30/85

Nos 59, 60, 61 and 62 of 1984

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N:

QUEK LENG CHYE — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N:

10 QUEK LENG CHYE — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N:

GAN KHAI CHOON — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N:

GAN KHAI CHOON — Appellant

- and -

20 THE ATTORNEY-GENERAL — Respondent

(CONSOLIDATED APPEALS)

CASE FOR THE RESPONDENT

Record

1. These are consolidated appeals from a judgment of the Court of Appeal in Singapore (Kulasekaram, Sinnathuray and Rajah, JJ) dated the 25th May, 1984 which dismissed the Appellants' appeals from a judgment of the High Court of the Republic of Singapore (Wee Chong Jin, C.J.) dated the 20th October, 1983 refusing the Appellants' applications — Part I pp.258-295; Part I pp.121-161

Record

for leave to be directors of companies pursuant to s.130 of the Companies Act (Chapter 130) ("the Act") and allowing the Respondent's appeals that the Appellants should not be granted leave to be directly or indirectly concerned or take part in the management of the various companies referred to in their applications having regard to their conviction (upon their pleas of guilty) of offences contrary to s.39(4) of the Act.

Part I pp.123-124
Part II (Exhibit QLC-1) p.65 (Exhibit pp.260-261)

2. The relevant sections of the Act are ss.4(6) 39(1), (4), (5), 43(1), 130 and 363(3) and (4) set out in the judgment of the Chief Justice.

Part I pp.123-126

3. The issues raised by these appeals are as follows:-

(1) Whether on the concurrent findings of both courts below there is any room for the Board to interfere with the refusal of leave for the Appellants to be directors or promoters of companies;

(2) Whether the Court of Appeal properly exercised its jurisdiction to interfere with the Chief Justice's granting of leave for the Appellants to be directly or indirectly concerned or take part in the management of various companies.

4. The essential facts of this case are set out in the judgments of the Chief Justice and of the Court of Appeal and may be summarised as follows:-

(1) Both the Appellants were at all material times prominent and experienced businessmen in Singapore. The Appellant Quek Leng Chye ("the Appellant Quek") is a member of the Quek family which controls the Hong Leong Group of Companies and was director, managing director or governor of 41 companies in the Group. Of those 41 companies, four are public listed companies, Hong Leong Finance Limited, City Developments Limited, Singapore Finance Limited and King's Hotel Limited. The three holding companies of the Quek family, Hong Leong Corporation Limited, Hong Leong Holdings Limited and Hong Leong Investment Holdings Limited by their shareholdings and their subsidiaries' shareholdings control the four public listed companies. The Appellant Gan Khai Choon ("the Appellant Gan") was director of 11 companies in the Group, four being public companies of whch three were listed in the Stock Exchange of Singapore and was the Group General Manager of two of the public listed companies,

Part I pp.268 to 269
Part I p.268 Ll.14 to 18
Part I p.268 Ll. 18 to 29
Part II (Exhibit QLC-6) pp.166 to 170
Part II (Exhibit QLC-9) pp.171 to 174
Part I p.269 Ll.9 to 21

Record

Hong Leong Finance Limited and Singapore Finance Limited, the former being a very large finance company. — Part II (Exhibits GKC-3 & GKC-6) pp.160 to 161

(2) CCC (Holdings) Limited ("the Company") was first incorporated on 11th August, 1979 as a private limited company (then known as City Country Club Private Limited). On 10th March, 1982 City Country Club Private Limited was converted into a public company (changing its name to CCC (Holdings Limited): as a private company it would have been limited to no more than 50 shareholders and prohibited from making any invitations to the public to subscribe for any of its shares. — Part II (Exhibit QLC-2) p.69 L1.8 to 13; Part II (Exhibit QLC-2) p.83 L1.19 to 28

(3) As a result of negotiations between a Singapore businessman, one Huang and one Derrick Chong, then Manager of the American Club, and the Appellant Quek (as a director of City Developments Limited which owned a piece of land at Stevens Road thought suitable for development into club premises) it was agreed that they together with a fourth party would enter into a business venture to develop the piece of land and carry on the business of a club there. — Part II (Exhibit QLC-2) pp.69 to 70; Part II (Exhibit QLC-2) p.69 L1.24 to 26

(4) The agreement was formalised in a pre-incorporation agreement on 1st August, 1979. By September, 1979 the Appellant Quek had decided to use Queens Private Limited (a wholly owned subsidiary of Hong Leong Holdings Limited) as its vehicle in the venture, Queens Private Limited having a 30% interest in the Company. On 6th September, 1979 both Appellants were appointed as directors of the Company, being nominated by Queens Private Limited as its representatives. — Part II (Exhibit QLC-2) P.70; Part II (Exhibit QLC-2) p.71 L1.15 to 21

