produced.
55. In his Response to the Executive Paper, Mr Cheng also suggested that Mr Chuang might have fabricated his story in the hope of financial gain in the event that Royle was directed by the Committee to make a general offer at \$0.635 cents.

56. There is no evidence to support the suggestion that the story was fabricated and the Panel does not find that it is well-founded. The suggestion that the Chuang witnesses all conspired together and managed to produce documentary evidence going back to 1990 is implausible and the Panel rejects it.
57. Having carefully assessed the relevance and probative value of the relevant documents before the Panel, and the evidence of witnesses testifying before the Committee and the Panel, the Panel rejects the evidence of Mr Cheng and {X2} in this regard.
58. In view of the evidence set out above, the Panel was left in no doubt that the Shares were purchased as a consequence of discussions between Mr Cheng and Mr Chuang, that the delivery of 5,564,000 Shares to Mr Cheng at the offices of Shun Ho did take place, that the Star King letter was a contemporary document which had been prepared on 3 September 1990 as claimed by General Nominees, that the name Star King was provided to Mr Ko by {X2} and that payment was made for the Shares on 6 September 1990.

Whether Ms Wong was acting in concert with Mr Cheng

59. Royle's general offer for Shun Ho in 1991 was triggered by the exercise on Saturday 6 April 1991 of an option over 100,000 shares in Shun Ho at 40 cents granted by {X1} to Mr Cheng on 7 March 1991. The closing price on 7 March was \$0.54. The closing prices on the trading days before and after 6 April were respectively \$0.59 and \$0.53. The exercise of the option was enough to take Royle's shareholding in Shun Ho over the Code threshold of 35% so that a mandatory general offer was required by Rule 33 of the Code.
60. Inquiries by Commission staff showed that Royle had increased its shareholding to just under the Code threshold of 35% through the purchase of 1,100,000 shares on Monday 4 February 1991 at 35 cents. The 100,000 shares over which {X1} had granted the option were part of a parcel of 1,000,000 shares purchased on Monday 11 February 1991, also at 35 cents. Both purchases were made through Richard Cheng Securities, a brokerage firm owned by Mr Cheng's father, and the sales were made through K S Kam & Co.
61. In both cases, the transactions were the first significant transactions on a Monday, and both took place at prices below the general market level. The closing prices on Friday 1 February and Monday 4 February were \$0.39 and \$0.43 respectively and on Friday 8 February and Monday 11 February were \$0.48 and \$0.49 respectively. The Panel notes that, as at 4 February 1991, the daily closing price of the Shares had not been below 35 cents since 7 July 1989. Thereafter the daily closing price did not fall to below 35 cents till 29 January 1992. These circumstances suggested that the transactions were arranged beforehand between buyer and seller.
62. The seller was Ms Geraldine Wong who said that the shares were some of those owned by Star King, a Liberian company she owned. The name Star King had already also been linked to Mr Cheng as discussed above. She said she also

owned Shares in the names of Lambee, Wiseplan and Vicksburg. The total shareholding of these companies was 17,382,000 shares or 7.5% of Shun Ho. In fact, some of the shares delivered by K S Kam & Co in settlement of these transactions were not registered in the names of any of these four off-shore companies. At the Panel hearing, Ms Wong claimed she had exchanged some of her shares with shares registered in street names to accommodate a friend's request to hold registered stock. The Panel did not find this explanation convincing.

63. According to Ms Wong, she needed cash urgently on both days for a reason she could not recall. She saw a broker's bid at \$0.35 on the SEHK's teletext screen and thus contacted the broker. She denied that the sales were pursuant to any direct negotiation with third parties.
64. The real time transaction report, however, did not show the purchasing broker on both occasions (Richard Cheng Securities) having put up a bid on the screen. The real time transaction reports also showed an almost instantaneous response to Ms Wong's offers of 35 cents. These trades were also entirely different from other trades by Ms Wong around this period, which were in smaller parcels and at the market price. Ms Wong could offer no sensible explanation for these differences.
65. The Panel noted these contradictions and the unusual circumstances surrounding these two sales and concluded that they were not arm's length transactions.
66. Ms Wong's shareholding consisted of shares acquired in early November 1988, (this was the time when Mr Cheng, through Royle, first agreed to acquire 34.5% of the shares in Shun Ho from Mr Alec Soon) supplemented by Shares taken up in the rights issue of 1990, when the four nominee companies controlled by Ms Wong took up their rights in full. It is to that period in November 1988 the Panel now turns.
67. The Panel questioned Mr Cheng extensively on the circumstances surrounding his agreement to purchase 34.5% of Shun Ho from Mr Soon at \$1.21 per share, and was particularly interested in whether his attitude to the transaction had changed when, as a result of OCS's queries, Mr Soon was no longer to retain a 12.8% stake in Shun Ho and a board seat. Practice Note 2(5) of the former Code provided for the situation where a controlling shareholder sells just under 35% of his shareholding to a purchaser, who thus avoids the obligation of making a general offer. In such a situation there is obviously a risk that there will be an understanding between the vendor and purchaser that the vendor will use his retained shares to support the purchaser and a concert party between vendor and purchaser will be created and an obligation to make a general offer incurred.
68. The Panel considered it curious that Mr Cheng should be prepared to pay a significant premium to market price and net asset value without getting secure control of Shun Ho and without being concerned about where the balance of Mr Soon's Shares would end up.

