

**HELD AT RAROTONGA**

**(CIVIL DIVISION)**

**MISC NO: 36/2001**

**IN THE MATTER OF:** THE INTERNATIONAL  
COMPANIES ACT  
1981-1982

**AND**

**IN THE MATTER OF:** CHINA AERONAUTICAL  
TECHNOLOGY FUND  
LIMITED (In  
Liquidation)

Mr T Arnold

Mr B R Gibson

Date of Decision: *27 November 2002*

**JUDGMENT OF GREIG CJ**

China Aeronautical Technology Fund Limited (the company) was established in the Cook Islands on 15 April 1993 under the provisions of the International Companies Act 1971. On 17 April 2001 the company was put into liquidation by order of the High Court. John James Toohey and Anthony Mitchell were appointed joint liquidators of the company. In response to the liquidator's call for all creditors to make claims T L Management Ltd (TLM) submitted a proof of debt to the liquidators as an ordinary unsecured creditor of the company. The proof of debt was in the sum of US\$647,828.00. The liquidators gave notice of adjudication of that proof of debt on 18 September 2001. It admitted as ordinary unsecured debt the sum of US\$312,357.00 and rejected the balance of the amount claimed. That figure was subsequently amended

and increased to the sum of US\$328,429.21. TLM has disputed that adjudication and has brought the matter to this Court for review and decision.

By agreement of the parties the matter has been dealt with by way of affidavit and written submissions. On behalf of TLM affirmations by Koo Ming Hon the financial controller of TLM were affirmed on 6 October 2001 and 26 March 2002 and affidavits by John James Toohey were sworn on 23 January 2002 and 17 April 2002. Reference has been made to earlier affirmations and affidavits filed in relation to previous proceedings in the liquidation brought by TLM. Written submissions of counsel have been received and those on behalf of TLM are dated 23 August and 19 September 2002 and those on behalf of the liquidator are dated 10 September 2002.

The company was originally established for the purpose of investing through its subsidiaries in joint ventures with unlisted enterprises of the Peoples Republic of China. Clause 9 of the Memorandum of Association of the Company provides:

“the company may carry on business until 1 January 2001 or such sooner date being the date on which the net asset value of the company, as calculated and determined in accordance with Article 7 of the Articles of Association of the company is less than US\$5,000,000.”

The company's shares were admitted to listing on the Irish stock exchange on 29 October 1993. The shares were delisted with effect from 8 May 2000.

By an agreement made on 28 September 1993 the company (therein called the Fund), appointed TLM, as recited in the document, for the purpose of providing investment advice and general administrative services as a Manager to the Fund. The formal agreement of 1993 and a supplemental agreement of 22 July 1994 were each made in the previous names of TLM. It is accepted that TLM is a party to these agreements. It will be necessary to

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deal in some detail with provisions of this agreement. But as part of the history of this matter I note the provision of Clause 19(A)(I) which provided for termination of the appointment of the Manager by the Fund giving to the Manager at any time after the third anniversary of the agreement not less than 12 months prior written notice.

On 14 July 2000 the Company entered into a sale agreement with one of its shareholders in which the company agreed to sell substantially all of its assets to that shareholder. The sale took effect. The consideration received by the company on the sale was paid out to the shareholders by way of dividend. The effect of this was to reduce the net asset value of the company to less than US\$5,000,000. By letter dated 10 August 2000, the company gave notice in accordance with Clause 19 that the Management Agreement would terminate on 10 August 2001. That letter was addressed to TLM in its earlier name to the addresses then known both in Hong Kong and the British Virgin Islands in which state some of the subsidiaries, through which the investment of the Chinese enterprises were made, were situated. Before this the Board of Directors of the company had been critical of TLM's conduct as Manager. In a letter dated 11 April 2000 to TLM the company said among other things,

"The Board of Directors is of the view that it's inability to approve such accounts is due largely to your failure to discharge your duty to provide information to the company and its auditors in accordance with your obligations under the Management Agreement dated 28 September 1993 (as supplemented by a supplemental Management Agreement dated 22 July 1994) ("the Management Agreement"),

The accounts referred to were the annual report and accounts for the financial year ended 31 December 1998 and the interim accounts for the period ended 30 June 1999. In that letter the company gave notice to TLM that it required it to deliver up within 14 days from that date all necessary

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information relating to the affairs of the company to enable the directors to be able to conclude the matters required for finalising accounts.