(5) The primary objective of the project was to make money from the sale of shares in the company that was going to run the club, i.e. the Company. — Part II (Exhibit ABM-1) p.1 L1.40 to end

(6) On 17th October, 1979 the Company bought the piece of land from City Developments Limited for $8.5 million and the land was mortgaged to Hong Leong Finance Limited for a term loan of $6 million for 3 years. Two further loans on 31st July 1981 and 30th December 1981 of respectively $2 million and $3 million were made by Hong Leong Finance Limited to the Company on the security of second and third mortgages of the land. Thus not only did both Appellants represent an — Part II (Exhibit QLC-2) p.71 L1.23 to end; Part II (Exhibit QLC-2) p.80 L1.18 to 21 and p.81 L1.12 to 15

interest in the company through Queen's Private Limited as investors in the Company but they were also closely involved as financiers of the scheme, through Hong Leong Finance Limited. Whereas the paid-up capital of the Company was only $5 million, its borrowings by the end of 1981 from Hong Leong Finance Limited amounted to as much as $11 million, secured on land which for planning purposes was zoned as for community purposes only.

Part II (Exhibit QLC-2) p.72 L1.8 to 13 Part II (Exhibit QLC-2) p.72 L1.17 to 21

(7) The said Huang had instructed one Winston Chen an Advocate and Solicitor and partner of the leading law firm Shook, Lin & Bok, to act for him. Winston Chen acted for the Company when it was formed. Opinions were sought by Huang and Winston Chen from a revenue silk in England, the first being obtained in July, 1979.

Part II (Exhibit QLC-2) p.72 L1.22 to end

(8) The advice from Leading Counsel envisaged a scheme whereby the promoters would form a holding company to buy and develop a piece of land as a club house. The land would then be revalued on the completion of the development and the holding company would issue bonus shares from the surplus thrown up on the revaluation. It would then form a subsidiary company and lease the land to the subsidiary to run a club. The subsidiary would canvass for members and those who wished to become members would be required to purchase shares in the holding company from the promoters.

Part II (Exhibit QLC-2) p.73 L1. 8 to 13 Part II (Exhibit QLC-2) p.80 L1.13 to 17

(9) As it was envisaged that there would eventually be around 2,000 members, the scheme, necessarily involving the sale of shares to those members, required the issuance of a prospectus in compliance with the Act. Between 12th October 1979 and 26th August, 1980 the paid-up and issued capital of the Company was increased at various times from $1 m. made up of 1 million shares of $1 each of $5 million made up of 5 million shares of $1 each.

Part II (Exhibit QLC-2) p.73 L1.14 to 18. Part II (Attachment A) pp.90-91. Part II (Exhibit QLC-2) p.73 L1.24 to 25. Part I pp.48 to 51. Part II (Exhibit QLC-2) p.73 L1.11 to 12

(10) In September, 1980 Huang consulted one Westley of Wardley Limited, a merchant bank. In his letter of 7th October, 1980 to Huang, Westley stated his opinion that should the scheme involve the sale of shares a prospectus would be required. On 4th November, 1980 Huang informed Winston Chen of Westley's view. Thus, considerable time and money was expended over the period 1979-81 by or on behalf of the directors of the Company in devising the tax scheme. It was intended all along to sell shares to the prospective members of the Club.

(11) On 28th May, 1981 Huang next consulted Winston

Chen who recorded Huang's instructions in a note which included the words "(a) Equity participation out. There is going to be a prospectis problem". — Part II (Attachment B) p.92

(12) On 18th September, 1981 both Appellants together with others attended a board meeting at which Winston Chen and two accountants, Keith Tay and Damian Hong of Peat, Marwick, Mitchell & Co. were in attendance. Winston Chen's contemporaneous note of the meeting included the words "(1) I explained scheme and problems regarding prospectus" and "(4) I am to work out prospectus problem". No instructions were given by the directors for a prospectus to be issued if one was required. — Part II (Exhibit QLC-2) pp.74 to 75

(13) Winston Chen then sought an opinion from Mr. David Bennett, Q.C., an Australian silk, as to whether members of a private club are "a section of the public" within s.4(6) of the Act. In his written opinion dated 19th October, 1981 Mr. Bennett concluded that he had "little doubt that an offer to the members of a club having some thousands of members ... would be an offer to a section of the public and ... an offer to all the members of a club whose membership totalled three would not". — Part II (Exhibit QLC-2) p.75 Ll.15 to 21; Part II (Attachment D) pp.94 to 99 at p.90 Ll.30 to 35