69. Mr Cheng said that he had been interested by the publicity surrounding Shun Ho at the time and had approached Mr Soon to see if he was interested in selling. He said Mr Soon needed money to inject into his family's business interests in Singapore but wished to retain an interest in Shun Ho and Mr Soon wished him to limit his shareholding to 34.5%, although Mr Cheng would have been happy to make a general offer. Mr Cheng said he could not remember having been shown the OCS letter which referred to the possibility that Royle might be obliged to make a general offer if Mr Soon retained an interest in Shun Ho. He was certain that Mr Soon had never discussed the letter with him and had not discussed with him either the possibility that he purchase Mr Soon's shareholding or that the agreement be renegotiated. Mr Cheng said that Mr Soon had unilaterally decided to sell his remaining shareholding in the market, probably because Mr Soon was concerned that Mr Soon might be required to make a general offer.
70. The Panel finds Mr Cheng's account to be implausible. Under the Code, the primary obligation to make a general offer would have fallen on Mr Cheng. It would in any event have been natural for Mr Soon to have discussed with Mr Cheng the OCS letter, which seemed to require a change in the basis of their mutual agreement. The Panel carefully listened to Mr Cheng and observed the way in which he gave his evidence at the hearing and found that it could place no reliance on his evidence. In the Panel's view, the much more natural explanation of Mr Cheng's attitude is that he knew that, irrespective of whether Mr Soon retained his 12.8% shareholding, he had already secured effective control through the purchases made through Ms Wong.
71. Ms Wong's explanation of these purchases given in her interviews with the SFC and before the Panel was that these purchases were originally made for a "Mdm Therest Wong". The names of Power International Inc and the alphabetical Chans were provided by "Mdm Therest Wong", who came from Tahiti with HK\$10 million to invest. All the 11 transactions, at 84 to 88 cents, were settled in cash and scrip collected by "Mdm Therest Wong" personally.
72. In her third interview with SFC investigators, Ms Wong revealed that she bought back all these Shares "off market" from "Mdm Therest Wong" at 30 cents in about March 1989. Payment was made from cash she kept at home.
73. When she was asked by the Panel why the price was 30 cents when over 10 million Shares were traded at 71 to 80 cents in March 1989, Ms Wong said that she had in fact wanted to sell the Shares at 90 cents for "Mdm Therest Wong", who agreed that if the Shares could be sold at above 90 cents during a period of six months from the time of the initial payment of 30 cents per share, then "Mdm Therest Wong" would get the extra money, otherwise the 30 cents would be considered as final settlement. As Ms Wong had no means of contacting "Mdm Therest Wong", the latter was asked to "watch the price" of the Shares from Tahiti and if the price went up above 90 cents, to approach Ms Wong for the extra money.

74. Ms Wong further told the Panel that "Mdm Therest Wong" gave her the money in one big bundle (this would have come to something more than \$8 million) at K S Kam & Co's bank on the day after she made the Share purchases for her. She then physically counted the scrip and took the two big bundles of scrip back to her home where "Mdm Therest Wong" personally collected them. Ms Wong gave "Mdm Therest Wong" one of her travel trolleys she kept at home to carry the scrip away.
75. Bank deposit slips, however, revealed that the cash deposits for settling the purchases made over four days (i.e. 4, 7, 9 and 11 November 1988) in the names of the alphabetical Chans were made over four different days (i.e. 8, 9, 11 and 19 November 1988).
76. According to Ms Wong, the next time she saw "Mdm Therest Wong" was in March 1989 when she brought the same scrip back to Ms Wong at her home. Ms Wong there upon gave her \$2,886,000 representing 30 cents per share from cash she kept at home. Ms Wong confirmed that "Mdm Therest Wong" was the only client who had ever collected or delivered scrip or money to her at home. No transfer duty was paid by Ms Wong on the purported purchase of shares from "Mdm Therest Wong".
77. Ms Wong told the Panel that she had met "Mdm Therest Wong" only briefly on two social occasions prior to the November 1988 purchases. She did not know any other details about her except her name and that she came from Tahiti. When asked by the Panel why she trusted such a client to the extent of placing orders for over \$8 million worth of shares in Shun Ho, a third line stock, she could provide no basis for her trust.
78. The Panel finds the entire story concerning "Mdm Therest Wong" - that all these transactions were purportedly in cash, with no fund trails, no identification of the client, and very large bundles of scrip being collected and delivered at Ms Wong's residence incredible.
79. Ms Wong had said in her third interview on 10 December 1991 with SFC investigators that she acquired four off-shore companies (Star King, Lambee, Wiseplan and Vicksburg) around June 1989 due to the political climate in Hong Kong and used them to hold the Shares . However, Ms Wong later told the Panel that in the six months after March 1989, she considered that to a certain extent those Shares were still Ms Therest Wong's shares. She said that since the Shares were not bought under her name, she had registered them in the names of these four companies so that they would not be registered under her name. Ms Wong provided no reason why she registered Ms Therest Wong's shares in these names well before the expiry of the six-month period during which she claimed Ms Therest Wong was entitled to any amount obtained on the sale of the shares in excess of 90 cents. The Panel was told that she did not register any of her other shares, of which she had a portfolio of around \$20 million, under these companies' names as these shares were bought and registered under her name.

80. Ms Wong further stated that she subscribed in the names of these four off-shore companies for 9,682,000 rights issue shares by depositing \$5,484,540 cash directly into the "Standard-Lloyds - rights issue account". This cash again came from cash she kept at home.
81. When SFC staff first obtained the addresses of the alphabetical Chans from K S Kam & Co, they posted letters to each of them in early 1992. The letters sent to A to H Chan in Canada were returned indicating wrong addresses. No reply was received regarding the letter sent to Janet Chan in Taiwan. Ida Chan had a Hong Kong address, which was found to have been occupied at all material times by a doctor, who did not know any Ida Chan. When Ms Wong was being asked in June 1989 about the purchases for Power International Inc, she said she had no knowledge of the account. The day after this interview, her colleague was instructed by her to contact the SFC to relate the message that the name Power International Inc was also provided by "Mdm Therest Wong".
82. A Liberian company named Power International Inc was used by Mr Cheng to acquire a property, Valley Court, in February 1989 for \$48 million. This company, which had yet to complete the purchase of the Valley Court property, was re-sold to Shun Ho at \$9 million profit one month later. This notifiable transaction was announced by Shun Ho in a formal announcement to the market as an agreement with a "third party", Shelton Investments Limited ("Shelton"). Shareholders, regulators and the market were not advised that the agreement was not in fact an arm's length transaction. It was only in April 1992 that Carey & Lui advised the SFC in response to enquiries that Mr Cheng was in fact the beneficial owner of Shelton.
83. Power International Inc was first acquired by Alan Lam & Norris Yang as a shelf company around 17 August 1988. There was some confusion in Mr Alan Lam's three replies to SFC's enquiries regarding the date when Power International Inc was sold to Mr Cheng, providing 14 April 1989, November 1988 and 25 February 1989 as tentative dates. The Panel noted that the November 1988 date was significant because that was the month when Ms Wong purchased Shares in the name of Power International Inc.
84. Mr Alan Lam was called to give evidence. He explained the first date 14 April 1989 was provided by looking at the receipts, which gave the date of billing. Mr Lam said he could not recall having provided the second date, November 1988, over the telephone to SFC staff, but even if he had, he might have misunderstood or thought he remembered without checking. The only reason he could think of was that Mr Cheng also acquired Royle and Shelton from his firm in or about November 1988. The third date, 25 February 1989, was provided after looking at the file and seeing the minutes which implied that Mr Cheng acquired Power International Inc on or prior to 25 February 1989.
85. The Panel asked Mr Alan Lam whether it was possible that Power International Inc had already been reserved by Mr Cheng in November 1988 but not actually sold to him until February 1989. Mr Lam said that it was possible. Mr Cheng did