Beginning on October 2000 Slaughter and May as solicitors for the company and the company itself wrote a number of letters requesting delivery of the statutory books and records including financial records of the company and threatening to treat a breach of these notices as a material breach of the management agreement entitling the company to terminate the agreement immediately. By letter dated 18 January 2001 the company gave notice terminating the management agreement and with immediate effect.

The first issues between the parties is to identify the obligations of TLM under the management agreement in light of the claims that they were in breach of them. The second issue is whether TLM did breach these obligations so as to entitle the company to terminate the agreement in January 2001.

The management agreement provided for the payment of a management fee in respect of each year or proportionately any part of a year. The fee was to be a sum equal to 2% of the net asset value of the fund as at 31 December in the immediately preceding calendar year plus the amount of any distributions made to the shareholders during that preceding calendar year to the extent that they were not reflected in such net asset value. The net asset value of the fund was to be determined in accordance with Article 7 of the Articles of Association of the company. There is a dispute as to the correct calculation for the management fee for the years 1999,2000 and 2001 and the extent to which any interest may be payable on those fees. There are some other items of adjustments which are in dispute and this is the third issue between the parties.

I turn then to the first issue as to the obligations of TLM under the management agreement. I note that although the management agreement

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provides that the law of Hong Kong applies to it. No evidence has been given as to the law of Hong Kong and as to whether it might be different from that of the law of the Cook Islands. I proceed on the basis that the parties have accepted that for the purpose of this dispute the law of the Cook Islands is the same as the law of Hong Kong and that the former will apply.

Clause 2 of the management agreement is as follows:

- (A) The Manager shall:-
- (i) identify and evaluate enterprises which appear to be suitable investments for the Fund (taking account of the investment objective and policy of the Fund from time to time, but initially as stated in the Information Memorandum) in addition to the initial 19 investments in Joint Ventures which are described in the section of the Information Memorandum which is entitled "Initial Investments", and report to the Board upon any potential additional investments.
  - (ii) negotiate, on behalf of the Fund, with the Ministry and the relevant enterprises in respect of any potential additional investments which are identified pursuant to (i) and agreed upon by the Board,
  - (iii) monitor any investments which are actually made by the Fund in any or all of such initial 19 Joint Ventures of which are subsequently selected by the Fund, report to the Board upon any developments or potential problems in any such investments, and provide a semi-annual progress report to the Board and the Shareholders upon the progress of such investments.
  - (iv) nominate one or more persons to represent the Fund or its subsidiaries upon the Board of directors of each of the

**Joint Ventures.**

- (v) co-operate with the Board and the Auditors in connection with any valuations of the Fund which are carried out from time to time in accordance with Article 7.**
- (vi) advise the Board on possible and appropriate methods of realising its investments from time to time (whether by means of public offerings, disposals of strategic interests, trade sales or otherwise) and assist the Fund in implementating (sic) such realisations (provided that all direct expenses incurred in connection therewith shall be borne by the Fund,**
- (vii) advise the Board on opportunities for the shareholders to make direct investments in the Joint Ventures (or in any interest of a Joint Venture),**
- (viii) offer to the management of the Joint Ventures the benefit of its commercial expertise.**
- (ix) provide to the Board general information on relevant economic and political developments in the PRC.**
- (x) provide general administrative services to the Fund as hereinafter provided, and**
- (xi) administer the investment of any cash or other liquid assets of the Fund (and for this purposes the Manager may place sums in cash deposits, with maturities not exceeding 90 days in the name of the Fund with banks or other persons approved from time to time by the Board.**

**The Fund shall not appoint any other person, firm or corporation to provide the said services during the term of this Agreement.**

- (B) All activities engaged in under the provisions of this Agreement by the Manager shall be subject to the overall policies, direction and control of**

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the Board, which may by Officers' Certificates give to the Manager general or specific directions relating to the services specified in sub-clause (A)."