(14) On 31st October, 1981 Winston Chen sent Huang a copy of Mr. Bennett's opinion and wrote that "in view of the uncertain position in law ... it would be preferable to have a prospectus issued unless exemption is obtained from the Registrar of Companies under section 39A of the Companies Act". There is no power in the Registrar of Companies under s.39A to exempt anyone from the obligation to issue a prospectus where a prospectus is required by the Act. — Part II (Exhibit QLC-2) p.76 L.33 - p.77 L.17; Part I p.132 Ll.25-28

(15) In a report dated 14th November, 1981 a firm of land valuers, Richard Ellis, C.H. Williams Private Limited revalued the piece of land at $27.5 million. — Part II (Exhibit QLC-2) p.81 Ll.8-11

(16) On 17th November, 1981 there was a meeting at which the Appellant Quek, but not the Appellant Gan, was present. A few days before the meeting the Appellant Quek (and presumably the other directors) received a copy of QLC-7 (a letter dated 14th November, 1981 together with Winston Chen's summary of — Part II (Exhibit QLC-2) p.77 Ll.30 to 32; Part I p.77 Ll.14 to 16

Part II (Exhibit QLC-7) pp.154 to 157 at p.157 L1.12 to 14

a scheme) wherein Winston Chen expressed his view that "if no exemption is obtained from the Registrar of Companies, prospectus on X (the new name of the Company) is to be issued by stockbrokers after registration". At the meeting, the scheme and the need for a prospectus were again discussed. Winston said that he would be seeing the Assistant Registrar of Companies that afternoon to seek his views on the prospectus. Winston Chen's contemporaneous note states that his instructions at the meeting were "If views adverse" (i.e. the views of the Assistant Registrar of Companies), "scheme needs rethinking". Winston Chen thus did not receive instructions to issue a prospectus if one was required but was instructed to rethink the scheme, then more than two years in the making and involving the sale of shares to some 2,000 persons and in respect of which advice had been obtained that a prospectus was required.

Part II (Exhibit QLC-2) p.77 L.32 to p.78 L.12

Part II (Exhibit QLC-2) pp.78 to 79 L1.31

(17) Winston Chen then had oral and written communications with the Assistant Registrar of Companies.

Part II (Exhibit QLC-2) p.79 L.32 to p.80 L.12

(18) In early February, 1982 Winston Chen told the directors including both Appellants that the decision of the Assistant Registrar of Companies was that the scheme could proceed without the need to issue a prospectus but he advised that they should not advertise and should only invite their friends.

Part II (Exhibit QLC-2) p.81 L.24 to p.83 L.18

(19) On 22nd February, 1982 at an Extraordinary Meeting of the Company it was resolved to have a bonus issue and a rights issue. The 5 million shares of $1 each of the Company were first consolidated into 1,000 shares of $5,000 each and the authorised capital was increased to $20 million by the creation of 3,000 additional shares of $5,000 each. Of the new shares, 1,000 were offered to the existing shareholders as a one for one rights issue at a premium of £25,000 each (these shares being uncalled). A sum of $10 million, being part of the surplus created by a revaluation of the piece of land at Stevens Road, was capitalised and appropriated to pay for the other 2,000 new shares of $5,000 each which shares were then distributed as a two for one bonus issue to the existing shareholders, all of whom accepted the shares in the rights issue. No part of that exercise put the Company into funds.

Part II (Exhibit QLC-2) p.83 L.33 to p.85 L.18

(20) By the end of March, 1982 the Appellants and the other directors had prepared a list of individuals

and companies whom they wished to invite to be members of the Club. They had also finalised the letter of invitation to the proposed invitees. On the 31st March, 1982, a firm of brokers, Lim & Tan (Pte) were appointed to sell the 2,000 shares allotted in the bonus issue.

Part II (Exhibit QLC-2) p.85 Ll.19 to 21

(21) On 2nd April, 1982, by which time the list of invitees had grown to 390 individuals and 17 companies, the letters of invitation signed by Huang in the following terms were despatched:-

Part II (Exhibit QLC-2) p.85 Ll.12 to 15 and 26 to end

"As you are known to our directors to be of high repute, we are pleased to invite you to join the exclusive City Country Club. Enclosed herewith you will find a brochure and a copy of the Rules of the Club together with an application form.