not deal with Alan Lam & Norris Yang only through Mr Lam. He knew and talked to almost everybody in the firm.

86. Mr Alan Lam was further asked about the sale of Vicksburg, which was sold by Alan Lam & Norris Yang in June 1989 but not paid for in cash until nine months later. He agreed that this behaviour looked like the behaviour of a client rather than a stranger. However, he had no record to show who actually acquired Vicksburg. His firm had actually sent out letters to various clients in an endeavour to find out who actually acquired Vicksburg. The company was struck off in 1992 for non-payment of 1991 licence fees.
87. The Panel noted that Vicksburg was the BVI company used by Ms Wong to hold shares in Shun Ho in 1989. She claimed to have used cash to acquire this company from a commercial agent, the name of which she could not remember.
88. The provisional allotment letters exhibited were addressed to Star King, Wiseplan and Vicksburg at 80 Broad Street, Monrovia, Liberia while that for Lambee had a Hong Kong address. When asked by the Panel how she received these letters, she said they were posted to their respective post office boxes because she had previously changed the addresses of the companies. She suggested that stickers with new addresses might have been placed on the envelopes of the letters. According to the share registrars of Shun Ho, the addresses for Star King, Wiseplan, Vicksburg and Lambee were only changed to the post office box addresses on 30 July 1990.
89. The post office boxes of these four companies were opened by four different persons on 9 and 10 July 1990. Ms Wong said that she asked a renovation worker she met in her friend's house to arrange for these four post office boxes to be opened for her.
90. The Panel was also surprised by the fact that the four nominee companies controlled by Ms Wong had been able to take up their rights in August 1990 by paying cash directly to Shun Ho, rather than by cheque delivered to Shun Ho's registrars, Corporate Registrars Limited, as provided by the terms of the letters of allotment. In the Panel's experience, this is highly unusual and would have had to be authorised by someone quite senior at Shun Ho. Both Mr Cheng and {X2} denied giving any such authorization and Mr Cheng suggested that it must have been given by an employee such as someone in the accounts department. The Panel considers this highly unlikely. The Panel also notes that Mr Cheng had given evidence in the Committee hearing that the company chop of Shun Ho could not have been affixed without his or {X2's}'s knowledge when asserting that no delivery of Shares in the name of Star King could have taken place. The Panel considers it even more unlikely that no one in Shun Ho would have considered it worthy of remark the fact that four nominee companies, whose combined shareholding was 8.3%, wished to take up their rights in cash, if Mr Cheng had had less than secure (i.e. Code) control, with a shareholding of only 34.5%.

91. The Panel carefully considered Ms Wong's evidence, in her three interviews with SFC staff and in front of the Panel, and found it could place no reliance on it. Ms Wong's evidence about Ms Therest Wong is highly implausible in itself. Ms Wong's investment in the Shares and the manner in which she dealt with these Shares is inconsistent with her other investment activities. Each successive version of her story gives the impression that it was adjusted as the SFC investigators and the Panel uncovered facts inconsistent with an earlier version.
92. The Panel's conclusion is that Ms Wong was from the first acting to warehouse shares in Shun Ho for another party and that that other party was Mr Cheng. Mr Cheng had management control of Shun Ho and a 34.5% shareholding in it. He had paid a premium that was not warranted unless he gained secure control and he was concerned to avoid incurring a general offer obligation.
93. Mr Cheng's actions throughout the events discussed in this Decision are consistent with his knowing that his control of the company was more secure than it appeared to be with a shareholding of only 34.5%. He was not concerned when Mr Soon sold his remaining stake. He was not concerned by the presence on Shun Ho's register of 4 nominee companies who wished to preserve their anonymity by subscribing for the rights issue in cash. Mr Cheng was prepared to rebuff Mr Chuang's request for board representation at a time when a company under Mr Chuang's control held roughly 20% of the Shares. He was prepared to antagonise Mr Chuang further by surprising him with a rights issue and then aborting the Shouson Hill property purchase after General Nominees had taken up its rights issue Shares on the basis that the purchase would go ahead. [He was not concerned that Mr Chuang, who at the time of the rights issue had a shareholding of roughly 20% in Shun Ho had purchased an additional interest of just under 5%.]
94. In his Response, Mr Cheng suggested that Ms Wong might have been acting in concert with some other party, such as Mr Soon or Mr Chuang, or might have herself accumulated her significant stake in Shun Ho so that she could profit from any contest for control that might emerge. Mr Cheng did not follow up these suggestions at the hearing by questioning Ms Wong or Mr Chuang and the Panel does not consider it necessary to discuss them in detail. They are not supported by evidence and are commercially implausible. Mr Cheng's Response also suggested that Mr Soon might have become aware of the name Power International Inc in the course of the November 1988 negotiations for the purchase of Shun Ho when, he said, Mr Lam and Mr Soon were together every evening for some fourteen days. At the hearing, Mr Lam denied having been with Mr Soon, whom he said he had met only briefly, and was unsure if he would recognise him.
95. Ms Wong is linked to Mr Cheng by the timing of her initial purchases, by the sales on 4 and 11 February 1989, by the use of the names - Star King, Power International Inc and Vicksburg, and by the arrangements to subscribe for the rights issue in cash. The circumstances are fully consistent with Ms Wong acting as a warehouse for Mr Cheng. The Panel has no doubt that Ms Wong was acting in concert with Mr Cheng.