The management agreement proceeded to provide that the Manager was not an agent of the company and that it would be entitled to delegate its duties.

Clause 5 provides as follows:

**"5. PROVISION OF FACILITIES**

The Manager shall keep the Fund fully informed as to the discharge of its responsibilities hereunder and shall provide all necessary office facilities, equipment and personnel to enable it to carry out its functions hereunder and if so required by the Fund shall arrange for members of the Manager's organisation to serve as directors, officers or agents of the Fund."

As is noted the reference to administration services in Clause 2 was further defined in Clause 8 in the following terms:

**"8. PROVISION OF ADMINISTRATIVE SERVICES**

- (A) Subject as herein provided the Manager shall provide the Fund with the general administrative services required by in connection with its business and operation.
- (B) Without prejudice to the generality of the foregoing the general administrative services to be provided by the Manager shall include:-
  - (i) the administration of all borrowings of the Fund (but, for the avoidance of doubt, the foregoing shall not be deemed to confer upon the Manager

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- the power to incur any borrowings in the name of the Fund unless so required by the Board);
- (ii) the administration in connection with and effecting of all necessary registrations with governmental and similar agencies and in connection with the maintenance of the listing of the shares on the Stock Exchange or on any other stock exchange on which the shares are for the time being listed;
  - (iii) keeping the accounts of the Fund and such books and records as are required by any applicable law or otherwise for the proper conduct of the affairs of the Fund, providing the Fund, its auditors and such other persons as may be authorised for the purpose by Officers' Certificates with access to all books and records kept by the Manager solely relating to the Fund and its affairs and preparing for forwarding to Shareholders by or on behalf of the Fund all warrants, statements and notices which the Board is required to issue, send or serve in accordance with the Articles and/or the practices of any stock exchange on which the Shares or any other securities issued by the Fund may be listed and handling the Fund's routine tax affairs on its behalf;
  - (iv) effecting, on behalf of the Board, the registration of any transfer of Shares and the issue to the transferees of the appropriate share certificates; and
  - (v) preparing for publication and/or despatch by or on



behalf of the Fund to the Shareholders and to the Auditors such notices, reports, financial statements and other written material as may be requested from time to time by the Board."

Officers' Certificates were described and defined as written, telex or facsimile instruction from the Fund in respect of any of the matters referred to in the management agreement signed by one or more persons as the Board from time to time may have authorised in accordance with Clause 6(C). Clause 6 (C) provided that different persons may be authorised by the Board to give Officers' Certificates for different purposes and such persons might include officers of corporations other than the Fund. A certified copy of a resolution of the Board was to be received and accepted by the Manager as conclusive evidence of the authority of a person to give Officers' Certificates and was to be considered in full force and effect until receipt of a written notice to the contrary.

Clause 13 of the Management Agreement deals with the expenses to be borne by the Manager and the provision of reimbursement of other expenses. The Manager is to render the services at its own expense and there are a number of items that are particularly mentioned as follows:

- "(i) all clerical and other services relating to administration, research, statistical and investment work performed by the Manager;
- (ii) the preparation (but not the printing or the distribution) of reports and notices of meetings required to be sent to the Shareholders;
- (iii) the cost of the office and other accommodation, the salaries of employees and all cable, telex and telephone charges required for the purpose of fulfilling its duties hereunder; and
- (iv) the remuneration of, and reimbursement of expenses,

fees and commissions incurred by, the Manager or any other person firm or corporation to whom the Manager has delegated any of its responsibilities hereunder."