Part II (Attachment L (i) p.113)

If you accept our invitation please complete the application form and return the same to us together with your payment for the entrance fee as soon as possible.

The entrance fee for an individual is $2,000/- and for a corporation or firm is $3,000/- (2 nominees) and your attention is drawn to Rule 12 of the Rules of The Club.

Part II (Attachment L (iii) p.129)

Upon acceptance of this invitation you shall be a qualified person under Rule 9 of the Rules of the Club and shall be entitled to the rights under Rule 10 of the Rules of the Club.

To become a member of the Club you must within a period of one month of your becoming a qualified person become the registered holder in CCC (Holdings) Limited of :

(a) in the case of an individual, one (1) ordinary share

(b) in the case of a firm or corporation two (2) ordinary shares.

You may contact the broking firm named below with a letter of confirmation from the Board confirming that you are a qualified person of the Club to make your offer to purchase the share/s.

Yours truly
Sgd. S.C. Huang
Chairman

Record

DC:sc
Broking firm: Lim & Tan (Pte)
Tel: 2244988
(Mrs. Esther Seet)
30 Stevens Road,
Singapore 1025
Tel: 7338822"

Part II (Attachment L (i)(ii)(iii) to (iv)) pp.113 to 135
Part II (Attachment L (iii)) p.128

(22) The letter of invitation and its enclosures disclosed no information whatsoever of the Company except that the land occupied by the subsidiary company "occupies some 4 acres in the extent and is (leased for 10 years) from 1982 from" the Company.

(23) Further, the letter of invitation did not disclose that the purchase price of one ordinary share of $5,000 of the Company would be $30,000, i.e. at a premium of $25,000. It was common ground that as at 31st March, 1982 the net tangible asset backing for each ordinary share of $5,000 each was $7,374 and, if the rights issue were fully paid-up, the net tangible asset backing for each ordinary share of $5,000 would be $13,030.

Part II (Attachment M) pp.136 to 148 at p.148 Ll.15 to 30

(24) Had a prospectus been issued its contents, in compliance with the Act, would have disclosed to an invitee the net tangible asset backing for each share in the Company (or at least information from which the amount of such backing could be deduced) the manner in which the Company proposed to finance the total cost of the development, the extent of the company's loans from Hong Leong Finance Limited and how the loans and interest were to be repaid.

Part I p.138 L.37 - p.139 L.13

(25) Queens Private Limited would have made $9 million profit on the sale of its 600 bonus shares assuming that all the bonus shares were sold at a premium of $25,000 and that it paid the full $30,000 for each of its 300 rights issue shares. Although the shares were offered at $30,000 each plus an additional sum of $2,000 couched in the form of an entrance fee, this $2,000 is effectively an option to purchase a share making the price altogether $32,000 for an individual purchaser. No explanation or justification has been offered of the following facts:

(a) that the net tangible asset backing of each share at the time of offer was 23% of the asking price, when the club premises were not then in existence; and

(b) that, assuming the vendors of the bonus shares

used the proceeds of sale of the bonus shares to pay for the $30 million rights issue, the vendors would realise $30 million profit and continue to hold 50% of the equity of the Company.

(26) By 10th May, 1982 129 persons and 12 firms and companies applied to join the club and were accepted as qualified persons. The police investigations started on that day. — Part II (Exhibit QLC-2) p.86 Ll.25 to 27 and p.87 Ll.8 to 9

5. On the 24th, 26th and 27th July, 1982, the Appellant Quek was interviewed by the police. He told the police the following:- — Part I p.103

(1) "When Derrick Chong offered us 30% investment in his project, he explained to us his project in detail. He told us that the primary objective of the project was to make money from the sale of shares of the company that was going to own/manage the club". — Part II Exhibit ABM-1) pp.1 to 12 Part II (Exhibit ABM-1) pl.Ll.43 to 48

(2) "At the meeting we had with Keith Tay (of Peat, Marwick, Mitchell & Co.) at his office on 18.9.81, I cannot remember whether the question of 'Prospectus' was discussed. I am now shown Mr. Keith Tay's letter dated 23.9.81 concerning the discussion we had on 18.9.81. The last paragraph on page 3 of this letter is not concerning 'Prospectus' but more about the tax problem". — Part II (Exhibit ABM-1) p.5 Ll.4 to 12; Part II (Exhibit HS8) pp.51 to 54 at p.54 Ll.32 to 37

