No. 9116-2004

IN THE MATTER OF MICHAEL SHUMAN, a registered foreign lawyer

and

PERIASAMY MATHIALAGAN, a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr W M Hartley (in the chair)
Mr A H B Holmes
Mrs S Gordon

Date of Hearing: 13th & 14th February 2006

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# FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Law Society by Iain George Miller, solicitor and partner in the firm of Wright Son & Pepper of 9 Gray's Inn Square, London, WC1R 5JF on 21st September 2004 that Periasamy Mathialagan c/o 23 Wicksteed House, County Street, London, SE1 6RQ, a solicitor, and that Michael Shuman c/o Quastels Avery Midgen, 74 Wimpole Street, London, W1G 9RR, a registered foreign lawyer, might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegations were that the Respondents acted in breach of the Solicitors Accounts Rules 1998 (or in the alternative the Solicitors Accounts Rules 1991) in that:-

1. (i) an unqualified legal assistant was a signatory on the firm's client bank accounts in breach of Rule 23 of the Solicitors Accounts Rules 1998 (or Rule 11(6) of the Solicitors Accounts Rules 1991);

(ii) between 21st July 1999 and 8th October 2001, no records were kept on the office side of the client ledger in respect of funds totalling £550,770.87 transferred from the firm's US dollar client account to the firm's sterling office bank account in breach of Rule 32(1) Solicitors Accounts Rules 1998;

(iii) between 30th June 2000 and 17th September 2001 no reconciliations were carried out on the firm's US dollar client account contrary to Rule 32(7) of the Solicitors Accounts Rules 1998;

(iv) adequate records were not kept of transactions on the firm's US dollar client account contrary to Rule 32(2) of the Solicitors Accounts Rules 1998 and Rule 11(2) of the Solicitors Accounts Rules 1991;

(v) money held on behalf of the Legal Services Commission (in the amount of £9,421.13) in respect of costs and disbursements was incorrectly withdrawn from client account contrary to Rule 22 of the Solicitors Accounts Rules 1998 or Rule 7 of the Solicitors Accounts Rules 1991.

2. at all material times prior to 4th June 2002 and/or 5th November 2002 the firm's notepaper did not comply with the Solicitors Publicity Code 1990 and/or the Business Names Act 1985 in that it did not list the partners in the firm;

3. that they have been guilty of conduct unbefitting a solicitor or registered foreign lawyer in that they became involved in dubious or fraudulent transactions notwithstanding such transactions were of such a nature that a solicitor or registered foreign lawyer should not properly involve themselves in such transactions.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Iain George Miller appeared as the Applicant and Mr Mathialagan was represented by Phillip Engleman of Counsel. Mr Shuman did not appear and was not represented, although Andrew Hopper of Queen's Counsel had addressed a letter to the Tribunal dated 10th February 2006 on behalf of Mr Shuman.

**Preliminary matter**

1. Mr Miller and Mr Hopper, on behalf of Mr Shuman, adopted an agreed position. Both recognised the Tribunal's discretion in relation to the withdrawal of allegations and/or proceedings.

2. Mr Shuman left the firm of Mathis in June 2002. That had been his only experience of practice as a registered foreign lawyer working with solicitors. Mr Shuman had no desire to maintain his registration. He informed the Law Society that he did not intend to renew it. He received a number of standardised communications telling him that if he did not pay his annual fee his registration would lapse. As he did not pay the fee he had taken it that his name would cease to be registered.

3. Only some time later did Mr Shuman learn that the Law Society had insisted on his remaining on the Register because there were outstanding disciplinary proceedings.

4. By bringing disciplinary proceedings against Mr Shuman it was clear that the Law Society sought to have his name removed from the Register. There was no other

sanction that the Tribunal was empowered to impose. The regulatory regime relating to registered foreign lawyers was different from that relating to solicitors.

5. It was Mr Shuman's position that he had only a peripheral involvement in the subject matter of the allegations. It was thought likely that Mr Mathialagan would give evidence in which he blamed Mr Shuman. Mr Mathialagan had not disclosed his case until midday on the Friday before the substantive case was due to be opened on Monday 13th February 2006.

6. Subject to the Tribunal's consent the Law Society and Mr Shuman had agreed that his name should be removed from the Register of Foreign Lawyers. The question of costs had been resolved by agreement, namely that each party would bear its own costs.

7. If the case were to continue against Mr Shuman he would be bound to defend himself against Mr Mathialagan's allegations which would considerably increase the cost of the hearing. The hearing would continue in relation to a regulatory issue in which Mr Shuman had no interest.

8. Mr Mathialagan would not suffer any prejudice. Mr Shuman had set out his case in writing and in detail and Mr Mathialagan had had notice of it and was free to answer it.

9. Whether the Tribunal ordered Mr Shuman's name to be removed from the Register or whether the Law Society did so itself, the effect would be the same.

10. The Law Society had a discretion as to whether or not a foreign lawyer's name be added to the Register of Foreign Lawyers. The Law Society, of course, was fully aware of the allegations made against Mr Shuman and would take these into account should he reapply to have his name placed on the Register of Foreign Lawyers. Mr Shuman had in any event addressed a letter of undertaking dated 7th February 2006 to the Law Society in which he said that he confirmed that he wished his name to be removed from the Register of Foreign Lawyers and he undertook (a) not to reapply to become a registered foreign lawyer and (b) that he would not be employed or remunerated by any solicitor in connection with his practice as a solicitor. He confirmed that he understood that his undertaking applied indefinitely and any application he might wish to make in the future to be released from his undertaking should be addressed in writing to the Law Society or to any successor of it.

11. In the circumstances it was trusted that the Tribunal would excuse the non-attendance of Mr Shuman and his representative. No discourtesy was intended by their absence.

12. It was agreed that the allegations made against Mr Shuman would lie on the file and the Law Society was not to be hampered in making details of the situation known to the Texas Bar, the professional body by which Mr Shuman was governed.

13. On behalf of Mr Mathialagan the application that Mr Shuman's name should by agreement be removed from the Register of Foreign Lawyers was opposed.

14. Having expressed doubt as to whether Mr Mathialagan had any locus standi in respect of the join application by the Law Society and Mr Shuman, on behalf of Mr

Mathialagan the Tribunal was invited to consider the aspect of fairness. The degree of Mr Mathialagan's involvement in the matters complained of was a material issue. Mr Mathialagan's representative would have liked to cross-examine Mr Shuman about his knowledge of the persons and the transactions concerned.

15. Mr Mathialagan was also concerned about the costs position. It appeared that Mr Shuman was "getting off scot free". It would be right that the Tribunal should decide the appropriate proportion of any costs to be borne by any party.

**The Tribunal's decision and its reasons in the preliminary matter**

Having given due consideration to all the facts and the joint application the Tribunal consented to the proposed arrangement whereby Mr Shuman was removed by the Law Society from the Register of Foreign Lawyers and the Tribunal endorsed the agreement as to costs made between the Law Society and Mr Shuman.

The Tribunal considered that the only order it could make having found the allegations against Mr Shuman substantiated was one that his name be removed from the Register of Foreign Lawyers. This outcome had been achieved by agreement. This met the Tribunal's primary duty to protect the public. The Tribunal did not consider that there was any prejudice to Mr Mathialagan. Mr Shuman could not be compelled to give evidence. Mr Shuman had given a detailed written statement in proceedings before the Master of the Rolls and that statement had been made available to Mr Mathialagan and to the members of the Tribunal. Mr Mathialagan would be given every opportunity to give his evidence and make sure that the Tribunal is fully aware of his case. The Tribunal had endorsed the agreement as to costs made between Mr Shuman and the Law Society, but it would not feel inhibited to impose the order for costs which it considered appropriate at the conclusion of the hearing. The Tribunal would not therefore hear allegations made against Mr Shuman. The allegations against him were withdrawn on the basis of Mr Shuman's undertaking to the Law Society.

The case proceeded against Mr Mathialagan alone.

The evidence before the Tribunal included the admissions of Mr Mathialagan of the facts and allegations concerning breaches of the Solicitors Accounts Rules and non-compliance with the Solicitors Publicity Code 1990 and/or the Business Names Act 1985. Mr Ireland, the Law Society's Forensic Investigation Officer (the FIO) gave oral evidence. Mr Mathialagan gave oral evidence. Mr Mathialagan did not dispute the facts relating to the transactions which the Applicant alleged were dubious or fraudulent, and admitted allegation 3 save that he denied that he had been dishonest.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Periasamy Mathialagan c/o 23 Wicksteed House County Street, London, SE1 6RQ , solicitor, be struck off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £24,958.04.

**The facts are set out in paragraphs 16 to 190 hereunder:-**

16. Mr Mathialagan, born in 1968, had been admitted to the Roll of Solicitors in 1993. At the material time Mr Mathialagan and Mr Shuman, a registered foreign lawyer, practised in partnership under the name of Mathis from offices at the Elephant & Castle Shopping Centre, London, SE1 6TE. Mr Shuman resigned from Mathis on 14th June 2002. On 1st November 2002 the Law Society intervened into the practice of Mathis where, by that time, Mr Mathialagan was a sole practitioner.

Breaches of the Solicitors Accounts Rules

17. The Law Society's Forensic Investigation Officer (the FIO) began an inspection of the books of account of Mathis on 17th September 2001. He prepared a report dated 30th September 2002 which was before the Tribunal.

18. The report revealed that the firm's books of account were not in compliance with the Solicitors Accounts Rules in respect of both its sterling client accounts and its US dollar client accounts.

Sterling client accounts

19. Client cashbooks were maintained by the firm's reporting accountant who calculated the individual liability to the firm's clients each month using a computer spreadsheet. These client balances were used when the accountant prepared the monthly client account reconciliations.