The Option Arrangement

96. On 7 March 1991, a six-month option agreement was granted by {X1} to Mr Cheng, at Mr Cheng's request, in order that Mr Cheng could purchase 100,000 Shares at \$0.40 per Share. On the same day, {X1} was appointed a director of Shun Ho. The Panel noted that {X1} also sold 500,000 Shares on the same day at \$0.53 to \$0.55 per Share.
97. On 6 April 1991, the option was exercised by Mr Cheng, increasing his shareholding in Shun Ho to 35.02% and triggering a general offer obligation at \$0.40. The market price at that time was between \$0.53 and \$0.59.
98. In reply to SFC's enquiries, {X1} stated on 25 April 1991 that the option price of \$0.40 was based on the "weighted average of the daily low price for the month of February less a discount of 4.76%". During the hearing, however, {X1} told the Panel that the price was proposed by Mr Cheng, he thought that it was just "a small token", and agreed without negotiation.
99. In the commercial experience of the Panel, such an option arrangement is very unusual. The Panel concluded that it was a device to enable Mr Cheng to exceed the 35% threshold at a low price at a time convenient to him, probably to enable Mr Cheng to regularise his undisclosed shareholding, which could have been disguised as on-market purchases during the offer period or after the offer had closed, when Mr Cheng had the ability to purchase up to an additional 5% of Shun Ho without triggering a mandatory offer.
100. There is no evidence that {X1} knew of the delivery of shares on 3 September 1990 or that Mr Cheng's shareholding in Shun Ho was more than 35%. However, he must have known that the option arrangement could only have been a device to avoid the Code and that his explanation to the SFC of how the option exercise price was arrived at was untrue.

Standard of Proof

101. Both Mr Cheng and Ms Wong, through their solicitors, submitted that the appropriate standard of proof is that applicable to criminal trials, i.e. beyond reasonable doubt.
102. The former Code and the Code do not have the force of law. It is the view of the Panel that for proceedings under the Code to adopt the criminal standard of proof beyond reasonable doubt would be wholly inappropriate. It would be inconsistent with the nature of the Code and tend to undermine its effectiveness.
103. The appropriate standard is that applied to civil proceedings. The Panel notes that a similar approach was also adopted by the Panel on Takeovers and Mergers in London in the Guinness Pic and Distillers Company Pic case in 1987 where it stated that:

"The Panel in making its judgments on the facts is not acting as a court of law but is applying the combined experience of its members to evidence which is almost invariably circumstantial."

104. In adopting the civil standard of balance of probabilities, the Panel is conscious that this standard must be applied flexibly so that cases involving serious allegations or Code consequences would require a higher degree of probability.
105. The Panel was mindful that should it find a concert party between Mr Cheng and Ms Wong or find that there had been a delivery of 5,564,000 Shares to Mr Cheng, serious financial and disciplinary consequences may ensue. It is for this reason that the Panel extensively questioned the parties and instructed that further enquiries be made during the hearing in order that it might be highly satisfied before any conclusion is drawn. The Panel was so highly satisfied.

Determination

106. On the basis of all the evidence discussed above, the Panel determined the questions asked of it as follows.
107. In relation to the first question as to whether Mr Cheng, Royle, Ms Wong and K S Kam & Co were concert parties in November 1988 or subsequently, the Panel determined that Mr Cheng, Royle and Ms Wong acted in concert in acquiring more than 35% of the shareholding in Shun Ho in November 1988.
108. The Panel considers that there is insufficient evidence for it to find that K S Kam & Co was acting in concert with Mr Cheng, Royle or Ms Wong. Although Ms Wong was an employee of K S Kam & Co and her acts could be attributed to her employer for some purposes, the Panel does not consider that K S Kam & Co should be regarded for that reason alone as a concert party in the sense of the Code.
109. The Panel has found that Mr Cheng, Royle and Ms Wong exceeded the Code threshold of 35% of Shun Ho on 29 November 1988 and thus contravened Rule 33 of the former Code in failing to make a general offer at that time.
110. The Panel has also found that there was a subsequent acquisition of shares on 3 September 1990 by Mr Cheng. However, at that stage Mr Cheng's shareholding was already in excess of 35% and the Shares acquired constituted less than 5% of the issued Shares, therefore their acquisition did not contravene the "creeper" provisions of Rule 33. The acquisition of further shares by Mr Cheng on 4 February 1991 and by {X1} on 11 February from Ms Wong did not increase the combined holding of the concert party comprised by Mr Cheng, Royle and Ms Wong and so could not have contravened Rule 33. This disposes of the matters set out in paragraphs 4(b), (c) and (d) of this Decision.

Consequences

Remedies

111. The Executive submitted that on 30 November 1988 an offer at \$1.2161 per share for the Shares should have been announced and shareholders should have received an offer but had not received it. Therefore Mr Cheng and Royle should pay appropriate compensation to those shareholders to put them, so far as practicable, in the position that they would have been in if Mr Cheng and Royle had complied with their obligations under the former Code when they arose. The Executive acknowledged that most such shareholders would have disposed of their shares between 30 November 1988 and now and that it would be difficult to identify all of those entitled to compensation and to establish the amount to which they were entitled. It submitted, however, that it would be possible to identify the last buying broker before 30 November 1988 and the first selling broker after that date from an examination of the transfer records maintained by the share registrar and then to identify the client from the brokers' records. This process should be supplemented by a series of advertisements paid for by Mr Cheng. A firm of accountants acceptable to the Executive should be appointed to administer this process and ensure shareholder claims are processed fairly. The reasonable expenses of this exercise should be borne by Mr. Cheng. The Executive submitted that the appropriate compensation should be the difference between the price at which the general offer should have been made i.e. \$1.2161 and the price which the beneficial owner of the shares at 30 November 1988 eventually received when he sold the shares. The Executive also submitted that this amount should be adjusted for interest, in view of the considerable time that had elapsed since the breach. The Executive submitted that this was consistent with the principles applied by the City Panel on Takeovers and Mergers in its Decision of 5 May 1989 in relation to the Guinness Pic offer for The Distillers Company Pic.
112. While reserving his right to argue that the Panel was wrong in holding that he had incurred a general offer obligation, Mr Cheng initially told the Panel that he was financially unable to make such compensation. He said, however, that he was willing, and would be financially able, to rectify his alleged breach by making a general offer, at a suitably adjusted price, to the existing shareholders of Shun Ho in 1993. He suggested a price of \$0.892 for each existing Share. This is the price arrived at by attributing the offer price of \$1.21 to each of the Shares that were in issue in November 1988 and adjusting it for subsequent Share issues, valuing new Shares issued at the issue price. In addition to the one-for-one rights issue at 57 cents in September 1990 discussed elsewhere in this Decision, Shun Ho has issued 46,380,000 new Shares (by placing and top-up) at \$1.00 on 12 May 1993 and 11,595,000 new Shares at \$0.50 (under an employees' option scheme) on 11 June 1993. Mr Cheng also offered to make a payment to the Unified Exchange Compensation Fund ("Compensation Fund").
113. The general offer to existing shareholders suggested by Mr Cheng would not have provided most of the shareholders who should have received the general