(3) "At the meeting on 17.11.81, the question about 'Prospectus' was discussed. The question discussed was whether we wanted a prospectus for the sale of the shares. Generally the Directors were not in favour of coming out with a prospectus because of cost and cumbersome (sic)." In connection with this explanation, it should be noted that the size of the issue by the Company involved some 2,000 shares at $30,000 each i.e. $60 m., a very large issue by Singapore standards, whereas the public flotation by Singapore Finance Limited (in which both Appellants were directors) involved an issue of some $33.75 million worth of shares and the issue of a prospectus signed by both Appellants in June 1981. Further, at no stage did the directors of the Company call for a quotation of the cost of the preparation of a prospectus. Nor did they instruct the Company's auditors to take any steps in preparation for the issuing of a prospectus such as preparing the Company's accounts. — Part II (Exhibit ABM-1) p.6 Ll.22 to 27; Part I pp.56 to 57; Part II (Exhibit CBK-1) pp.175 to 205

Record

Part II (Exhibit ABM-1) p.8 L1.24 to 34

(4) "I think he (Winston Chen) sought this opinion (from Mr. David Bennett, Q.C.) to determine whether a prospectus is required. I believe I have not seen Mr. David Bennett's reply before .... I cannot remember whether Mr. Winston Chen had referred to this opinion but he was particular in who we invite to be members of the Club."

Part II (Exhibit ABM-1) p.12 L1.15 to 32

(5) ".... Winston Chen objected to include the selling price of $30,000 (in the letter of invitation). His reason was he wanted the invitee to make the offer otherwise it would not be in accordance with what he has presented to the ROC (Registrar of Companies). I understood this to mean that this will contravene the waiver he has obtained from the ROC ... I believe it was also at the same meeting Winston Chen told us that the invitation letters must not look like a prospectus. He said in the context that he has obtained waiver from ROC".

Part II (Exhibits) pp.259 to 266
Part II (Exhibit QLC-1) p.65
Part II (Exhibit QLC-1A) p.66
(Exhibits) p.265

6. On the 9th February, 1983 both Appellants together with the other directors pleaded guilty in the District Court (S. Chandra Mohan, District Judge) to a charge that they had contravened s.39(4) of the Act in that as a director of the Company they had caused documents to be sent out offering for sale shares in the Company to the public, which documents being deemed under s.43 to be prospectuses did not comply with the requirements of the Act as to prospectuses. An offence under s.363(3) was taken into consideration against both Appellants.

Part II (Exhibits) p.261
Part II (Exhibit QLC-2) pp.68 to 89
Part II (Exhibits) p.264
Part II (Exhibits) pp.264 to 265
Part I p.46 L1.16 to 23

7. Both Appellants admitted the facts set out in a Statement of Facts read to the District Court by the prosecution. After hearing certain arguments on behalf of the other defendants as to the meaning of s.39(5) of the Act, the District Judge ruled that if those defendants continued to qualify their admission of the facts by not accepting that their case did not fall within s.39(5) then their pleas would be rejected and their trial ordered to proceed. Upon those defendants admitting all the facts without qualification (as the Appellants had already done), their pleas of guilty were accepted. The prosecution relied principally upon documents seized under the authority of a search warrant at the premises of Messrs. Shook Lin & Bok in which law firm Winston Chen was a partner. No documents were obtained from the other Defendants or from the Company.

Record

8. After hearing please in mitigation, on the 12th February, 1983 the District Judge fined the Appellants the sum of $500.

Part II (Exhibits) pp.275-281 and p.295

9. Having regard to the provisions of s.130 of the Act both Appellants resigned from all their directorships.

Part I,p.11 Ll.10 to 13 p.19 Ll.9-12

10. On the 11th February, 1983 pursuant to s.130(2) of the Act both Appellants gave two weeks notice of their intention to make an application which by Originating Summons dated 28th February, 1983 both Appellants made, namely, to be a director or promoter of and/or to be concerned and take part in the management of any company or companies incorporated or to be incorporated in Singapore and/or to be a director of and/or be concerned and take part in the management of certain companies listed in Annexures to their applications.

Part II (Exhibit QLC-4) pp. 149 to 151

Part I pp.1-3, 4-8

11. Both Appellants swore affidavits in support of their applications respectively on the 28th February and 9th and 16th March, 1983. Various affidavits were filed in answer on behalf of the Respondent. With the exception of Exhibit QLC-7, a copy of which was in the documents seized at the premises of Messrs. Shook Lin & Bok, no correspondence or other documents were disclosed by either of the Appellants to shed further light upon their respective parts in the events leading to the police investigations.