20. The firm maintained client ledgers using a specially written computer programme.

21. When comparing individual client ledgers maintained by the firm with the balances calculated by the accountant the FIO identified a number of discrepancies. The majority of discrepancies were satisfactorily explained but a small number remained unanswered.

22. In the period 21st July 1999 to 8th October 2001 funds totalling US$864,088.59 (£550,700.87) were withdrawn from US dollar client bank accounts and transferred to the firm's sterling office bank accounts. Amounts were then paid, principally in cash, to clients, to other parties on the client's instructions and to Mr Mathialagan and Mr Shuman. No record of transactions had been made on the office side of the relevant client ledgers.

US dollar client accounts

23. At the commencement of the inspection the most recent reconciliation of the US dollar client bank accounts was at 30th June 2000.

24. In the period between 30th June 2000 and 31st August 2001 receipts and payments totalling $10,174.655.98 and $1,300,881.49 respectively had passed through the two US dollar client bank accounts operated by the firm.

25. The firm had not maintained a cashbook to record the transactions and although client ledgers had been maintained they did not record all transactions.

26. During the course of the inspection the FIO allowed the firm time to bring the ledgers up to date but a review of the ledgers indicated that some of the transactions had not been accurately recorded.

27. The ledgers did not contain sufficient narrative, particularly in respect of cash payments, as to the recipient of the funds.

28. In July 2002 one client wrote to the Office for the Supervision of Solicitors (hereinafter referred to as the Law Society) stating that an amount of £20,000 had been withdrawn from client account between May 2001 and July 2001 without his authority. Although the client had been requested to provide specific details this information had not been provided by the date of the FIO's report.

29. At a meeting with Mr Mathialagan on 26th July 2002 the FIO referred to a transfer of US$7,125 (£5,000) made on 11th July 2001 from Bank of Ireland US dollar client bank account to Bank of Ireland office bank account, which was in respect of the client matter referred to in paragraph 28 above. This amount was not paid out to the client and there was no bill in respect of the transfer. Mr Mathialagan was asked by the FIO to investigate the justification for this transfer. No reply had been received by the date of the FIO's report.

30. In view of the accounting deficiencies it had not been possible for the FIO to establish whether funds held on both sterling client bank accounts and US dollar client bank accounts were sufficient to meet the firm's liabilities to clients as at 31st August 2001. The FIO found a minimum shortage of £7,099.39 on the sterling client accounts.

31. At a meeting on 27th June 2002 Mr Mathialagan agreed the minimum cash shortage of £7,099.39 and replaced it during the inspection by amounts recovered from the Legal Services Commission (LSC).

32. The minimum cash shortage arose in the following way:-

| | |
|---|---|
| (i) amounts to be recouped by the Legal Services Commission not held in client bank account | £9,421.13 |
| (ii) Interest earned on general client bank account incorrectly credited to client bank account | (2,321.74) |
| | £7,099.39 |

33. With regard to item (ii) above, the LSC wrote to the firm about "outstanding payments on account" and they provided details on certificates held by the firm or payments made to the firm where no final bill had been paid. The firm was required to complete a form (UPOA/2 - Report On Case) for each matter and return it to the LSC. In addition, if the case had been settled the firm was required to complete either a "CLAIM1" or "CLAIM2" form.

34. In respect of four matters the firm completed and submitted CLAIM2s (Report in Civil Cases - costs met in part or full by other party) which resulted in a demand for

payment from the LSC for £10,957.53, representing amounts paid to the firm in respect of costs and disbursements and payments made direct to Counsel.

35. The FIO noted from a review of the four relevant client ledgers that only £1,536.40 was held in client bank account in respect of one of the three matters.

36. At the meeting on 27th June 2002 Mr Mathialagan confirmed that where the firm had received payments on account from the LSC and the firm's costs and disbursements had been settled by the other side the firm would be required to retain in client account (out of the monies received from the other side) amounts due to be recouped by the LSC.

37. The shortages on the four matters had existed from between 17 months to 51 months. The matter of Miss O was given as an example.

38. The firm acted for Miss O in respect of her personal injury matter. Mr Jayaram, a senior legal assistant, had conduct of the case.

39. Mr Mathialagan confirmed that the firm had received payments on account from the LSC and that payments had been made direct to Counsel totalling £3,518.28 as detailed on a statement from the LSC dated 8th May 2002.

40. The client ledger showed that the firm had received costs and disbursements from the defendants amounting to £8,148.91 on 14th April 2000 and that they had transferred £7,098.64 on the same date to office bank account. On 2nd May 2000 the firm paid damages received to the client and after paying outstanding disbursements, a balance of £1,536.40 was retained in client account.

Breach of the Publicity Code

41. Mathis's letterhead was printed with the legend "List of partners can be inspected at our office". It is a requirement of any firm of less than 20 partners to list the partners on the firm's paper pursuant to the Business Names Act 1985. There were two partners at the firm of Mathis.

Financial transactions

42. Because of concerns about dubious financial schemes and money laundering the Law Society in September 1994 and in October 1997 issued each solicitor with printed warning cards in connection with money laundering and bank instrument fraud. Both the money laundering and bank instrument warning cards were reprinted in the Guide to the Professional Conduct of Solicitors, 8th edition, which was published in 1999. Mr Mathialagan confirmed that he had received both of the warning cards and he was aware of their contents.

43. In the light of the warning cards it was expected that solicitors should have been extremely cautious about becoming involved in the type of schemes that are the subject of the warning cards. Following the Law Society's intervention into Mathis approximately 98 files relating to such transactions had been identified. Some had come to the attention of the FIO during his inspection and some had not come to light until after the intervention.

44. The firm of Mathis derived a substantial benefit from such transactions, having charged and been paid fees of £117,249.55 in respect of the matters set out in the FIO's report.

Investment schemes and loan financing

45. The Tribunal had before it a wealth of documents relating to the dubious transactions and has selected extracts from a small number of them by way of example for the purposes of these Findings.

46. The Tribunal has set out lengthy documents in full so that the nature of the documents is apparent to those who might not otherwise have had the opportunity to read documents drafted in this way.

47. The firm acted for a number of clients wishing to invest substantial funds in investment programmes or to obtain substantial loans from European banks through the use of "consultants".

48. In respect of these matters the firm held funds either "in trust" or "in escrow" but with all such funds being dealt with through its two US Dollar client bank accounts which had been opened to facilitate these transactions.

49. At a meeting with them on 27th June 2002 the FIO asked Mr Mathialagan and Mr Shuman if they had any concerns or suspicions about monies going through the US dollar client bank accounts with regard to possible money laundering. Mr Mathialagan said that they usually knew who they were dealing with. Mr Shuman said that it was always on their mind for any transaction. Mr Shuman claimed to have experience in money laundering precautions having acted for banks who provided manuals about due diligence procedures.

50. The FIO set out in his report details of a high yield investment scheme/capital enhancement programme as follows:-

Clients: Mr J Moore - President, JBS Management Group, Inc
Mr P Gonzales - Private individual
Mr V Rowe - President, Global Management Inc
Mr R Hazard - President, Child's Hope International Inc
Mr H J Williams - Private individual
Mr J Utz - Managing Member, SAAM, LLC
Mr S Danner - Private individual

Matter: Participation in Capital Enhancement Program

Co-ordinator: Mr Terry Harper - Anglo-American Finance Group Ltd

Investment strategist: Mr Claudio Campanella

Introducer: Mr Frederick Stanchich - Commercial Client of Mathis

51. Mr Mathialagan acted for a number of American investors who were looking to enhance their capital in connection with their financial objectives.

52. Mr Mathialagan had been informed, prior to the first request on 1st July 2001 from Mr J Moore of JBS Management Group to establish a trust account, that these requests would be received by the firm. It had been confirmed first by Mr Stanchich and then by Mr Harper.

53. Mr Mathialagan said that Mr Harper had been recommended by Mr Stanchich. Mr Shuman told the FIO that Mr Harper ran a church organisation, "Wings over the World", and among other things real estate, had been part owner of a bank and was also known to provide certain financial and banking facilities.

54. Mr Stanchich informed Mr Mathialagan about the requests that would be coming for the establishment of trust accounts and Mr Stanchich had told Mr Mathialagan that he was working with a Mr Campanella who was licensed through an FSA authorised company in London. He said they were going to be receiving funds from various clients to be held "in escrow" for their business.

55. Mr Mathialagan understood that the money he received was to be used for trading in futures or something like that in London. Mr Mathialagan said he had handled "escrow work but not in trading".

56. The FIO enquired whether such investment should be regulated by the FSA. Mr Shuman told the FIO that Mathis "just approached for escrow initially and wanted him [Mr Mathialagan] to handle the legal aspects of the investment transaction. When we got the full information on the transaction as it was developing and the structure that they wanted to put together we were not satisfied their potential business was going to comply with the securities regulations in force in the relevant jurisdictions. We advised him [Mr Stanchich] of this and they, Mr Stanchich and Mr Camapanella, agreed not to proceed".

57. Mr Mathialagan said that Mr Stanchich and Mr Harper had told him they would give all the details of who was going to send monies. He did not ask how many 'investors' were going to request that trust accounts be set up and he did not get a list of the individuals concerned or the amounts to be remitted.

58. Mr Mathialagan said that he was informed by Mr Harper that requests were to be forthcoming prior to individuals requesting trust accounts.

59. Mr Mathialagan explained that the clients wanted him to make sure that monies were to be given to a properly licensed company and were secure; Mr Mathialagan would carry out appropriate due diligence. He would not pay out monies unless he was satisfied about the company to which such payment was to be made. The instruction to Mathis sent by fax included the following words:-

> "We wish to establish a Trust Account with your firm in our name with the intention of providing limited authority with (to be named party(s)) for the purpose of enhancing our capital in connection with our financial objectives. Specific instructions as to our intention will follow upon our acceptance and registered transfer of our funds. We anticipate your positive response

concerning our request and look forward to working with your firm in this endeavour."