offer at the time the obligation arose, i.e. November 1988, of any redress because they would have disposed of their shares by now.

114. The Panel has considered these submissions very carefully. It is faced with a situation for which no clear precedent exists. A serious breach of the former Code, denying shareholders a general offer, has taken place and remained concealed for a long period. The period during which the breach has gone unknown to the market and uncorrected is much longer than in previous concert party rulings where the Takeovers Committee has directed the making of a general offer as an appropriate remedy, such as its decisions in the Paladin and Jademan matters. In both the Paladin and Jademan matters, the basic facts of the cases were known to the public and shareholders were effectively on notice that the Committee might make such a ruling. The closest precedent to the situation currently under consideration by the Panel is the situation that confronted the City Panel in the Distillers matter. In that case, the City Panel also had to consider how to redress a breach that had been concealed for a long period but the situation was less problematical than in the current case because Guinness had made a general offer at the appropriate time, which received a high acceptance rate, and the main problem with which the City Panel had to deal was how to adjust the consideration received by offerees.
115. At the very core of the Code is the concept of equality of treatment for shareholders. This is exemplified by the provisions of Rule 33 of the former Code and the fundamental proposition that a premium for control should be made available equally to all shareholders.
116. The Panel has found that Mr Cheng acted in concert with Ms Wong to secure Code control of Shun Ho in November 1988. The price paid for the key block, \$1.2161 per share, was substantially higher than the then current market price for Shun Ho shares of 80-88 cents. A premium for control was clearly paid but not made available equally to all shareholders. Nor did shareholders receive the opportunity to exit at an appropriate price that a general offer would have afforded them.
117. The former Code aims to afford to shareholders protection from such a situation. In seeking to correct the harm caused to shareholders by this breach, the Panel cannot but maintain that the intended beneficiaries of such redress must be those shareholders who were beneficial owners of Shares on the date on which the breach occurred. In the circumstances of this case, any other proposition is both inequitable and inconsistent with the protection the former Code and the Code are expected to afford shareholders.
118. Redress is a wholly separate issue from the question of what sanctions might properly be imposed upon Mr Cheng and the other parties to these proceedings. The question of sanctions is dealt with in a later section of this Decision. The Panel notes, however, that merely to require Mr Cheng to make a general offer at an adjusted price now would not only fail to provide redress to those who were beneficial owners at the time the breach occurred but would also mean that Mr

Cheng would have obtained a benefit by effectively delaying the general offer he should have made by almost 5 years.

119. While the Panel accepts that the mechanism of implementation may be difficult and not all potential beneficiaries may be identified, it cannot accept that mechanical difficulties are a valid reason for departing from a conclusion reached by relying on the fundamental principles of the former Code provided that implementation is feasible.
120. The Panel has found that a clearly identifiable body of shareholders did not receive the opportunity to participate in a general offer to which they were entitled. They are the parties whom the former Code sought to protect and it is their interests the Panel must bear foremost in mind in formulating a remedy. The formulation of the appropriate remedy is a separate issue from imposing sanctions although clearly the two are related in respect of the Panel's ability to compel Mr Cheng to make recompense.
121. A mandatory bid should have been made by Mr Cheng and Royle as principal members of the concert party in November 1988 to other shareholders at a price of \$1.2161, the highest price paid by Mr Cheng and persons acting in concert with him within the preceding six months and a comparable offer should have been made for the warrants.
122. The actual price paid by Royle on 29 November 1988 for 31,990,000 warrants (i.e. 41.4% of all outstanding warrants) of Shun Ho was 30 cents per warrant. The exercise price of the warrants was 80 cents. A comparable offer for the warrants to other warrant holders should have been made at a price equal to the difference between the mandatory share offer price and the exercise price, i.e. 41.61 cents. This is the price arrived at by using the standard formula for calculating the offer price for warrants under a general offer.
123. In the Panel's view, the principles of the former Code require that Mr Cheng put the beneficial owners of shares and warrants as at 30 November 1988 in the position that they would have been in, had he complied with his obligations at the time they arose. Because of the length of time that has elapsed and the concealment of the breach throughout that period, it is impossible to achieve this perfectly but the Panel has to do the best it can to provide adequate redress in the light of its assessment of the likely effects of the breach on shareholders and warrant holders.
124. Had a general offer been made at \$1.2161 for shares and \$0.4161 for warrants, it would have had to be subject to a minimum acceptance condition of 50% of the shares and to no other conditions. Shareholders and warrant holders would have had the options of accepting the offer and receiving the full offer price if the acceptance condition was satisfied, of selling on market at a price that would have been higher than otherwise because of the offer, or of retaining their shares or warrants. An offer at \$1.21 would have been very attractive compared both to actual market prices and to net asset value per share. Having regard to these factors, to the general condition of the market at the time and to the business and prospects of Shun Ho, the Panel considers that the independent financial

adviser to Shun Ho would have recommended acceptance of the offer and the owners of almost all the shares and warrants would have either accepted the offer or, if the market prices had risen sufficiently close to the offer price, sold on market during the offer period. In the particular circumstances of this case, the Panel considers that the acceptance level of the offer would have been very high, although it recognizes that, as in all offers, a small percentage of shares and warrants would not have been tendered to the offer, because the owners of the shares and warrants would not have accepted the offer for their own reasons or would not have been in a position to accept the offer, either because they would not have been aware of it or would have been unable to complete the requisite formalities to make a valid acceptance before the offer closed.