13(B) provides for the expenses and other matters for which the Manager will be reimbursed. These included legal counsel and legal services; interest on and charges and expenses of the fund arising out of borrowings made by the Fund; the incorporation and initial organisation of the Fund taxes and corporate fees, the expenses involved in registering the Fund, maintaining its registration with the stock exchange or government or agencies, expenses incurred in the alteration of Memorandum or Articles and expenses incurred in the preparation of any documents amending the provisions of the Agreement; brokerage, fiscal or government charges or duties, legal and professional advice, the audits of the Fund and all other matters authorised by this Agreement or by any Officers' Certificate which are not required to be done at the expense of the Manager.

Clause 14 provides that the Fund shall cause its books and accounts to be audited at least once each year by the auditors for the time being of the Fund. I have already mentioned the terms of Clause 19 as to termination of the Agreement, the provision as to termination immediately upon notice is contained in Clause 19(B) as follows as it is relevant to this matter:

- "(B) Notwithstanding any other provisions of this Agreement, this Agreement may be terminated immediately upon notice being given by one party to the other, if the other:-
- (i) [this deals with insolvency bankruptcy liquidation etc]
  - (ii) shall commit any material breach of its obligations under this Agreement and (if such breach shall be capable of remedy) shall fail to remedy the same within thirty days after receipt of notice served upon it by the other party requiring such remedy;"

Subclause (C) of Clause 19 provides that on the termination of the Agreement the Manager is to deliver up to the Fund all forms of proxy, letters of authority mandates, powers of attorney, books of account, correspondence and records of all and every description held by it which were or are in its possession.

In mid-1999 there was a difficulty in obtaining Board approval for the final annual report and accounts for the year ended 31 December 1998. This impinged on the listing on the Irish stock exchange. That exchange required the annual report to be lodged in Ireland by 30 June 1999 to maintain the listing and TLM through its Executive Vice President and General Manager Duncan Hon wrote on a number of occasions on this topic. On 1 June 1999 he sent to the company a second draft of the 1998 annual report which included some revisions. He forwarded on 14 June an urgent reminder which he said that TLM had received from the stock brokers in Ireland that was addressed to Ms Donna Wong who was at the time the secretary of the company and it seems a employee or agent of TLM. That conflicts with the averment of Koo Ming Hon as to her status. There was continued correspondence with TLM and with Slaughter and May as to TLM's ongoing discussions and attention to the printing and preparation of the 1998 annual report. In a message dated the 28 October 1999, Mr Duncan Hon had noted that the management company had no basis to prepare the 1999 interim report and on behalf of TLM he denied responsibility for the board's failure in respect of the filing of these accounts. By the beginning of February 2000 there were proposals made as to a review and re-representation of the 1998 account. Slaughter and May wrote to Arthur Andersen to inquire as to what further work would be required and its costs. Arthur Andersen replied indicating that further auditing procedures needed to take place and the costs for that. Arthur Andersen were the auditors of TLM. It seems, contrary to the averment of Koo Ming Hon, that Arthur Andersen did not prepare the accounts but merely audited them. In his facsimile message of 25 March

2000, Duncan Hon indicated the work that had been done towards the review of the 1998 annual report and accounts, that it was in the process of updating the financial situation of the joint ventures and that a report will be sent to the Board for consideration, once that was completed. In a message dated 31 March 2000 Duncan Hon noted that he would not be able to attend the Board meeting on 31 March but that TLM was in the process of updating the financial situation of the individual joint ventures, that there were matters outstanding in respect of EVIC. The message ended with this:

"The Manager is trying our best to compile the financials of the JV and our report to the Fund. We will send the information to the Directors once available."

At the meeting on 31 March Duncan Hon's fax of 31 March was noted. It was recorded that the Manager should continue to update the financial situation and to co-operate with the fullest extent possible with Arthur Andersen to enable the 1998 accounts, the 1999 interim accounts and the 1999 annual accounts to be produced as soon as possible. A time table was proposed by the Board and it was resolved that "The Manager be instructed to proceed with all haste on the interim accounts".