Different investors sent their instructions in this standardised format.

60. Mr Mathialagan confirmed that the programme was being co-ordinated by Mr Harper who, Mr Shuman confirmed, represented Anglo-American Financial Group Limited.

61. Following receipt of the instructions Mathis issued "Trust Agreements", an example of which is set out below:-

"Dear Mr H

**Re: Trust Account - Natwest Bank plc**

1. I refer to the above matter and to your fax dated 20/07/2001.

Our client account details are as follows:

| | | | |
|---|---|---|---|
| i. | Name of Bank | : | NatWest Bank plc |
| ii. | Address | : | PO Box 3171<br>290 Walworth Road<br>London SE17 3RQ<br>United Kingdom |
| iii. | SORT CODE | : | 60-22-27 |
| iv. | SWIFT | : | NWBKGB2L |
| v. | Name of account: | | Mathis Solicitors - USD Client Account |
| vi. | Account number: | | 0108069719.<br>Ref: Mr Ron Hazard |

**2. Trust terms**

We take this opportunity to thank you for instructing us in the above matter.

***2.1 Your instructions are as follows:***

i. That you wish to appoint us your Trustee and that you want to open a Trust Account with us. You are instructing us on your own behalf.

ii. That you are a charitable Ministry helping children in need world wide at the above address.

iii. That the Trust Account is for the benefit and absolute discretion of yourself. That we will be allowed to confirm to the sender of any monies to your Trust Account (if it is not yourself) that we shall only

take instructions with regard to the Trust Account from you and that we are trustees only for you and not for anyone else.

iv. That all instructions on the Trust Account on behalf of you shall only be binding on us if it is given by telephone and in writing (facsimile accepted) by you and in the event of incapacity or death the personal representatives of yourself.

v. That you will provide us with reasonable notice prior to any transfers of monies are made to the Trust Account.

vi. That you will provide us with all normal due diligence materials required regarding the source of any monies transferred to the Trust Account.

vii. That we may at our discretion send any trust monies back to the account from where it originated if the sender of the monies to your trust account (if it is not yourself) refutes for whatever reason that the monies sent are for the benefit and absolute discretion of yourself and that they agree that we are to take instructions only from you. Furthermore, we may at our discretion send any trust monies back to the account from where they originated if the due diligence requirements of us or our bank are not satisfied concerning the monies or any of the parties involved.

viii. That you personally indemnify us for following the instructions from you as per the Trust Agreement witnessed in this document.

***2.2 Case plan***

**<u>Documents to be furnished</u>**

i. Certified copies of the current passport of Mr Ron Hazard.

***2.3 Advice given***

i. The partners acting as the Trustees have the necessary experience in dealing with trust matters and trust accounts.

ii. The firm also has the resources and know-how of specialist barristers and consultants who will be available for hire should the need arise.

iii. The firm is insured for a maximum limit of £1,000,000.00 on each separate matter for negligence. Please advise if more cover is needed for this matter.

iv. That all information relating to this trust account is private and confidential and that professional legal privilege shall attach and apply to them.

v. We will advise you as the matter progresses on the trust account on a monthly basis.

***2.4 Our costs***

i. We will advise you in advance and agreed upon before any cost on your part is incurred.

ii. The you [sic] may be able to reclaim all VAT payments for our services if you are not resident in the UK for tax purposes.

iii. The above quoted fees do not include disbursements. Disbursements include, amongst others, travelling costs, hotels, third party services, (e.g. bank charges, counsel fees etc.) However, no unusual disbursements will be incurred without your prior written consent.

***2.5 Reference number***

i. The file Reference Number for this Trust Account contract between us and you is PM/Hazard/ (H7140)

ii. The partner dealing with this matter as Trustee is Mr P Mathialagan.

iii. Mr P Mathialagan professional status: Solicitor for England and Wales. He is also a Solicitor-Advocate for Malaysia. His initials are PM.

***2.6 Telephoning the office***

i. When you telephone the office, our receptionist may ask your name, your file reference number, the solicitor's reference and the nature of your inquiry.

ii. Please ask for Mr Mathialagan and they will then put your call through to me. If I am not in, or I am engaged on other business, the receptionist will inform you. Please leave your name, telephone number and any message. It is my aim to return telephone calls on the same day. My mobile number is 00 44 771 146 9927.

***2.7 Complaints procedure***

i. If you have any problem or difficulty in your dealings with me, with regard to the standard of service provided, then you should write to our Practice Manager Miss C W Wong explaining the problem. The complaint will be dealt with as soon as possible.

ii. The above information is given to yourself for your benefit and to help you with your dealings with the firm and in order to prevent any difficult or misunderstandings in the future. It is also our terms of accepting your instructions. Please confirm you [sic] acceptance.

I look forward to hearing from you in due course.

Thank you.

| | |
|---|---|
| Yours sincerely | Received and accepted |
| [signed] | |
| P Mathialagan | Ron Hazard |
| MATHIS | Child's Hope International |

cc Harper - 0019494931561"

62. Further instructions were received from clients in respect of participation in a programme called 'S & P 500 Program'. An example of one of these instructions is set out below:-

"JBS Management Group, Inc
PO Box 507
Gladstone, Oregon 97027 USA
(503) 655-2501

Monday, July 30, 2001

To: Mathis Solicitors
21 St. Georges Road
London, England SE1 6ES
011-44-207-582-2588

Ref: PM/MOORE/G7100
NB(JS31)

Subject: S & P 500 Authorization

Gentlemen;
This is to authorize Mr P. Mathialagan/Mathis Solicitors to coordinate our trust account with a qualified bank, and/or brokerage institution for the purpose of participating in the S & P 500 program capital enhancement program while maintaing [sic] the corpus of the trust account within the context of the S & P Program.

Further, to authorize Mr P. Mathialagan/ Mathis Solicitors to receive and cause to execute the instructions from the "strategist" for the purpose of maximizing our returns in the S & P 500 program.

Further, to authorize Mr P. Mathialagan/ Mathis Solicitors to establish a "receiving account" for the profits generated in the program and to act as the paymaster in the disbursement of profits, compensation, and/or applicable fees to the appropriate parties.

Further, to receive accounting reports from the bank or other institutions as to our account activity and to forward such reports on to us when made available by the bank, institution and/or strategist.

Further, to authorize Mr P. Mathialagan/ Mathis Solicitors to "re-enroll" our profits into our trust account for the purpose of "maximizing" our overall account yields. We reserve the right, from time to time, to instruct Mathis Solicitors to transfer varying amounts to us from the profits generated through the program for business or personal purposes. We will give specific written instructions as needed.

These instructions require no further confirmation from us and by our signature below is to be considered effective as of the date given herein.

Sincerely:

[signed]
Jeffery L. Moore
President JBS Management Group, Inc

Witness:

[signed]
Edward S. Johnson"

63. Mathis subsequently received instructions from clients in respect of another programme called 'Aspire Program' in the following terms:-

"D
1119 N.W. 74th Street
Kansas City, Missouri 64118
816-419-9835

September 6, 2001

Mr P Mathialagan
Mathis Solicitors
231-232 Elphant and Sastle [sic]
Shopping Centre
London, England SE1 6TE
Fax: 011-44-207-582-2588

Ref: Authorization to proceed MATHIS REF# PM/D
MY REF# NB (JS36)

Gentlemen;

Upon receipt by Mathis Solicitors of a S.W.I.F.T. confirmation from CityBank, New York to Nat West Bank, London, England, of a "reserved cash certificate" in favor of Mathis Solicitors; which "certificate" shall remain as

> security against our funds. Mathis Solicitors is hereby authorized to make available these funds to be utilized by the Aspire program manager against presentation of a Contract return of approximately 180% annually or not less than 15% per month, accumulated and paid quarterly.
>
> Upon the receipt of the quarterly profits, you are to hold these profits in trust at our instructions as to their disposition. We will provide these instructions to Mathis Solicitors under separate cover.
>
> As our Trustee, you are authorized to facilitate and execute all documents in connection herewith, to transfer and receive funds held on our behalf in connection therewith and to monitor the activity of the Aspire program, and to exercise any and all rights and warrantees under the Venture Agreement with Nunzio Bruno dated August 27, 2001 for any occurring default. This fax transmission is to be treated as an original.
>
> I herewith set my hand
>
> [signed]
>
> D
> Tel: 816 419-9835
> Fax: 816 468-8933
>
> Witness [signed Karen Banksdale]"

64. Mr Mathialagan told the FIO that the 'Aspire Program' was totally different from the 'S & P Program'. Mr Shuman said that the 'S & P Program' was the one Mr Campanella was setting up for trading in "stock market futures". It changed to the 'Aspire Program' as it had been found out that Mr Campanella could not be the strategist as he was not licensed and the 'S & P Program' could not proceed.

65. The 'Aspire International Program' documents gave details of a return on investment of approximately 180% in a year and not less than 15% per month. Mr Mathialagan told the FIO that such a return was "definitely not possible". Mr Shuman said "You can make returns trading in futures but there is a risk".

66. The documents referred to a "reserved cash certificate" which Mr Mathialagan understood was going to be a deposit certificate from a good bank in London acknowledging the deposit of the capital and that they returned the capital at the end of the year with interest at 5%/6%. He had had to make sure that their capital was not at risk in exchange for this cash certificate.

67. The proposed investment programme did not proceed through Mathis. The firm informed the clients that the bank which was to send a SWIFT confirmation of a "reserved cash certificate", did not have a branch in the UK and that the Law Society rules of conduct for client account matters prevented a solicitor from undertaking such obligations for a client from an overseas bank with no branch in the UK. Mr Mathialgan had been disquieted when the bank had been changed from Citibank in London to a bank in Riga, Latvia. Mathis returned money to some clients and others instructed the firm to remit their monies to an American lawyer, William Randall,

who had taken over as trustee in respect of the Aspire International Investment Program.