125. On this basis, the Panel considers that the most appropriate starting point for assessing the effect on the owners of shares and warrants of Mr Cheng's failure to make an offer is to have regard to the difference between the price at which the offer should have been made and the prevailing market prices during the offer period, which should have run between 30 November 1988 and 30 January 1989. (The offer should have been announced on 30 November 1988, and the offer document despatched within 40 days i.e. by 9 January. It would have had to be open for a minimum of 21 days). The average closing price per share over this period was \$0.738 and the average closing price for warrants was \$0.189. Considering the matter in the round, the Panel considers that it is appropriate to quantify the initial disadvantage suffered by the owners of shares and warrants due to the absence of a general offer by taking the difference between the general offer price and the average market prices for shares and warrants over the offer period. This produces a starting figure of \$0.478 per share and \$0.227 per warrant.
126. The Panel considers that it should also take into account the fact that shareholders and warrant-holders have been deprived of the amount which they should have had for a considerable time period and considers that an interest component should be added to compensate for this delay. It has selected 3 month HISOR as the appropriate rate in the circumstances of this case.
127. Compounded quarterly over the period from 30 January 1989, the last day on which the offer would have been open for acceptance, the interest component is \$0.172 per share and \$0.083 per warrant as at 30 November 1993. This gives \$0.65 per share and \$0.31 per warrant as the amount to be paid to the owners of shares and warrants to put them in the position that they would have been in if Mr Cheng had complied with his obligation to make a general offer.
128. The Panel acknowledges that adopting this method of computing the remedy does not distinguish between the circumstances of individual owners of shares and warrants who have sold their securities at different times and for different prices and that there will therefore be some variations in the present overall financial position of individual investors. The Panel was aware that a more precise way of determining the amount of the remedy would be to examine the position of each owner of shares and warrants, determine what each would have done if a general offer had been made, and then calculate the disadvantage

suffered by each owner by reference to the price at which he in fact sold his shares and warrants at various times over the period of more than 5 years that has elapsed between the incurring of the offer obligation by Mr Cheng and the publication of this Decision. This approach was proposed by the Executive, but the Panel considers that it is desirable that redress should be provided to investors on a general basis, that the scheme to provide it be as easy to administer as practicable and that both Mr Cheng and those entitled to compensation should know exactly what the Panel's ruling entails.

129. In adopting a general approach, the Panel has also had regard to the approach followed by the City Panel in formulating a remedy in the Distillers matter. In the Distillers matter, Guinness submitted that any compensatory order would have to be made on a general basis. The City Panel agreed and was prepared to disregard minor inconsistencies in the position of individual shareholders. While the factual situation in this matter is in some respects more complex than that considered by the City Panel, the decision in Distillers illustrates that the approach the Panel proposes is consistent with the principles of the former Code and of fairness. Mr Cheng did not make submissions on the details of the implementation of the principles the Panel has adopted.
130. **Annexure B** to this Decision sets out the calculation of the compensation payable to those who were shareholders of Shun Ho in November 1988.
131. The Panel regards Mr Cheng's offer to pay a sum of money into the Compensation Fund as irrelevant to any aspect of this ruling. It has not taken it into account in framing this ruling nor does it see it as remedying the former Code breach.
132. The Panel has not had submissions from Mr Cheng on the procedures for identifying the owners of shares and warrants who are entitled to payment in accordance with this ruling. The Panel considers the procedures suggested by the Executive and set out at paragraph 111 are appropriate.
133. If Mr Cheng does not comply with the Panel's ruling on his obligations under the former Code in this situation, the Panel will have to give consideration to disciplinary action, including the making of a "cold shoulder" order under paragraph 12(1)(e) of the Introduction to the current Codes. A "cold-shoulder" order is the most severe sanction available under the current Code. Its effect would be that the services of dealers and advisers, including brokers and merchant banks, are to be withheld from Mr Cheng for the period of the order. Other possible consequences of such an order are that Mr Cheng would be unable to buy or sell securities on the Stock Exchange of Hong Kong. The Panel is confident that a "cold-shoulder" order would receive strong backing from the SFC, the Exchange, and members of the financial community in Hong Kong and would have serious consequences for Mr Cheng. The SFC would inform overseas securities regulators of the making of a cold-shoulder order.
134. The Executive is to bring this matter before the Panel at the end of 3 months, if Mr Cheng fails to comply with the Panel's ruling. If Mr Cheng takes other action

inconsistent with complying with the Panel's ruling, the Executive is directed to bring the matter before the Panel forthwith. The Panel also requests the assistance of the Commission in using its statutory powers to establish Mr Cheng's ability to comply with the Panel's ruling as to his obligations under the former Code.

Sanctions

135. The Panel now turns to the question of sanctions. The Panel under its procedural rules has to decide, in the event of a finding of a breach, what action, if any, it should take. Under the former Code, the Panel may have recourse to private reprimand or public censure or to further action as appropriate.
136. After reaching the findings above, the Panel communicated the findings to the parties, and invited written representations from them. The parties made such representations which were then fully considered and taken into account by the Panel in deciding upon the following sanctions.
137. The circumstances that the Panel has inquired into demonstrate that Mr Cheng's conduct in breaching Rule 33 should be the subject of censure. As to the extent of the censure, the Panel considers that, Mr Cheng's breach was a very serious breach of the central provision of the Code. His subsequent conduct exacerbated the breach and multiplied its effects and necessitated the concealment of material information from the market in subsequent documents issued by Shun Ho including its annual reports and the rights issue circular. It involved at least one further Code breach in relation to the offeror and offeree documents in May 1991. The breach was premeditated and carefully concealed.
138. The Panel has already recorded its rejection of Mr Cheng's evidence before it. His lack of reliability as a witness reflected little credit on him.
139. In the light of these matters, the Panel is fully satisfied that Mr Cheng's conduct was such as to warrant severe condemnation. The Panel severely condemns Mr Cheng's conduct and he is severely censured.