The response to that was a message from TLM on 5 April 2000 which referred to a letter from Slaughter and May which it appears had reported on the meeting of 31 March 2000. TLM by Duncan Hon noted a number of matters which brought TLM to the point of saying "the Manager has no option but to seek independent legal advice on the potential liabilities, if any, that the Manager could incur in these extremely unusual circumstances". It then recorded that it disassociated itself with the approval, issuance and any related matters on the 1998 annual report and accounts. Following that, the company wrote to TLM, the letter of 11 April 2000. Having noted that the Board was unable to approve the annual report of accounts and the time limits required for the Irish stock exchange it expressed the view, that I have

mentioned above, that this was due to the Manager's failure to discharge its duty to provide information to the company and its auditors. It then gave notice that it required the Manager to deliver within 14 days of the date of the letter all necessary information in relation to the affairs of the company up to 31 March 2000 to enable the directors to instruct the auditors to proceed to audit the accounts. The letter 11 April 2000 ended with this sentence:-

"In view of the fact that requests were first made of you to recommence progress on this in January, the Company would regard any failure to deliver such information within the above specified time limit as a breach of the Management Agreement by you, and reserves the right to take action against you for breach of contract in accordance with the terms of the Management Agreement."

Duncan Hon responded to that letter of 11 April by facsimile message of 25 April 2000. He stated that the Manager had performed all its obligations under the Management contract back in May/June 1999 saying that the 1998 annual report and accounts were prepared and the drafts were already approved but he was of the view that it was the failure of the Board to act as being the primary reason for the de-listing by the Irish stock exchange. He went on to say that TLM "has been updating the financial records of the JVs and the Fund as a continuous effort. However the management company has not been able to collect all the updated financial reports for all the JVs and because of the JVs work schedules the site visits to the major factories by Arthur Andersen could not be arranged on short notice."

He then went on to say that additional information on the Fund and the management company's assessment of the carrying value of the investments will be provided to the Board. The letter of 11 April was followed by a letter from Slaughter and May dated 30 October 2000. That letter requested TLM to deliver or arrange for the delivery of all statutory books and records

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(including financial records) of the company no later than 3 November 2000. Notice was given as to Clause 8(B)(iii) of the Management Agreement and reference was made to access to all books and records kept by the Manager. By letter dated 9 November 2000 the company wrote to TLM referring to Slaughter and May's letter notifying that it deemed the failure to comply as a material breach and seeking remedy of the Breach within 30 days.

On or about 6 December 2000 TLM sent or arranged to be sent to Slaughter and May four Lever Arch files. They were described as,

1. Minute Book,
2. Minute Book title No. (2),
3. Minute Book file No. 3 and
4. Important documents.

None of the files contained any financial records. There was however a receipts and payments summary for the period from 24 December 1998 to 25 April 2000. The company wrote to TLM on 14 December 2000 noting what had been received, the failure to provide any financial records and seeking some further details in respect of the summary referred to. A further 7 days was granted to comply. There being no further response, on 18 January 2001 the company wrote to TLM formally determining the Management agreement with immediate effect.

I conclude from the foregoing that TLM was under a duty to prepare the accounts and that it did so as is recorded by the contemporaneous messages and letters. I do not accept Mr Koo Ming Hon's averments that it was Arthur Andersen that was to prepare those accounts. It may be that he has misunderstood the comparative duties when he made his affirmations but there can be no doubt that TLM was fully involved in the preparation of the accounts and accepted that as its duty. That would seem to be required

under the terms of the management agreement, in any event as part of the general administrative services to be carried out by it. In light of the stated disassociation of TLM from the 1998-99 accounts it is not surprising that the company sought to obtain details of all financial records and other company matters and that it took over the company secretary aspect of the administration of the company.