Part I pp.9 to 16 61 to 93 & 90 to 100 pp.17-24, 64 tp 66 & 75 to 89 pp.45 to 53 54 to 55 73 to 74 56 to 57 103 & 25-44 Part II (Exhibit QLC-7) pp.154 to 157

12. On the 7th March, 1983 the Appellants' applications came on for hearing in the High Court before the Chief Justice. After hearing argument on four separate days in March, 1983 the Chief Justice reserved judgment.

Part I p.104 Part I pp.104 to 120

13. On the 20th October, 1983 the Chief Justice delivered judgment refusing the Appellants leave to be directors of companies but granting them leave to be directly or indirectly concerned or take part in the management of various companies.

Part I pp.121 to 161

14. Having summarised the nature of the applications and set out the relevant provisions of the Act, the Chief Justice then dealt with the material facts. The Chief

Part I pp.121 to 123 pp.123 to 126 pp.126 to 139

Record

Part I p.130 Ll.11 to 15

Justice found that as it was envisaged that there would eventually be around 2,000 members the scheme, which necessarily involved the sale of shares to those members, would require the issuance of a prospectus in compliance with the Act. It was not disputed that s.39A of the Act did not empower the Registrar of Companies to exempt anyone from the obligation to issue a prospectus where a prospectus was required by the Act. Winston Chen informed the Appellants of the decision of the Registry of Companies and advised them that the scheme could proceed" without the need to issue a prospectus: he also advised them that they should not advertise and should only invite their friends. By the time the first invitation was sent out, the list of individuals and companies to whom the letter of invitation was to be sent had grown to 390 individuals and 17 companies and on 31st March 1982 the directors had appointed a firm of brokers to sell the 2,000 bonus shares. From 2nd April, 1982 invitations were despatched. The invitation letter disclosed no information whatsoever of CCC(Holdings) Limited except that the land occupied by the City Country Club Private Limited "occupies some 4 acres in the extent and is leased (for 10 years from 1982) from CCC (Holdings) Limited". Nor did the invitation letter disclose that the purchase price of one ordinary share of $5,000 of CCC (Holdings) Limited would be $30,000, i.e. at a premium of $25,000. The Chief Justice said that it was common ground that as at 31st March, 1982 the net tangible asset backing for each ordinary share of $5,000 each was $7,374 and, if the rights issue were fully paid up, the net tangible asset backing for each ordinary share of $5,000 would be $13,030. Had a prospectus been issued its contents pursuant to the requirements of the Companies Act, would have disclosed to an invitee the net tangible asset backing for each share of CCC (Holdings) Limited, the manner in which the Company proposed to finance the total cost of the development, the extent of the company's loans from Hong Leong Finance Limited and how the loans and interest were to be repaid.

Part I p.132 Ll.25 to 28

Part I p.135 Ll.9 to 14

Part I p.136 L.32 to p.137 L.10

Part I p.137 Ll.11 to 12

Part I p.138 Ll.21 to 26

Part I p.138 Ll.27 to 30

Part I p.138 Ll.30-36

Part I p.138 L.37 to p.139 L.13

Part I pp.139 to 141

15. The Chief Justice summarised the effect of certain Australian decisions in respect of provisions identical to that of s.130 of the Act and then considered the applications before the Court.

16. The Chief Justice then considered a submission

made on behalf of both Appellants, namely, that s.39(4) of the Act created an offence that was technical in nature and of the character of strict liability offences and that there was no intention on the Appellants' part to avoid the issue of a prospectus. The Chief Justice found the submission in respect of s.39(4) untenable and said that it disregarded the provisions of s.39(5) which expressly absolved a director from incurring any liability by reason of non-compliance or contravention of any of the requirements set out in s.39. In the Chief Justice's view, the only inference that could be drawn from the Appellants' pleas of guilty was that they could not plausibly put forward before the District Court a defence based on any of the matters in s.39(5). In the Chief Justice's view this was a scheme which all those involved in it knew, if the projected 2,000 invitees were persuaded to apply for membership and take a share each in the holding company, would result in enormous profits (some tens of millions) from these invitees. Putting it at its lowest in the Chief Justice's view, it was highly unlikely that all or a significant proportion of the 2,000 shares which were available to invitees under the scheme would be taken up if a prospectus in compliance wih with the Act were issued to each invitee, thus resulting in a situation, possibly a financial disaster to the original shareholders which they must have wanted to avoid at any cost.

