

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 139 OF 2017 (RJM)

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)

AND

IN THE MATTER OF PACIFIC HARBOR ASIA FUND I, LTD. (In Official Liquidation)

IN CHAMBERS

Appearances: Mr. Ben Hobden of Conyers, Dill & Pearman for Mr. David Griffin, JOL
Mr. Guy Manning of Campbells for the Joint Official Liquidators (“JOLs”)
Ms. Jennifer Colegate of Collas Crill for Mr. Lai Kar Yan, JOL

Before: The Hon. Mr. Justice Robin McMillan

Heard: 4th Dec 2017

Judgment Delivered: 6 Dec 2017



HEADNOTE

Power of the Court to order payment of fees and expenses – Limitation on those powers - Scope of insolvency jurisdiction of Court.

Judgment:

1. By a Supervision Order dated 27 August 2017 Mr. Griffin and Mr. Lai Kar Yan were appointed as JOLs of the Company, Mr. Griffin having previously been Voluntary Liquidator along with Mr. John Batchelor.

2. The Master Fund structure comprised the Company (a Cayman Islands exempted company) as offshore feeder fund, a Delaware feeder fund (a company incorporated in Delaware) and the Master Fund, which is a Cayman Islands Limited Partnership.
3. The two Limited Partners of the Master Fund are the Company and the Delaware feeder fund company, holding 77% and 23% of the partnership interest respectively.
4. The Master Fund is operated through its General Partner GP Ltd ("GP").
5. The assets of the Company itself comprise its 77% partnership interest in the Master Fund and some limited cash hold in a bank account in the Netherlands.
6. The Master Fund made investments in distressed debt obligations in the Asia-Pacific region, which are now problematic recovery targets for the Master Fund, which is not itself in liquidation.
7. The Master Fund has encountered economic difficulties, and it has been in wind-down.
8. However, Aggregator Solutions PLC (an affiliated entity of Deutsche Bank) holds 98.9% of the shares in the Company through these sub-funds.
9. The issue which arises is as to the remuneration of Mr. Lai who was appointed by this Court in order to realize the Master Fund's assets, and he is solely responsible for such matters. As the Company holds 77% of the Master Fund assets, should Mr. Lai's remuneration be based on the Company's assets or on the broader 100% of the Master Fund's assets?
10. Ms. Colegate argues that Mr. Lai was appointed to realize the assets of the Master Fund, namely all of the assets, even though the Company's recovery is limited to 77 % of the assets.



11. She contends that realizing the assets of the Master Fund should be fully rather than partially compensated for given that it entails costs incurred in connection with the realization of assets failing outside the liquidation estate of the Company which cannot be paid from that estate but should be compensated for in any event as a matter of fairness.
12. Ms. Colegate asserts that this is consistent with both the Companies Law and the CWR, and furthermore with the law of equity.
13. Mr. Hobden however states that this approach is not in the best interests of the Master Fund and its creditors and stakeholders; and he points out that there is no legal authority as such to support Mr. Lai's position, certainly in the law of this jurisdiction.
14. The Court's attention has been drawn to the proposition that Mr. Lai's remuneration and expenses as JOL in relation to realizing the assets of the Master Fund are expenses in the liquidation of the Company itself, and Mr. Hobden cites sections 109 and 103 of the Companies Law, as well as Order 20, r. 1 (2) of the CWR.
15. I accept that the only order of payments which I can approve is that governed by and stipulated by Cayman Islands insolvency law.
16. This Court's powers extend to the winding up of the Company and to no other entity.
17. In other words, the Master Fund is not in liquidation and it is not appropriate or permissible for the Court to treat the Master Fund, which is a separate exempted limited partnership, under a liquidation regime or subject to a liquidation regime in any formal way. Furthermore, the Court has no inherent jurisdiction to vary priority of payments as laid down by law.



18. The point in issue is a simple one, but fundamental, notwithstanding the lengthy written arguments which have been submitted.

19. I therefore direct that the remuneration of Mr. Lai incurred in respect of work done to realize the assets of the Master Fund and/or by Mr. Griffin to investigate the business, dealings and affairs of the Master Fund are payable, and payable only, as an expense in the liquidation of the Company in accordance with the CWR. This is the right way to proceed and the only way to proceed.

20. The costs of this application shall be paid as costs in the liquidation.

Robin McMillan



McMillan J
Judge of the Grand Court