68. The FIO also reported on the matter of where Mathis was instructed to act by a faxed letter from Mr Rowe on 18th July 2001 in the following form:-

> "Golden Management Inc.
> PO Box 55915
> Little Rock, AR 72215-5915
> 501.868.8053 Fax 208.545.1017
> E-mail GOLDENMANAGEMENT@worldnet.att.net
>
> July 18, 2001
>
> Mr. Mathis
> Mathis Solicitors
> 231-232 Elephant and Sastle [sic]
> Shopping Centre
> London, England SE1 6TE
> FAX: 011-44-207-277-0313
>
> Reference Code: **NB** (DH18)
>
> Ref: Trust Account Request
>
> Gentlemen:
>
> We wish to establish a Trust Account with your firm in our name with the intention of providing limited authority with (to be named party(s)) for the purpose of enhancing our capital in connection with our financial objectives. Specific instructions as to our intention will follow upon your acceptance and registered transfer of our funds.
>
> We anticipate your positive response concerning our request and look forward to working with your firm in this endeavour.
>
> Sincerely,
>
> [signed]
> Vernon M. Rowe, President
> Authorized Signatory
>
> Cc: Bruno/Harper"

69. Mr Mathialagan had been notified by Mr Harper that Mr Rowe would be contacting him. Mr Rowe had been notified that Mathis could no longer act in respect of the Aspire Program but he did not instruct the firm to return his funds or to send them to William Randall.

70. Mr Rowe wrote a letter to Mr Mathialagan dated 29th November 2002 on Golden Management Inc letterheading which said he was "in conversation with a bank program in Switzerland" and "I do not want to close my account with you. As the profits are paid I would like to diversify and be able to utilize your bank program also." Mr Mathialagan did not have any bank programme.

71. In a letter dated 19th December 2001 from Mr Rowe to Mr Mathialagan he said the first programme in Zurich did not happen but that he was working on another programme which would pay 50% per month for twelve months. Mr Rowe enclosed a three page explanation of the programme. Mr Mathialagan had been curious but did not think a return of 50% per month was achievable. He had "never seen a trading programme like that work." Mr Rowe had been warned against the scheme by Mr Mathialagan and Mr Shuman and his monies held by Mathis were returned to him.

72. Another transaction involved bank instruments and an act of guarantee. The FIO's report gave details as follows:-

Bank Instruments

Clients: Tema-Fond d.o.o. - Incorporated in the Republic of Croatia - Represented by Mr Mile Rudan, President, Mr Jozo Marasovic, Managing Director and Mr Goran Zubic, Manager.

Volta Industries Corp. - Incorporated in the British Virgin Islands - Represented by Mr Claudio Campanella, under a Power of Attorney, as 'Consultant'.

Other Party: Harvest International Trade - American Explorer Group Inc - Represented by Dr L Coyle, President.

Introducer: Mr F Stanchich - Volta Industries Corp.

Matter: contract of engagement, dated 12th August 2001 between Tema-Fond d.o.o. and Volta Industries Corp for the arrangement of a 'Bank Advise' (Wording per Contract) by Volta Industries Corp in the amount of US$100million.

Contract Agreement dated 11th August 2001 between Tema-Fond d.o.o. and Harvest International Trade - American Explorer Group Inc for purchasing and selling bank instruments for a profit using funding source provided by Tema-Fond d.o.o. of at least US$100million.

act of guarantee

Clients: Tema-Fond d.o.o.
Mr Claudio Campanella

Other parties: American Corporate Funding Inc - Represented by Mr Jozo Marasovic, Managing Director, and Alqadiri Itnernational Trading Co, Kuwait.

Matter: Arrangement of a Insurance Contract relating to a contract dated 16th August 2001 between American Corporate Funding Inc and Alqadiri International Trading Co in respect of a first supply of US$50million of Russian Crude Oil out of a total contract of US$195million.

Tema-Fond d.o.o.

73. Mathis acted for Tema-Fond d.o.o. acted for Tema-Fond d.o.o., a company incorporated in the Republic of Croatia which was registered on 13th March 2001.

74. Tema-Fond had been introduced by Mr Stanchich.

75. Documentation on the client file included a "Contract Agreement" dated 11th August 2001 between Tema-Fond d.o.o., represented by Mr Mile Rudan and Mr Jozo Marasovic, and Harvest International Trade - American European Explorer Group Inc (HITAEEG) represented by Dr L Coyle which was in the following form:-

"*Contract Agreement*
*Between*
***Harvest International Trade – American European Explorer Group, Inc.***
***&***
***TEMA-FOND d.o.o.***

THIS AGREEMENT (the <<Agreement>>) is signed on the 11th day of August 2001 (the <<Effective Date>>) between Harvest International Trade – American European Group, Inc., a corporation registered under the law of the United States of America, and located at Crescent Centre Suite 222, 6075 Poplar Avenue, Memphis, TN 38119 USA, FEIN_62-1797820, which is represented by it's President Dr. Lawrence A. Coyle (hereinafter known as "HITAEEG") and TEMA-FOND, d.o.o., and located at 10000 Zagreb, Zelengaj 22, Hrvatska which is represented by its Director Mr. Jozo Marasovic and President Mr. Mile Rudan (hereinafter known as "TEMA-FOND"), collectively hereinafter called as the "Parties".

**I. Subject of the Agreement**

The Parties agreed that:

**1. SUBJECT**

1.1 Wherefore HITAEEG, Inc. and TEMA-FOND with this contract Agreement desire to conduct business whereby TEMA-FOND has a funding source that can provide the parties use of at least ($100,000,000 USD) United States Dollars (hereafter known as "the funds" as shown in Exhibit "A" of this agreement) that they may be presented to HITAEEG, Inc. for the use of purchasing Bank Instruments as described in Exhibit "B" of this Contract Agreement and in turn selling the Bank Instruments to generate a profit for the parties.

1.2 It is the intention of this agreement that the parties shall have the full right and unhindered ability from the other party to accomplish their respective responsibilities as per the procedure stated herein. If in the event that one party would request assistance from the other party then the party who had been requested to assist will assists as much as he is able. Furthermore the party requesting assistance is still responsible to fulfil his part of this contract with or without the assistance of the other party.

1.3 The parties responsibilities and procedure are as follows:

## 2. RESPONSIBILITIES OF THE PARTIES

2.1 TEMA-FOND and its representative have a source that will provide the funds as described in Exhibit "A". The cost associated with providing the funds for this contract will be the sole responsibility of TEMA-FOND. TEMA-FOND will use all of its ability and resources to accomplish this part of the agreement but the effort will be on a best efforts basis only. Furthermore TEMA-FOND is not guaranteeing the performance of the funding source that is to provide the funds.

2.2 TEMA-FOND and its representative will reveal to HITAEEG Inc., the source that will provide the funds as described in Exhibit "A". HITAEEG Inc. and TEMA-FOND will work together to have the funds secured in an acceptable banking format whereby they will be useable to HITAEEG, Inc., to accomplish buying and selling of Bank Instruments which are described in Exhibit "B".

2.3 Upon the successful placement of the funds in an acceptable banking format HITAEEG, Inc., will have the complete unhindered responsibility seek to secure buy/sell contract(s) of bank instruments. The type of Bank Instruments that HITAEEG, Inc., securing contracts with providers will be in strict accordance with Exhibit "B" of this agreement. Furthermore it will be the sole responsibility of HITAEEG, Inc., to handle this part of the Contract Agreement.

2.4 Furthermore HITAEEG, Inc., will use all of its ability and resources to accomplish this part of the agreement but the effort will be on a best efforts basis only. Furthermore HITAEEG, Inc., is not guaranteeing the performance of any of the sources that is to provide the bank instruments. However HITAEEG Inc., will endeavour to secure penalty clauses in the Buy/Sell agreements with the provider of the Bank Instruments, if in the event the provider fails to perform. The penalty amount that HITAEEG, Inc., would seek to include in the Buy/Sell agreements with the providers would be 1% of the face value of the Bank Instruments. Ant penalty payments that would be received by HITAEEG, Inc. for no performance from a provider will be used to pay any outstanding expenses first and any balance remaining will be divided in proportion to the profit distribution schedule of this contract.

2.5 Furthermore HITAEEG, Inc., will have the sole responsible set up, communicate and control all Banking related with the placement of the funds

and the Buy/Sell procedure, including but not limited to the following: The account where the funds will be held for and on behalf of HITAEEG, Inc.; The Exchange Bank where the actual Buy/Sell agreements can take place; The Gross Profit Account where the original Gross Profits generated from the Buy/Sell agreements received from each individual transaction for and on behalf of all the parties of this contract agreement; Give instructions to the Exchange Bank where the profits will be received where and how to send, divide, hold , pay, compound, or otherwise deal with the profits in accordance to this contract agreement. The Parties legal counsel will agree to a form of disclosure whereby a formal accounting of transactions and trances will demonstrate and reveal the entire amounts of completed buy/sell contract by the Exchange Bank

2.6 Furthermore under no circumstances will there be any effort or attempt by TEMA-FOND be made to contact any of the providers, banks, or any other parties that would be disclosed by HITAEEG, Inc., during and after the completion agreement for the term of 5 years. TEMA-FOND agrees and understands that during the course of this contract agreement certain parties will be disclosed to TEMA-FOND by HITAEEG, Inc., and its representatives. It is further agreed by TEMA-FOND that the parties that will be made know or revealed to TEMA-FOND are considered confidential and the sole property of HITAEEG, Ins. In the event any attempt or contact is made by TEMA-FOND to contact any of the parties that will be disclosed, discovered or otherwise to TEMA-FOND that attempt or contact will be considered a breach of this contract agreement. If a breach of this sort were committed by TEMA-FOND it would give HITAEEG, Inc., full legal right to receive compensation for the act committed. The amount of compensation would be determined by HITAEEG, Inc. at that time.