Part I p.155 Ll.12 to 16 p.160 Ll.25 to 26; pp.142 to 143

Part I p.142 L.26 to p.143 L.35

Part I p.143 Ll.31 to 35

Part I p.145 Ll.18 to 23

Part I p.145 Ll.23 to 31

17. In dealing further with the Appellant Gan's application, the Chief Justice summarised his interest in the various companies. Of the eleven companies in which he held directorships, eight of them were either wholly owned or controlled by the Hong Leong Group of Companies. The Chief Justice concluded that apart from nine companies listed in his application the Appellant Gan's application should be rejected. As to the nine companies, the Chief Justice said that, after careful cosideration of all the relevant factors and weighing the punitive effect on the Appellant Gan against the minimal risk to the general public and the interests of their shareholders, creditors, employees and others dealing with them, the Appellant Gan should be permitted to be concerned in and take part in their management.

Part I p.150 L.32 to p.156 L.15

Part I p.152 L.25 to p.153 L.1

Part I, p.155 Ll.19 to 32

Part I p.155 L.32 to p.156 L.15

Record

Part I p.156 L.16 to p.161 L.21

Part I p.161 L1.16 to 21

18. In dealing further with the Appellant Quek's application, the Chief Justice summarised his extensive interests in the 41 companies listed in his application. As in the case of the Appellant Gan and for the same reasons the Chief Justice granted the Appellant Quek leave to take part in the management of 39 of the 41 companies.

Part I pp.164 to 169, 170 to 176

Part I pp.177 to 185, 186 to 191

Part I pp.192 to 212,213 to 234 and 235 to 257

19. By Petitions of Appeal dated the 8th December, 1983 in respect of both Appellants the Respondeht prayed for the reversal of such part of the Chief Justice's judgment whereby the Appellants were given leave to be concerned and take part in the management of certain companies. By Petitions of Appeal dated the 17th December, 1983 both Appellants prayed for the Chief Justice's Order to be varied so as to grant the Appellants leave to be directors or promoters of and/or to be concerned or take part in the management of any company or alternatively to be a director of and to be concerned and take part in the management of certain named companies. Both the Appellants and the Respondent presented skeleton arguments for the consideration of the Court of Appeal.

Part I pp.258 to 295

20. On the 25th May, 1984 the Court of Appeal (Kulasekaram, Sinnathuray and Rajah, JJ.) delivered its judgment dismissing the Appellants' appeals and allowing the appeal of the Respondent.

Part I pp.263 to 267. Part I pp.268 to 269. Part I pp.270 to 280. Part I pp.280-282, Part I p.282. L.23 to p.284 L.20.

21. In its judgment, the Court of Appeal first summarised the nature of the appeals before it and then the facts. After describing the position of the Appellants, the Court of Appeal set out the history of the scheme. The Court of Appeal then referred to s.130 of the Act and summarised the submissions made by the Respondent that the Chief Justice should not have granted leave for the Appellants to take part in the management of any companies.

Part I p.284 L.21 to p.286, Part II (Exhibits) pp.297 to 306 Part I p.285 L1.15 to 18. Part I, p.285 L1.18 to 22. Part I, P.286.

22. The Court of Appeal then considered the submission that the Court should adopt the same approach to the case as the District Judge did in sentencing the Appellants. The Court of Appeal said that it was not bound by what took place in the criminal proceedings; the onus was on the Appellants in their applications and there were wider issues to consider. The Court of Appeal adopted certain observations in two Australian cases as representing the correct approach to follow in s.130 applications.

Part I p.287 L1.9 to 24

23. After referring to the principles governing an appeal against the exercise of a discretion,

the Court of Appeal summarised the submissions made on behalf of the Appellants. In the Court of Appeal's view, by November 1981 the Appellants, as directors of the company, must have had in the forefront of their minds that a prospectus had to be issued. And that it was not an excuse for the Appellants to say that they left the question of the issue of a prospectus to their solitors. In the Court of Appeal's view, the only proper finding was, as the Chief Justice found, that the Appellants had intentionally and unlawfully avoided the issue of a prospectus. The Court of Appeal agreed with the Chief Justice's rejection of the submission that the Appellants had pleaded guilty to offences which were technical in nature and of the character of strict liability offences and with the Chief Justice's observation that the only inference that could be drawn from their pleas of guilty was that they could not plausibly put forward before the trial court a defence based on s.39(5) of the Act.

Part I,p.287 L.25 to p.288 L.5. Part I,p.289 L.25 to 28 Part I,p.289 Ll.28 - end. Part I p.290 Ll.22 to 24 Part I,p.290 L.31 to p.291 L.15

24. The Court of Appeal summarised the various matters which would have had to be disclosed if a prospectus had been issued in accordance with the Act and concluded that the Appellants did not want to issue a prospectus because they did not want to disclose to the buyers that the shares were being sold at an exorbitant price. The Court of Appeal accordingly rejected the contention that the Appellants had acted honestly, although accepting that they might not have acted dishonestly within the strict definition of the criminal law. In the Court of Appeal's view, the Appellants' commercial integrity was suspect. The Appellants' assertions were untenable in law and not quite the truth. The Chief Justice had rightly exercised his discretion to refuse the Appellants leave to be directors of companies.