Mr Koo Ming Hon claims that there were no records beyond those that had been made available in the preparation of the 1998 accounts. It is suggested that in any event after the sale of the substantially all of the assets in July 2000 it was not possible to obtain any further information. That fails to recognise that in the course of preparing the 1998 accounts, and in the course of the work that was done thereafter there must have been a substantial amount or ought to have been a substantial amount of financial records as well of course of its own records in respect of the expenses and other payments it may have undertaken in carrying out its management duties. TLM did not at any time comply fully or adequately with the requests and demands made by the company and on its behalf by Slaughter and May. It did not, if there were no such documents attempt to explain that.

There is some argument in the submissions of the parties as to confusion between an obligation to prepare accounts, an obligation to give access to documents and an obligation as alleged to deliver up documents. Plainly TLM accepted that there was an obligation to deliver up some documents and as I have noted before, Lever Arch files were finally delivered to Slaughter and May in December 2000. It would have been a simple matter if there were no other documents at all to have said so. The inevitable inference is that there were other documents but that for reasons of its own TLM was not prepared to deliver them up or to make any arrangements to give access.

Having regard to the whole of the circumstances I am satisfied that TLM was in breach of its duties under the management agreement. In particular, it did

not comply with the request to deliver up documents in respect of the financial reports of company or to give access to them. It failed to remedy the breach when it was brought to its attention and notice thereof was given. I conclude that the company was entitled to terminate the management agreement in January 2001 and that the management agreement was validly terminated on 18 January 2001.

I turn now to the remaining issues which are matters of adjustment of the claims.

The management fee is a sum equal to 2% of the aggregate of the net asset value of the Fund as at 31 December in the immediately preceding calendar year and the amount of any distributions made to the shareholders during that preceding calendar year. The net asset value is calculated in accordance with Article 7. 7A provides as follows:

"the net asset value and the net value per share shall be determined by the directors in US dollars as at 31 December in each year and at such other times as they consider appropriate and shall be determined on the basis of this article."

Sub paragraphs B,C,D,E,F deal with various assets and the ways and methods which they have to be valued and included. Article 7G provides

"every calculation of Net Asset Value shall be audited as soon as practicable after determination by the auditors."

The management fees payable for a year or part year after the first were to be payable in advance within 7 days of the date "upon which the Net Asset Value of the Fund has been calculated and audited in accordance with Article



7 in respect of the immediately preceding calendar year." And there was a provision for deferment of the payment of a management fee if the Fund did not have sufficient cash or other liquid assets to pay it. In such case the deferred fee would bear interest until the date of actual payment at the rate of LIBOR plus 1%. There is no other provision in the Management Agreement for payment of interest.

The net asset value for determination of the management fee must be fixed or agreed by the Directors and audited. Both of these are prerequisites to the calculation and to the payment of the management fee. Interest is not payable if there has been a delay in payment beyond the date provided for under the agreement unless it is shown that the company or the Fund was unable because of a deficiency in cash or cash assets to pay it. Delays caused by a failure or delay in auditing of the accounts or other reasons would not give rise to any right to interest. Indeed this seems to have been recognised in that a payment was made on 29 February 2000 to TLM, in the absence of auditing. Therefore a full and proper determination of the net asset value would be required later. On that occasion it was expressly acknowledged by TLM that any adjustment would be made in later payments.

For the management fee for the year 1999 the liquidator has calculated this on the net asset value as finally determined and audited for the accounts for the year to 31 December 1998. He has added in dividends and a repayment of paid up capital giving credit to the two payments made to TLM in respect of that years management fee. There is an over payment of that fee of \$75,253.00, I agree with that calculation and that figure.

For the management fee for the 2000 year the liquidator has calculated this on the basis of the net asset value as determined for the ended 31 December 1998 and then made a profit and loss reconstruction for the year up to 31 December 1999. There has been no audit of those accounts so that strictly under the terms of the Agreement no fees can be paid or can be treated as

payable. The adjustments made by the liquidator appear to be fair and reasonable and reflect the change of position in the company in 1999 as best as can be done. In the end there is a small difference of a US\$25,026.00 disallowed.