Ms Geraldine Wong

140. Ms Wong was the other person found to have been involved in a Rule 33 breach. Unlike Mr Cheng, she does not appear to have enjoyed the benefits of control of Shun Ho Resources and there is nothing to suggest her role was more than that of warehouseman. The Panel has also recorded its rejection of her evidence before it. The Panel considers that Ms Wong should be strongly censured for her involvement in the breach and for her attempts to mislead the Panel and the Executive in their inquiries. As Ms Wong is a registered person, the Panel considers that it should refer her conduct to the Securities and Futures Commission for such further inquiry and licensing or other action as it considers appropriate.

{X2}

141. {X2} is a director of a listed company and a person to whom the Code applies. Whilst there was no evidence before the Panel that he was involved in the Rule 33 breach in November 1988, the Panel has already recorded its rejection of {X2's} evidence in relation to the 3 September 1990 delivery of shares, the recovery of the letter of receipt and delivery of the cash deposit slip by him personally. The Panel is satisfied that {X2} was prepared to be involved in what would have been a clear breach of Rule 33 in September 1990. Further, he took responsibility with other directors of Shun Ho for the offeree documents issued in May 1991 when he knew that the document did not comply with the Code. The Panel strongly criticises {X2's} conduct.

{X1}

142. In respect of {X1}, the Panel has already recorded its finding that {X1} was not involved in any Code breach by virtue of his involvement in the share purchase of 11 February 1991 or the option arrangement of 7 March 1991. The Panel is fully satisfied that {X1} was prepared to cooperate in an arrangement with Mr Cheng that could only have been a device to allow Mr Cheng to cross the Code threshold without having to make a genuine offer to shareholders and that his explanation of how the option exercise price was arrived at in his letter of 25 April 1991 was false, misleading and incomplete. The Panel considers it is appropriate that it should publicly criticise {X1}.

K S Kam & Co.

143. Ms Geraldine Wong is a long standing and trusted employee of K S Kam & Co. and appears to have enjoyed considerable authority and autonomy. She was therefore able to cause fictitious names to be entered in K S Kam & Co's client records and so facilitate a breach of Rule 33 of the Code. {X3} also gave evidence that he supported Ms Geraldine Wong's account which the Panel has disbelieved about how she came to acquire shares from "Mdm Therest Wong". The Panel inquiry has not focused on {X3's} involvements in the events of November 1988 or afterwards but nevertheless the Panel is critical of {X3's} failure to exercise adequate supervision of his employee in the manner she conducted business through his firm.

Fees

144. Section 8 of Part III of the Securities and Futures Commission (Fees) Rules provides that, where a hearing takes place before the Panel to consider an allegation of breach of the Takeovers Code, a fee determined in accordance with subsection (2) shall be payable by any person who in the opinion of the Panel –
- (a) has caused unnecessary expense to be incurred in connection with the investigation of the allegation or the conduct of the hearings; or
 - (b) has committed a breach of the Code.

145. The Panel records that, in its opinion, Royle Corporation Limited, Mr William Cheng Kai-man and Ms Geraldine Wong Pui-ching have committed a breach of Rule 33 of the former Takeovers Code.

Daily closing price and trading volume of Shun Ho Resources Holdings Ltd, with relevant events noted
(formerly known as Standard-Lloyds Holdings Ltd)
during the period from 1 July 1988 to 25 October 1993



- Notes:
1. 4-11/11/88 - Ms Wong purchased 9,682,000 Shares in the names of alphabetical Chans and Power International Inc.
 2. 29/11/88 - Dartmouth sold 40,000,000 Shares to Royle.
 3. 8/6/90 - Shun Ho one-for-one rights issue announced.
 4. 10/8/90 - Shun Ho issued 115,950,000 new Shares. General Nominees purchased 11,128,000 Shares from 24/7 to 10/8/90.
 5. 3/9/90 - Delivery of 5,564,000 Shares by General Nominees to Mr Cheng.
 6. 4 & 11/2/91 - Mr Cheng and (X1) purchased 1,100,000 and 1,000,000 Shares respectively from Ms Wong.
 7. 7/3/91 - (X1) granted option at \$0.40 to Mr Cheng.
 8. 6/4/91 - Mr Cheng exercised option, triggering general offer obligation.
 9. 17/5/91 - Mr Cheng revised offer price to \$0.45.
 10. 19/6/91 - Mr Cheng's offer declared unconditional and Mr Cheng owned 54.52%, no further acceptances received until close of offer on 28/6/91.

Shun Ho Resources Holdings Ltd

Calculation for total outlays

	Shares	Warrants
General offer price	1.2161	0.4161
Average market value for Dec 88 - Jan 89 (note)	(0.73818)	(0.18923)
GO Price subject to interest adjustment -	0.47792	0.22687
No of eligible shares/warrants	54,423,000	45,400,000
Adjusted GO Price	0.65	0.31
Estimated outlays	35,374,950	14,074,000
Total Outlays		49,448,950

Note :

	Shares	Warrants
Average for Dec 88	0.7735	0.19589
Jan 89	0.70286	0.18257
Simple average for 2 months	0.73818	0.18923

Appendices

1. Adjusted G O Price for shares
2. Adjusted G O Price for warrants

Assumptions:

1. Interest on the offer price will run from 30 January 1989 to 30 November 1993
2. Interest is to compound at 6 monthly interval and at 3 month HIBOR
3. Interest rates used represent rates at the end of each month

GO price	Rate	Period	No of days	Interest	Interest
					sub-total
0.47792	10.68	February 1989	28	0.003915	
0.47792	11.31	March 1989	31	0.004590	
0.47792	11	April 1989	30	0.004320	
0.47792	10.68	May 1989	31	0.004335	
0.47792	10.12	June 1989	30	0.003975	0.499057
0.499057	8.87	July 1989	31	0.003759	
0.499057	9.31	August 1989	31	0.003946	
0.499057	9.37	September 1989	30	0.003843	
0.499057	8.43	October 1989	31	0.003573	
0.499057	8.37	November 1989	30	0.003433	
0.499057	8.62	December 1989	31	0.003653	0.521266
0.521266	8.56	January 1990	31	0.003789	
0.521266	8.93	February 1990	28	0.003570	
0.521266	9.25	March 1990	31	0.004095	
0.521266	10	April 1990	30	0.004284	
0.521266	9.56	May 1990	31	0.004232	
0.521266	8.81	June 1990	30	0.003774	0.545013