Part I,p.291 L.23 to p.292 L.14 Part I p.292 Ll.16 to 18 Part I,p.292 Ll.24 to 29 Part I,p.292 L.29 to p.293 L.1. Part I,p.293 Ll.16 to 21. Part I,p.293 Ll.21 - 24

25. The Court of Appeal upheld the grounds of appeal of the Respondent and refused the Appellants leave to be directly or indirectly concerned or take part in the management of the various companies. In the Court of Appeal's view, the Chief Justice had failed to give due or sufficient regard to the need in Singapore for managers as well as directors to be persons of integrity. Further, the Appellants had failed to discharge the onus upon them of showing that notwithstanding their

Part I,p.293 Ll.25 to 26 Part I,p.293 L.27 Part I p.294 L.20. Part I,p.294 L.21 to p.295 L.12

convictions they should be granted leave to manage companies.

Part I pp.296-298, 299-300

26. On the 13th August, 1984 both Appellants were granted leave to appeal to the Privy Council.

27. It is respectfully submitted that upon the concurrent findings of the Chief Justice and of the Court of Appeal the Appellants were correctly refused leave to be directors or promoters of companies. Both the Chief Justice and the Court of Appeal were entitled in all the circumstances to form the view (1) that it was highly unlikely that the Appellants did not realise that a prospectus would be required as the bonus shares were to be sold to some 2,000 people and/or (2) that it was highly unlikely that the Appellants did not deliberately shut their eyes to the need for a prospectus.

28. It is respectfully submitted that upon the Appellants' applications under s.130 the Chief Justice and the Court of Appeal were entitled to look at the whole matter afresh. Neither Court was bound by any view expressed by the District Judge, having before them different issues and the burden of establishing entitlement to any relief being upon the Appellants.

29. It is respectfully submitted that both the Chief Justice and the Court of Appeal were correct in their view that the only proper inference to draw from the Appellants' pleas of guilty was that neither of them could plausibly put forward a defence based on any of the matters set out in s.39(5), with the result that the District Judge should not have permitted the Appellants to resile from their pleas of guilty by, in effect, presenting in mitigation facts which would have constituted a defence within s.39(5).

30. It is respectfully submitted that the Court of Appeal correctly allowed the Respondent's appeal because the Chief Justice had exercised his discretion to allow the Appellants to be directly or indirectly concerned or take part in the management of certain companies both under a mistake of law and under a misapprehension as to the facts. It is respectfully submitted that the Court of Appeal correctly held that the Chief Justice failed to appreciate that the onus was upon the Appellants to show that their suitability to be involved in companies whether as directors or managers had not been impugned. Alternatively, it is respectfully submitted that the Court of Appeal correctly held

that the Chief Justice could not have been satisfied that such onus had been discharged. Further it, is respectfully submitted that the Chief Justice misapprehended the facts in failing to appreciate that the risks to those who might be affected were not materially reduced by the Appellants being managers rather than directors.

31. The Respondent respectfully submits that the Appeals should be dismissed with costs for the following (among other)

10 R E A S O N S

1. BECAUSE on the concurrent findings of both Courts below there is no room for the Board to interfere with the refusal of leave for the Appellants to be directors or promoters of companies;

2. BECAUSE the Court of Appeal properly exercised its jurisdiction to interfere with the Chief Justice's granting of leave for the Appellants to be directly or indirectly
20 concerned or take part in the management of various companies;

3. BECAUSE in all the circumstances the Appellants failed to establish that they were entitled to any relief;

4. BECAUSE the decision of the Court of Appeal was right and ought to be upheld.

STUART N. McKINNON QC

FONG KWOK JEN

Nos 59, 60, 61 and 62 of 1984

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL IN
SINGAPORE

B E T W E E N :

QUEK LENG CHYE — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N :

QUEK LENG CHYE — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N :

GAN KHAI CHOON — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

B E T W E E N :

GAN KHAI CHOON — Appellant

- and -

THE ATTORNEY-GENERAL — Respondent

CASE FOR THE RESPONDENT

JAQUES & LEWIS
2, South Square,
Gray's inn,
London, WC1R 5HR.

Solicitors for the Respondent