2.7 Furthermore any profits that will be generated from this Contract Agreement will be handled in accordance to Section IV “Profit Distribution” if this agreement. HITAEEG, Inc., will give to the Exchange Bank written instructions how to handle each of the parties Profits that are generated by any Buy/Sell contracts that are completed during the life of this Contract Agreement.

2.8 How the parties are to proceed from the date of signing of this contract is handled in Part III of this Contract Agreement.

## 3. PROCEDURE

3.1 From the date of signing this Contract Agreement by both of the parties the following will be the procedure that will be followed by the parties to execute this Contract Agreement. As follows:

3.1.1 TEMA-FOND on Wednesday August 15, 2001 will request a SWIFT wire transfer of $3,500,000 (Three Million Five Hundred Thousand United States Dollars) (hereinafter to be called the “Fee”) to be transferred from his bank and to be sent to his Solicitors account in London to be held in escrow for this transaction.

3.1.2 TEMA-FOND will also request a written confirmation that the funds have been SWIFT wire transferred to his solicitors account in London. The written confirmation will be sent by fax to his Solicitors Office in London and a copy will be given to HITAEEG, Inc. as soon as the Solicitor receives a copy. TEMA-FOND will allow his London Solicitor to work directly with HITAEEG, Inc., to accomplish this and any other part of this Contract Agreement that requires the Solicitors assistance.

3.1.3 TEMA-FOND on or before Monday August 13, 2001 give to HITAEEG, Inc., the contact information of the $100 million funding source whereby HITAEEG, Inc., when ready can contact and contract with the funding source to complete this part of the contract agreement.

3.1.4 Once HITAEEG, Inc., had received the fax copy and the confirmation that the Fee had been ordered by TEMA-FOND's bank then HITAEEG, Inc. will begin to communicate with the Funding Source that will provide the $100 million US Dollar funding facility as described in Exhibit "A".

3.1.5 HITAEEG, Inc., will prepare the paperwork and the documents and sign the contract with the funding source whereby when the Fee arrives in the Solicitors account that within 2 days after their arrival the $100 Million Funding facility will be placed in the HITAEEG, Ins., Bank to complete the Buy/Sell process.

3.1.6 Upon the signing of the agreement with the Funding Source and the arrival of the Fee in the Solicitors account either that day or the beginning of the next business day HITAEEG, Inc., will proceed to secure a contract with a Provider of Bank Instruments. We are expecting that the Fee should arrive into the London Solicitors account on or about August 15th 2001.

3.1.7 Upon the signing of an agreement with a Provider of Bank Instruments HITAEEG, Inc., will instruct the funding source to send the $100 Million Facility to HITAEEG, Inc., Bank where the Buy/Sell transactions will take place. From the signing of the contract with the provider and the placement of the $100 Million Fund into the HITAEEG, Inc. account will take approximately 2 business days, which is expected to be on or about August 17th 2001.

3.1.8 The Funding Source will SWIFT wire the Funding Facility to the HITAEEG, Inc., account and also fax to the London Solicitor and to the HITAEEG, Inc., main office in Memphis Tennessee a copy of the Funding Facility SWIFT order. Upon the confirmation by both the London Solicitor and HITAEEG, Inc. that the Funding Facility is on the Account of HITAEEG, Inc. the London Solicitor will release to the Funding Source the Fee provided by TEMA-FOND that is being held in escrow by the London Solicitor.

3.1.9 Also during this process TEMA-FOND will need to give written instructions to HITAEEG, Inc., as to where they want the Exchange Bank to send their portion of the Net profits generated by the Buy/Sell transactions.

3.1.10 At this point the remaining process will be handled by HITAEEG, Inc., an in accordance to this procedure if all is completed in accordance to the above timing we will expect to be started on or about August 17th 2001. It is fully agreed by the parties that each part if this section had time constraints that may very because of third parties that are yet to be contracted to perform certain parts of this section. Furthermore the time frame considered to complete this procedure is only an estimate, but the tasks are still accurate in the order that they are to be accomplished in keeping with this procedure.

3.2 Once we start the use of the funding source's $100 million Facility we have 30 calendar days to use this facility. HITAEEG, Inc. will on or about the 20th calendar day advise the funding source if an extension is desired. If an extension is desired by the parties then HITAEEG, Inc., will request both TEMA-FOND and HITAEEG, Inc. use a portion of each of their profits to pay the extension fee. This process can be repeated every month for as long as the parties agree and the funding source agrees to provide the funding facility needed to accomplish this type of transaction. Each and every month a written request will be made by HITAEEG, Inc., to TEMA-FOND if they desire an extension and a formal response needs to be made in writing to HITAEEG, Inc. The response form TEMA-FOND can be made by fax to the HITAEEG, Inc. at the designated contact numbers attached to this contract agreement.

## 4. PROFIT DISTRIBUTION

4.1 The contracts with the providers will be arranged by HITAEEG, Inc., and in every case any the net profit will be divide between the parties in accordance to this section of the contract agreement.

4.2 Net profit is the profit that is to be considered after all expenses, banking costs and fees are paid to providers, bankers and funding sources.

4.3 All agents, representatives and commissions that are expected by any of these parties will be paid by each side separately and no agents, representatives or parties expecting commissions will be allowed to receive funds from more than one side.

4.4 Profit will be paid to each party and that party will be responsible to pay any other obligations, contracts, costs, taxes or other expenses which that party has either contracted or is legally bound to pay by the laws of the country that they are receiving the funds or that they are doing business.

4.5 Each party holds the other harmless of any unknown obligations and will not claim any part of the other parties profits to satisfy and obligation that the other party is not directly contracted or obligated to pay.

4.6 Profit will be considered as net profit after the expenses are deducted from the Gross profit and then the following distribution will be made from the Exchange Bank for the parties:

4.6.1 TEMA-FOND will receive 70% of the Net Profit.

4.6.2 HATAEEG, Inc. will receive 30% of the Net Profit.

4.6.3 From the first Transaction of each month the Expenses to start the transaction will be paid Such as the Fee to secure the Funding Source. In each case the party or parties that paid this fee will be reimbursed in full from the first Transaction each month or until the full amount of the fee is repaid to the party(s). This payment will be a separate instruction that will be given to the exchange bank each month starting with the first month and the first Buy/Sell contract that will be fulfilled.

4.6.4 All other expenses, provider fees, cost of the Bank Instruments and distributions will be handled by HITAEEG, Inc., and the Exchange Bank.

4.7 Profit will be sent to each of the parties on a contract-by-contract basis. It is the desire of both of the undersigned parties to receive payment weekly if possible or at minimum bi-monthly from the Exchange Bank profit account.

***5. Governing Law:***

5.1 This Agreement shall be governed by and interpreted in accordance with international law. In the event a dispute between the Parties cannot be resolved they have the right to exercise arbitration in Geneva, Switzerland. The arbitration court will be the final say.

***6. Amendment:***

6.1 No amendments, changes or modifications to this Agreement shall be valid unless made in writing and signed by a duly authorized representative of each Party.

***7. Entire Agreement:***

7.1 This Agreement comprises the entire agreement of the Parties with respect for to the subject matter hereof and supersedes and cancels all prior communications, understandings and agreements between the Parties, whether written or oral, expressed or implied.

***8. Counterparts:***

8.1 This Agreement may be executed in one or more counterparts and by facsimile transmission. Each counterpart shall be deemed an original and all counterparts shall constitute one and the same instrument. It shall not be

necessary that any single counterpart be executed by both Parties, so long as at least one counterpart is executed by each Party.

***9. Coming into force:***

Upon the signing of this Agreement the full intent, rights and obligations of this Agreement came into force. The entities that are the undersigned have the authority to sign and act on behalf of the so stated Parties in which they are signing on behalf of. The date of signature and the date of this contract are the same date as to the time when the Coming into force takes effect."

76. There was also a contract of engagement dated 12th August 2001 between Tema-Fond d.o.o. and Volta Industries Corp (incorporated in the British Virgin Islands) represented by Mr Claudio Campanella (Consultant) acting under a Power of Attorney in the following form:-

"CONTRACT OF ENGAGEMENT

THIS CONTRACT OF ENGAGEMENT dated 12/08/2001, by and between TEMA-FOND d.o.o. duly represented by Jozo Marasovic and Mile Rudan., with its principle office located at 10000 Zagreb, Zelengaj 22, Hrvatska hereinafter referred to as "COMPANY" and VOLTA INDUSTRIES CORP at Via Espana, Bank of Boston, Floor 8, Panama 5, Republic of Panama duly represented by Claudio Campanella and/or assigns, hereinafter referred to as "CONSULTANT".

The undersigned(s) warrant(s) that he/she/they is /are an authorized signatory(s) for COMPANY, his/its successors, subsidiaries and or related firms by means of "Interlocking Directories" and /or (principals-in-common), hereinafter referred to inclusively as the "COMPANY", and;

COMPANY desires to contract, engage and employ CONSULTANT to represented COMPANY on its/their interests in connection with COMPANY's business affairs, including exploring and arranging a "Bank Advise" issued by an acceptable Bank to Company and on COMPANY's behalf, for purposes determined solely by the COMPANY, CONSULTANT agrees to serve at the pleasure of the COMPANY including negotiation, preparation, review, revision and processing of documents in connection therewith;

COMPANY approached CONSULTANT, and for $10 and other good and valuable considerations, the receipt thereof is herewith acknowledged, seeks to employ CONSULTANT to arrange, on COMPANY's behalf a "Bank Advise" (as set forth in Exhibit "A") issued by responsible Bank within the Banking community. COMPANY has warranted and affirmed that he/she/they qualify as sophisticated investor(s) having expert knowledge of financial matters and can determine, to his/her/their own satisfaction, that this "Bank Advise" (and the issuer thereof) is sufficient for his/her/their business objectives. COMPANY herein affirms that it has sought professional counsel in making its determination to proceed with its business objectives and the arranging of a "Bank Advise"; and that COMPANY has been advised as to the risks associated therewith. COMPANY herein acknowledges that

CONSULTANT is relaying on these warrantee(s) in entering into this contract of engagement for the purposes of arranging the "Bank Advise".