The liquidator has disallowed the claim for interest, on the basis that the delay in the payment or in the calculation of the payment was the fault of TLM in that it failed to comply with the requests and demands to provide essential information upon which the net asset value might have been calculated. I would not disagree with the conclusion that the failure on the part of TLM to deliver accounts or financial information prevented an earlier calculation of the net asset value. The liquidator's calculation has been based on information provided by the directors of the company since the date of liquidation. In any event however it is my conclusion that there is no right to interest payment in the circumstances under the terms of the Management Agreement. As a result I agree the liquidators calculations and adjustments for the year 2000.

For the management fee for year 2001 there is again no audited accounts. The situation was though that all the company's assets under the sale agreement were to be paid to the purchaser. The liquidators have calculated the fee on the basis of the aggregate of the distributions made to the shareholders in the year ended 31 December 2000. It has been pro-rated to the date of termination – 18 January 2001. It is not appropriate to attempt to calculate this fee on the basis of a net asset value in 1998 or 1999. The fact is that there was a nil net asset value as at 31 December 2000. The only amount available for calculation is that amount of the distribution. The liquidators have allowed interest to be paid on this. There is no challenge of that. In the circumstances it may be allowed to stand as an appropriate adjustment. I agree therefore the liquidators calculations and adjustments for the 2001 fee.

There are three other items which fall to be decided. The first of these is described as advance payment in the original Memorandum of Disallowance. This was an adjustment of \$30,000. The invoices exhibited to one of the early affidavits were reviewed by the liquidators and they have made a reversal in that amount of \$US16072.21. There is a remaining disallowance of \$US12,350.70. There are four particular items included on that in which the liquidators sought further particulars. In the affirmation of Koo Ming Hon sworn on 26 March 2002 assertions are made but without any particulars which would allow me to make a decision on this. It is for TLM as the creditor to provide the evidence of the items on which the claim is made. In the absence of satisfactory evidence I am not prepared to allow that and so uphold the liquidators decision on that.

The second item is by way of a set off claim for the expenses the company was put to in providing administrative services when TLM failed to provide any further services after about March 2000. The response by TLM is not that it failed to carry out any of its duties after March 2000 but rather that the company secretary was removed at the behest of the Board and replaced by Slaughter and May's secretarial company. It is alleged that the secretary was not employed by TLM but was employed by a Fund company. As I have noted above, that conflicts with material in the documentation. In any event it rather seems to me that the date upon which TLM decided to disassociate itself from at least the 1998/99 accounts was April 2000 when Duncan Hon sent a message following the decisions of the Board in March.

This however is really a counter claim by the company for events which had occurred before the date of the liquidation and do not themselves form part of the liquidation. It is also suggested that these amounts are included in a claim of proof of debt by Slaughter and May. Moreover there is no suggestion that the company raised this matter at any stage before the liquidation itself. It is in effect a claim for breach of contract pursued by the liquidators in

reduction of the amounts to which TLM has been found to be entitled to claim. I do not accept that this is a proper adjustment to make and I therefore disallow it.

The remaining adjustment in this part of the case is a claim for interest on the interest as it is claimed. The liquidators have made an allowance for this and as it is to the benefit of TLM and there is no dispute about it, that may then stand.

In the result then the liquidator's notice of adjudication dated 18 September 2001 subject to the adjustments accepted by the liquidators and the disallowance of the claim in Schedule 5 under the heading "Statutory Expenses" (\$US12,821.00) is confirmed subject to those variations. The application for review is dismissed. The liquidator is entitled to costs. The liquidator has claimed costs on a party and party basis, I am not prepared to allow that without submissions by the Applicant. I reserve question of quantum of the costs and will receive submissions thereon.

*W. J. G. C.J.*

**CHIEF JUSTICE**