GO price	Rate	Period	No of days	Interest	Interest
0.545013	8.62	July 1990	31	0.003990	
0.545013	8.25	August 1990	31	0.003818	
0.545013	8.62	September 1990	30	0.003861	
0.545013	8.06	October 1990	31	0.003730	
0.545013	8.43	November 1990	30	0.003776	
0.545013	8	December 1990	31	0.003703	0.567894
0.567894	6.93	January 1991	31	0.003342	
0.567894	7.12	February 1991	28	0.003101	
0.567894	7.18	March 1991	31	0.003463	
0.567894	6.68	April 1991	30	0.003117	
0.567894	8.37	May 1991	31	0.004037	
0.567894	7.68	June 1991	30	0.003584	0.588541
0.588541	6.5	July 1991	31	0.003249	
0.588541	6.06	August 1991	31	0.003029	
0.588541	5.37	September 1991	30	0.002597	
0.588541	5.31	October 1991	31	0.002654	
0.588541	4.43	November 1991	30	0.002142	
0.588541	4.06	December 1991	31	0.002029	0.604243
0.604243	4.56	January 1992	31	0.002340	
0.604243	4.68	February 1992	29	0.002246	
0.604243	4.93	March 1992	31	0.002530	
0.604243	4.43	April 1992	30	0.002200	
0.604243	3.81	May 1992	31	0.001955	
0.604243	3.87	June 1992	30	0.001921	0.617438

GO price	Rate	Period	No of days	Interest	Interest
0.617438	3.37	July 1992	31	0.001767	
0.617438	3.31	August 1992	31	0.001735	
0.617438	3.12	September 1992	30	0.001583	
0.617438	3.93	October 1992	31	0.002060	
0.617438	4.87	November 1992	30	0.002471	
0.617438	4.31	December 1992	31	0.002260	0.629317
0.629317	3.68	January 1993	31	0.001966	
0.629317	3.43	February 1993	28	0.001655	
0.629317	3.37	March 1993	31	0.001801	
0.629317	3.25	April 1993	30	0.001681	
0.629317	3.43	May 1993	31	0.001833	
0.629317	4	June 1993	30	0.002068	0.640324
0.640324	3.56	July 1993	31	0.001936	
0.640324	3.34	August 1993	31	0.001816	
0.640324	3.22	September 1993	30	0.001694	
0.640324	3.22	October 1993	31	0.001751	
0.640324	3.37	November 1993	30	0.001773	
		Adjusted GO Price			0.649296
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Warrants

Assumptions:

1. Interest on the offer price will run from 30 January 1989 to 30 November 1993
2. Interest is to Compound at 6 monthly interval and at 3 month HIBOR
3. Interest rates used represent rates at the end of each month

GO price	Rate	Period	No of days	Interest	Interest
					sub-total
0.22687	10.68	February 1989	28	0.001858	
0.22687	11.31	March 1989	31	0.002179	
0.22687	11	April 1989	30	0.002051	
0.22687	10.68	May 1989	31	0.002057	
0.22687	10.12	June 1989	30	0.001887	0.236904
0.236904	8.87	July 1989	31	0.001784	
0.236904	9.31	August 1989	31	0.001873	
0.236904	9.37	September 1989	30	0.001824	
0.236904	8.43	October 1989	31	0.001696	
0.236904	8.37	November 1989	30	0.001629	
0.236904	8.62	December 1989	31	0.001734	0.247446
0.247446	8.56	January 1990	31	0.001798	
0.247446	8.93	February 1990	28	0.001695	
0.247446	9.25	March 1990	31	0.001943	
0.247446	10	April 1990	30	0.002033	
0.247446	9.56	May 1990	31	0.002009	
0.247446	8.81	June 1990	30	0.001791	0.258719
0.258719	8.62	July 1990	31	0.001894	
0.258719	8.25	August 1990	31	0.001812	
0.258719	8.62	September 1990	30	0.001833	
0.258719	8.06	October 1990	31	0.001771	
0.258719	8.43	November 1990	30	0.001792	

GO price	Rate	Period	No of days	Interest	Interest
0.258719	8	December 1990	31	0.001757	0.269581
0.269581	6.93	January 1991	31	0.001586	
0.269581	7.12	February 1991	28	0.001472	
0.269581	7.18	March 1991	31	0.001643	
0.269581	6.68	April 1991	30	0.001480	
0.269581	8.37	May 1991	31	0.001916	
0.269581	7.68	June 1991	30	0.001701	0.279382
0.279382	6.5	July 1991	31	0.001542	
0.279382	6.06	August 1991	31	0.001437	
0.279382	5.37	September 1991	30	0.001233	
0.279382	5.31	October 1991	31	0.001259	
0.279382	4.43	November 1991	30	0.001017	
0.279382	4.06	December 1991	31	0.000963	0.286836
0.286836	4.56	January 1992	31	0.001110	
0.286836	4.68	February 1992	29	0.001066	
0.286836	4.93	March 1992	31	0.001201	
0.286836	4.43	April 1992	30	0.001044	
0.286836	3.81	May 1992	31	0.000928	
0.286836	3.87	June 1992	30	0.000912	0.293099
0.293099	3.37	July 1992	31	0.000838	
0.293099	3.31	August 1992	31	0.000823	
0.293099	3.12	September 1992	30	0.000751	
0.293099	3.93	October 1992	31	0.000978	
0.293099	4.87	November 1992	30	0.001173	
0.293099	4.31	December 1992	31	0.001072	0.298738
0.298738	3.68	January 1993	31	0.000933	
0.298738	3.43	February 1993	28	0.000786	
0.298738	3.37	March 1993	31	0.000855	
0.298738	3.25	April 1993	30	0.000798	

GO price	Rate	Period	No of days	Interest	Interest
0.298738	3.43	May 1993	31	0.000870	
0.298738	4	June 1993	30	0.000982	0.303963
0.303963	3.56	July 1993	31	0.000919	
0.303963	3.34	August 1993	31	0.000862	
0.303963	3.22	September 1993	30	0.000804	
0.303963	3.22	October 1993	31	0.000831	
0.303963	3.37	November 1993	30	0.000841	
Adjusted GO Price					0.308222

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