SERVICES: The CONSULTANT shall exert its best efforts and devote such time and attention to the COMPANY'S affairs as defined by corporate resolution (or letter of instruction), attached hereto and made a part hereof. COMPANY engages CONSULTANT to arrange such "Bank Advise" as attached hereto as Exhibit "A", and CONSULTANT shall be in charge of facilitating the insurance thereof.

## ARTICLE ONE (1)

1. ACKNOWLEDGMENT OF COMPANY: COMPANY in employing CONSULTANT to use its best efforts to arrange a Bank "Advise", per EXHIBIT "A" acknowledges that CONSULTANT'S income is derived by associations and contact that may be disclosed to COMPANY, and specifically authorizes CONSULTANT to be paid a fee in connection with the arrangement of the "Advise" as set forth in EXHIBIT "B", attached hereto and made a part hereof by reference. This "fee" is to cover the costs of issuance and associated services rendered by CONSULTANT on COMPANY's behalf. A "Holding Account" will be established by COMPANY with an acceptable fiduciary party under this contract of engagement, to cover all costs associated with the issuance of the "Bank Advise" and for COMPANY's efforts, time and expenses and any other related expense, including but not limited to: attorney, broker and escrow fees.

a) COMPANY hereby authorizes CONSULTANT to submit on COMPANY's behalf, information supplied to CONSULTANT by COMPANY for the purposes of obtaining funds, commitments, or other manner of capital or credit enhancements for any such purposes that COMPANY authorizes CONSULTANT to arrange.

b) COMPANY authorizes CONSULTANT to seek out and access individuals and/or Companies willing to make available funds as set forth in Exhibit "A", attached hereto and made a part hereof.

c) COMPANY may terminate this engagement if CONSULTANT is prevented from rendering services or performing his duties because of illness, incapacity or injury during the term of this engagement.

d) CONSULTANT shall, during his engagement by the COMPANY, be deemed an independent contractor and shall be permitted to engage in any business and perform services for his own account.

e) The COMPANY shall indemnify the CONSULTANT and hold him harmless for all acts or decision made by him in good faith while performing the requested services of COMPANY. The COMPANY shall defend CONSULTANT in connection with such acts in the performance of his duties.

f) The CONSULTANT shall not incur any liability for any actions made in good faith and in the exercise and care in connection with the discharging of his duties as described hereinabove, and shall not be deemed to have violated any of the provisions of this engagement for acts done in good faith.

g) This engagement agreement shall inure to the benefit of and be binding on the COMPANY, its successors and or assigns, including without limitations, any corporation, trustee or appointee by some authority.

2. CLOSING: Closing, for the purposes of this engagement, shall be defined as delivery of a "Bank Advise" per exhibit "A", (via SWIFT or other acceptable method), to COMPANY's designated Bank, evidenced to the Fee Holder: (1) a "Certificate of Service" issued by the Provider's Bank stating the time, date, SWIFT quotation and other pertinent information contained in the SWIFT. Upon receipt of the above by the *Escrow Fee Holder / Agent*, of the above, the receipt thereof shall constitute satisfactory delivery of the services engaged herein, and will be deemed conclusive with this instruction for the arrangement fee to be considered fully earned by CONSULTANT (i.e. "PROVIDER"). The Fee Holder shall be obligated, upon receipt thereof, to release the held by them to the CONSULTANT (or to his instructions) within 48 hours after receipt thereof without any further instruction, consent or notification by COMPANY. Any further verification shall be on a Bank to Bank basis as set forth herein below. As acknowledged herein by COMPANY, the "Fee Holder/Agent" shall hold a copy of the Certificate of Service containing the language of Exhibit "A" as evidence that the transmission has been sent and received, and which will be available for review at the offices of Fee Holder. COMPANY agreed that no copies of the transmission shall be disseminated accept to provide a copy to COMPANY's Bank to do so as prescribed below.

3. VERIFICATION: COMPANY acknowledges that he/she/they will co-operate with CONSULTANT and PROVIDER by providing its designated receiving Bank a written notice to expect the Bank "Advise" within an approximate time frame, and to request an immediate response (in writing from their receiving Bank officer) that (1) it has either received the Advise or (2) has not received the Advise within the time prescribed as set forth in the Escrow - HOLDING AGREEMENT.

a) It is accepted and greed that within the Banking community that a Bank to Bank transmission (i.e. Tested Telex or SWIFT transmission) is, in of itself, a verified authenticated transmission. COMPANY herein agrees that the failure of COMPANY's receiving Bank to: (1) act upon or respond to receipt of the Bank Advise or, (2) failure to respond in writing to COMPANY's written inquiry, as described above, shall not prohibit the Escrow Fee Holder from fulfilling its duties as to the release of the "Fee", nor would the lack of performance on the part of COMPANY's "receiving Bank" preclude the fee from being considered fully earned by the PROVIDER (or its assigns - as engaged by CONSULTANT in the performance of its duties hereunder, on behalf of the COMPANY.

b) If COMPANY's designated (receiving Bank) is not able to authenticate the "transmission" and states so (in writing) to COMPANY within two (2) business days of the reported delivery to COMPANY's receiving Bank (with copy immediately delivered to CONSULTANT), within one business day of receipt thereof by COMPANY, the nature and circumstances surrounding its inability to verify same), then the ISSUING Bank shall reconfirm the validity of

its transmission in the manner prescribed under the section 'CLOSING'. The failure of COMPANY's Receiving Bank to respond in writing to COMPANY, in the manner prescribed above, the status of the transmission upon written request by COMPANY.

4. UNAUTHORIZED ACTIVITES Any communication by COMPANY, or anyone associated thereto, to the issuing Bank relating to the Bank "Advise" (other than COMPANY's Receiving Bank officer in charge of the account for COMPANY) is strictly prohibited and shall constitute a serious breach of confidentiality and shall cause termination of the "Bank Advise" herein referred to as Exhibit 'A". COMPANY affirms that the sole responsibility of 'CONSULTANT", under his employment, is to cause the agreed upon "Bank Advise" per Exhibit 'A", to the Bank co-ordinates provided by "COMPANY" to CONSULTANT herein referred to as Exhibit "C", for the period stated; and which forms an integral part of his contract of Engagement. CONSULTANT and/or its holders of power of attorney are not responsible for, (or in any way connected to), the COMPANY's use of the "Bank Advise" or the intended business purposes thereof. "COMPANY" holds "CONSULTANT" and its PROVIDER completely harmless and without responsibility or liability for anything relating to third party contract(s), third party affiliations, agreements, undertakings, Banking commitment, concerning third party invoicing, electronic delivery and/or physical delivery of concerning or related to COMPANY's business objectives.

5. PERFORMANCE OF THE PARTIES

a) PERFORMANCE Of CONSULTANT: COMPANY agrees and accepts that once CONSULTANT has arranged the required "Bank Advise" as described in Exhibits "A", then CONSULTANT will have completed entirely its responsibility and performance to COMPANY under this Engagement. COMPANY holds CONSULTANT harmless for any consequences arising out of the interruption of business due to Force Majeure, acts of God, riots, civil insurrections, wars, conflicts, strikes, lock-outs, stock market instability, Bank collapse, acts of State or any other cause beyond it's control which might have impact on the stability of "CONSULTANT" to fulfill its obligations under this contract of Engagement.

b) PERFORMANCE OF COMPANY: COMPANY shall be responsible for notifying their Bank/ Bank officer, in writing, to anticipate receipt of "Bank Advise" and to require their receiving Bank to advise COMPANY, in writing, when the bank has either; (a)have received the Advise, or (b) have not received the Advise and or any other pertinent inquiry related to the Advise within the time period prescribed in this engagement. COMPANY agrees that the absence of any written notification by COMPANY's Bank shall be construed to mean that good delivery was made.

## ARTICLE TWO (2)

1. NON~DISCLOSURE AND NON~CIRCUMVENTION: COMPANY hereby covenants and agrees that COMPANY will not disclose to any other persons or party, nor contact the identities of any individuals, financial institutions agencies and/or parties of interest or of potential interest to COMPANY and all his aforementioned which were obtained as a result of the CONSULTANT's effort and/or know how in the COMPANY's behalf. The non-disclosure and non-circumvention part of this agreement shall remain in force for a period of 36 months and shall effect all subsequent transactions contemplated or entertained by COMPANY.

2. FINANCIAL DISCLOSURE COMPANY further agrees to authorise the CONSULTANT to submit on COMPANY's behalf, information supplied to CONSULTANT by COMPANY, when necessary, for the purpose of obtaining the Bank Advise, or for any such purposes that COMPANY engages CONSULTANT to perform as necessary for the intended purposes of COMPANY's business objectives.

3. TERM This contract of Engagement is valid for three hundred and sixty five (365) days or until performance has been accomplished per the provisions contained herein and the Exhibits and attachments hereof; and is to apply to any and all subsequent transactions as repeat, extended, new or renegotiated transactions as well as the initial transaction, regardless of the success of any given contracts.

4. IDENTITIES OF PARTIES COMPANY acknowledges that CONSULTANT's income is based on its associations and contacts which may be disclosed to COMPANY and acknowledges that CONSULTANT would incur financial loss if a breach of confidentiality or circumvention would occur; or if a CONSULTANT's information were to be disseminated by COMPANY. Therefore, COMPANY, or its COMPANYS IN COMMON ASSOCIATES and AFFILIATES. COMPANY hereby confirms that the identities of the trade accounts, financial institutions, corporations, individuals, and companies introduced to COMPANY by CONSULTANT are currently and permanently the property of the CONSULTANT and shall remain so for the period of FIVE years.

5. THE SPIRIT OF EQUITABILITY It is also understood that the spirit behind this agreement is one of mutual trust and confidence, and of the reliance on each other to do what is fair and equitable.

6. INTERPRETATION The parties agree that any dispute, or controversy (whether based upon contract, tort, intentional or otherwise, constitution; statue; common law; or equity and whether pre-existing or future, including initial claims, counter-claims, cross claims and third party claims, arising from or relating to this agreement or the relationships which result from this engagement, including the validity or enforceability of this arbitration clause, any part thereof or the entire engagement ("Claim"), shall be resolved, upon the election of you or us, binding arbitration pursuant to this arbitration provision and the applicable rules or procedures of the arbitration administrator selected at the time the Claim if filed. The parties further agree that the sole and exclusive remedy for resolving any controversy, claim, or cause of action arising out of, or relating to this transaction, or the breach thereof, shall be exclusively by Arbitration, in accordance with the Commercial Arbitration Rules of the International Arbitration Association. The sole and exclusive jurisdiction

and venue for the resolution of any controversies, claims or causes of action shall be under British law. The parties further agree, that each will bear their own legal costs and expenses, including legal fees. Judgement upon any award of the arbitrator(s)(s) shall be final, binding and conclusive, and that judgement may be entered upon such award in any court having jurisdiction thereof.

7 CANCELLATION If CONSULTANT shall fail to provide the Advise within thirty days, of the execution of this contract of engagement, or within the time set forth in the Escrow Holding Agreement, then this contract will be null and void. If, however, such accounts are acquired later, and circumstances show that the CONSULTANT's efforts and/or know-how have played an active part in procuring and promoting the "Closing" as herein defined, then this contract of engagement shall be reinstated in its original spirit, and be binding on all parties and CONSULTANT shall be entitled to the same percentage of compensation as set forth in Exhibit 'B' attached hereto. This contract of engagement may be cancelled, in writing, by the mutual consent of CONSULTANT and COMPANY.

8. SPECIAL PROVISIONS Any reference to term in this agreement shall be amended to read perpetual unless the corporation is dissolved and all applicable disbursements have been made to CONSULTANT, his successors, heirs or assigns. Any assignment of this agreement will be by mutual written consent. No oral representations are binding on either party. All information furnished by both parties is deemed reliable and sufficient for the purposes intended thereby. This contract of Engagement was solicited by COMPANY and is a private engagement between the parties involving consultants and professional advisors.

9. COUNTERPARTS This contract of engagement may be signed in counterparts and a executed/signed facsimile transmission thereof shall be deemed to have the same force and effect as if an original.

COMPANY:

TEMA-FOND

By [signed] Jozo Marasovic Date: 12th August 2001

By [signed] Mile Rudan Date: 12th August 2001

CONSULTANT:

VOLTA INDUSTRIES CORP.

By [signed] Claudio Campanella Date: 12th August 2001"

77. The two contracts were linked in that under the contract of engagement Volta Industries Corp would obtain a funding source of US$100million and this source would be notified to HITAEEG who would use the funds to trade in bank instruments. Under the Contract Agreement Tema-Fond d.o.o. would be required to pay a fee of US$3,500,000 to the funding source.

78. Mr Mathialagan understood that Volta Industries was owned by Mr Stanchich. Mr Stanchich had telephoned him saying that he wanted to sign the contracts which were to be witnessed by Mr Mathialagan. Very little notice was given. The phonecall was made on Saturday morning and the client was coming to sign the contract of engagement that afternoon. Mr Rudan, Mr Marasovic, Mr Campanella and Dr Coyle had attended Mr Mathialagan's office that Saturday afternoon. Mr Stanchich telephoned but did not attend. Mr Mathialagan had not previously seen the contract agreement. Mr Mathialagan was acting for Volta. When Tema Fond wanted to send monies to the account he "set up an escrow".

79. Mr Mathialagan received instructions from Mr Marasovic and Mr Rudan. Those instructions were to "open an escrow account to leverage their funds". They were supposed to send US$4million or something like that and Mr Mathialagan had to keep the funds "in escrow" for them. It was something arranged between them and Volta.

80. Mr Mathialagan was informed at the Saturday meeting that US$3.5million was to be received into the firm's US dollar client account. Dr Coyle came with his laptop and gave information to Mr Mathialagan. The contract of engagement was dated 12th August 2001, a Sunday, and Mr Mathialagan confirmed that the same parties, save for Dr Coyle, went to the office on Sunday and had attended on Saturday.

81. Mr Mathialagan confirmed that he had the contract form which had been used before for Terry Harper on his computer and he inserted all the relevant information given to him and printed the document.

82. Mr Mathialagan had provided details of the firm's dollar client bank account on 12th August 2001.

83. Mr Mathialagan had explained the clauses and Mr Rudic had interpreted for Mr Marasovic.

84. Mr Mathialagan confirmed that he explained what the clauses meant without giving any advice and his role was limited to only the "escrow work" and nothing else.

85. When asked if he had seen the contract agreement before Mr Mathialagan said that he had not and that this was the only one he had seen.

86. Mr Ireland referred to 'Exhibit A' of both the contract agreement and contract of engagement relating to the "Bank Advise" which included the following terms:-

> "Good, clean and non-criminal origin"
>
> "term of … year(s) and one day"
>
> "unencumbered, free and clear of any liens"
>
> reference to ICC 500/600

and also 'Exhibit B' of the contract agreement relating to the sample bank instrument which included:-

"Term - One (1) year and One (1) day"

"Age - Fresh Cut"

"Interest - Seven and One Half Percent (7.5%) paid annually in arrears"

and he indicated that both contracts included non-disclosure and non-circumvention agreements.

87. The FIO asked Mr Mathialagan if he agreed that these were typical phrases which were referred to in the Law Society's warning card on banking instrument fraud. Mr Mathialagan confirmed that they did but added that he only witnessed the signing of the contracts and that he was responsible for just that part of it.

88. Mr Ireland pointed out to Mr Mathialagan that he had said that he was familiar with the warning card on banking instrument fraud - not all clauses, just in general terms.

89. Mr Ireland asked Mr Mathialagan if at the meeting where he was explaining the clauses to Mr Rudan and Mr Marasovic he informed them that the contracts included typical phrases found in banking instrument fraud documents. Mr Mathialagan said that he did not.

90. Mr Mathialagan accepted that the documents included phrases typically found in bank instrument fraud. He considered that if he carried out due diligence and was satisfied with his verification and in the light of his experience with Mr Stanchich and Volta who had delivered whatever they have contracted in the past and his belief that they would not enter into business they could not do, he was properly able to disregard the use of such phrases.

91. Despite Mathis's role being limited to being trustees Volta had agreed to pay Mathis for its time and for preparing the contract of engagement and the explanation of clauses to Mr Rudan and Mr Marasovic.

92. Mr Mathialagan explained that Tema-Fond was not a client at the time: when Tema-Fond and Volta signed the agreement they agreed to use his firm as the "escrow agent".

93. At interview with the FIO Mr Mathialagan confirmed that the firm's fees on the US$3.5million to be paid by Tema-Fond was US$70,000, as detailed in the confirmation of instructions. Mr Shuman added that the fee would be for doing the due diligence work of which Mr Mathialagan had vast experience.

94. Mr Mathialagan confirmed that the matter did not proceed because Tema-Fond could not raise the US$3.5million. He did not get paid anything in respect of the work undertaken on this particular matter. Instead of the initial transaction an act of guarantee dated 5th September 2001 issued by Consorzio Nazionale Coopercredito relating to a contract between American Corporate Funding Inc and Alqadiri International Trading Co dated 16th August 2001 concerning the initial supply of US$50million of Russian crude oil out of a total of US$195million had come into play. Mr Mathialagan said that he did not know why there had been that change.

95. Mr Mathialagan had been informed of the change by Mr Rudan and Mr Marasovic who telephoned him. He was also informed by Mr Campanella. His firm's role had again been to act just as "escrow agent" as monies were there. He had to confirm that monies were with him and the insurance policy had been delivered to him.

96. US$1million had been paid into the firm's US dollar client bank account on 28th August 2001. Mr Mathialagan said that Mr Rudan just told him that they were transferring US$1million. The remitter of the funds was Tema-Fond. Mr Mathialagan did not know if the funds came from a Tema-Fond account. He believed that banks in Switzerland, because of secrecy, did not disclose from whom funds were being remitted. Mr Mathialagan did not make any enquiry.

97. US$1.5million was paid into Mathis's US dollar client bank account on 31st August 2001. Mr Mathialagan said that they must have told him that a further US$1.5million would be coming. The bank advice showed that the monies were remitted by Rudan Holdings in Canada. Mr Mathialagan said that they were part of Tema-Fond's group of companies.

98. Mr Mathialagan wrote a letter dated 6th September 2001 to Mr Marasovic of American Corporate Funding Inc on Mr Campanella's instructions in which he asked if he was acting for Mr Campanella in this matter or in his capacity under a Power of Attorney for Volta Industries. Mr Mathialagan said that he acted for Mr Campanella in a personal capacity.

99. At interview the FIO referred to the letter which stated that Mathis was holding a policy of an act of guarantee and that the firm had been instructed to release it upon receiving the sum of $US3million. He pointed out that at the meeting on 9th January 2002 Mr Mathialagan had said when asked why only US$2.5million had been received that it had been received for something else and that it had been reserved for the Volta transaction.

100. The client's authority was to release the act of guarantee for the payment of US$2million instead of US$3million Mr Mathialagan said the authority was received by a fax dated 11th September 2001 and he also telephoned.

101. The FIO asked why US$2million was transferred to the client ledger for Mr Campanella when the authority from Tema-Fond stated that the beneficiary was Consorzio Nazionale Coopercredito. Mr Mathialagan said that he spoke to the client in a telephone conversation on 11th September 2001 and it was confirmed that the monies were for Mr Campanella.

102. On 11th September 2001 following instructions from Mr Campanella, an amount of US$300,000 was paid to Consorzio Nazionale Coopercredito. At the meeting on 25th June 2002 Mr Mathialagan confirmed that this was the premium in respect of the policy.

103. When asked how Tema-Fond benefited from this transaction, Mr Mathialagan said that he did not know. He said the act of guarantee was collected at the airport by Mr Goran Zubic, representing Tema-Fond, who then flew on to the Middle East.

104. Mr Mathialagan confirmed that fees billed by his firm were US$4,900 (£3,333.33) to Tema-Fond and US$40,000 (£27,586) to Mr Campanella, both of which were agreed fees.

105. When asked what legal services the firm provided in respect of this transaction Mr Mathialagan said "No legal service as such, just a trust service. Being escrow agent".

106. Mr Ireland asked Mr Mathialagan if he agreed that the firm's bills were not accurate as they stated that they were for "legal services". Mr Mathialagan said that they should have been/are "agreed professional fees".

107. The client ledger for Tema-Fond showed that on 9th November 2001 a payment of US$250,000 was made to HITAEEG and on the same date a payment of US$245,000 to Inter Loc Co Ltd. Mr Mathialagan confirmed that he did not know the reason for either of these payments. The FIO pointed out that Inter Loc Co Ltd was a company registered in England and that Dr Coyle was a director. Mr Mathialagan said that he did not know this.

108. When asked if he knew what the underlying transaction was in respect of the two payments totalling US$495,000 made to two companies connected to Dr Coyle, Mr Mathialagan said that he did not and that he just followed the instructions given to him.

109. When asked if he knew why Tema-Fond would be paying US$495,000 to Dr Coyle when its contract did not proceed, Mr Mathialagan said that he did not realise it was paying them and that they just instructed him to transfer the monies.

110. The FIO went on to report on "loan financing".

Volta Industries Corp

111. Mathis (Mr Mathialagan and Mr Shuman) acted for Volta Industries Corp, a company incorporated in the British Virgin Islands. The client had been introduced to the firm by Mr Sherman.

112. The US dollar client ledger recorded that amounts were transferred from the Bank of Ireland US dollar client bank account in respect of three bills dated 17th May 2001, 7th June 2001 and 5th July 2001 for £25,000, £20,246.22 and £22,000 respectively. When the FIO asked what legal work the firm had undertaken Mr Shuman said that they had done legal and professional work. They had done work on business contracts many of which never came to fruition. The Respondents attended meetings to safeguard their clients' business interests.

113. Mr Shuman told the FIO that Mathis did not act as a bank. Mr Mathialagan said that they acted as trustees. He went on to say that they had a high degree of business with the clients so they were not just acting as their bank and they were convinced that there were no illicit dealings.

114. Mr Mathialagan confirmed that the firm's instructions were to maintain a trust account and also to work with some of Volta's clients on funding arrangements.

115. Mr Mathialagan told the FIO that he did not consider that there was a conflict of interest in agreeing to act for clients of Volta "because the scope of the thing is after the due diligence to confirm what Volta has delivered and what they have bargained for". Mr Mathialagan (and Mr Shuman) told the FIO that they would only transfer money in an escrow situation after due diligence and confirmation from the client that funds may be released. Mr Mathialagan also confirmed this in his oral evidence before the Tribunal.

116. The ledger for Volta recorded three amounts transferred from client ledgers where the firm had acted for the other party to the contract. The amounts transferred were US$119,989.10 on 6th September 2000 concerning Balamore Management Ltd, US$400,000 on 15th May 2001 concerning Ultragold Inc and US$73,500.01 on 23rd November 2001 concerning Lean Cheng Sdn Bhd.

117. All of these matters concerned the arrangement by Volta, through intermediaries, of bank offer letters from European Banks about loan finance. The agreements required an initial fee to be remitted by Mathis to Volta following confirmation by them of the authenticity of the bank offer documentation.

118. In respect of the Ultragold Inc and Lean Cheng Sdn Bhd Transactions, certain contract documentation was sent by the FIO to Mr Jon Merrett, Assistant Director, International Chamber of Commerce, Commercial Crime Services for his opinion as to the nature of these transactions. Mr Merrett's report was before the Tribunal.

Ultragold Inc

119. The FIO reported upon Ultragold Inc as follows:-

| | |
|---|---|
| Clients: | Facilitator - Volta Industries Corp (Consultant)<br>Borrower - Ultragold Limited - Represented by Mr J S Diak |
| Matter: | contract of engagement dated 27th February 2001 between Volta Industries Corp and Ultragold Limited for arrangement by Volta Industries Corp of a "Bank Advise" (Wording per Contract) in the amount of US$5million. |
| Other parties: | Walton Trust (Potential funding source)<br>Mr F Campbell (Potential funding source) |
| Intermediary: | Mr Salehian - A & M Securities SA |

120. Mathis acted for Ultragold Inc represented by Mr J S Diak. Draft contract documentation had been faxed to Mathis by Mr Stanchich on 23rd February 2001.

121. The form of the contract was the one that was used in the Tema-Fond d.o.o. matter and had been produced on the firm's computer from documents supplied by Mr Stanchich.

122. The FIO pointed out that the "Bank Advise" referred to funds being of "non-criminal origin", a phrase referred to in the warning card on bank instrument fraud. Mr Mathialagan said that at that stage Mr Stanchich was confident that he would be able

to deliver that "verbiage" and that he would have to do due diligence on that "bank advise" signed by two bank officers. Mr Mathialagan said that his first experience with Volta, when he did his first due diligence, was that they performed as per the contractual agreement. All transactions were of a similar nature and there was no risk until due diligence had been completed. As a result he gave them the benefit of the doubt, so that he did not get blamed for being too paranoid, over certain words that were in the warning cards. Mr Shuman had pointed out that some of the words in the warning cards were correct banking terms.

123. At a previous meeting the FIO had been told that Mr Diak had said he would be able to use the "Bank Advise" to raise credit. It was provided that funds supposedly were only being reserved for 30 days and the FIO asked how it was possible to raise credit against such funds. Mr Shuman said that it would be dependent on the "Bank Advise" and other elements. He went on to say that it was impossible for him to answer the question based on the limited information scenario given to him and he would have to research thoroughly before giving an answer. He said he had seen related types of letters in the previous ten years but would have to verify it to say whether they existed.

124. The initial contract included, in 'Exhibit A', details of a "bank advise" that was to be arranged by Volta Industries. This "bank advise" referred to an amount of US$5million. This amount was subsequently increased to US$6.5million.

125. Mathis was notified that Volta Industries had assigned 2½% of their 4% fee to Walton Trust who were to arrange the relevant "bank advise".

126. Mathis subsequently received the bank advice issued by Deutsche Bank and addressed to Walton Trust in St Helier.

127. As part of its due diligence Mathis contacted Deutsche Bank on 29th March 2001 to confirm the authenticity of the document and was notified on the same day that it was a fake.

128. Mr Diak faxed Mathis on 17th April 2001 stating that the amount was to be increased to US$10million and the company was to be changed to "The Alcyon Group Ltd/Ultragold".

129. On 23rd April 2001 a letter was faxed to a Mr F Cambell, a contact sourced by Mr Stanchich in the United States, together with an 'Exhibit A' bank advice. This document contained the phrase "non-criminal origin".

130. Mr Shuman said that some of the phrases such as "banking co-ordinates", "UCC" and "ICC" were phrases and references which might be used in legitimate documents. He said that he believed it would be negligent to discard all business that might contain one of these phrases and he relied upon his experience and research if it was required, given the task in hand.

131. Mathis was provided with a telefax dated 14th May 2001 issued by a Swiss Bank, Ferrier Lullin, in respect of a request for a US$10million credit line for the Alcyon Group Ltd/Ultragold Capital Inc. The text of the letter, which was non-committal, was consistent with the wording on an amended 'Exhibit A' "bank advise" received

by the firm. It had also received an amended 'Exhibit B' concerning the disbursement instructions.

132. On 15th May 2001 Mr Mathialagan contacted the Swiss bank which confirmed that the letter had been issued by them and on the same date he wrote to Mr Diak informing him of the outcome of the due diligence work undertaken by him.

133. In accordance with the disbursement instructions the firm transferred, on 15th May 2001, US$400,000 from the ledger of Mr Diak to the ledger of Volta Industries Inc.

134. At the meeting with Mr Shuman on 24th and 25th April 2002 the FIO asked, in relation to the fax issued by Ferrier Lullin, who Mr Salehian of A&M Securities SA was. Mr Shuman said that he arranged the letter. He said this may have been sub-contracted by Volta. Mr Shuman said that Mr Salehian's connection to this transaction was that he was an intermediary.

135. On 19th November 2001 Mr Shuman wrote to Detective Bastin at the Fraud Office in London concerning the fake Deutsche Bank document.

Lean Cheng Sdn Bhd

136. The FIO also reported on the matter of Lean Cheng Sdn Bhd as follows:-

| | |
|---|---|
| Clients: | Facilitator - Volta Industries Corp - Represented by Mr Teagu Venugopal under a Power of Attorney as 'Consultant'. |
| | Borrower - Lean Cheng Sdn Bhd, incorporated in Malaysia - Represented by Mr Tan Seang Leng. |
| Matter: | contract of engagement dated 12th October 2001 between Volta Industries Corp and Lean Cheng Sdn Bhd for the arrangement by Volta Industries Corp and Lean Cheng Sdn Bhd for the arrangement by Volta Industries Corp of an irrevocable, unconditional, non-interest bearing Bank Guarantee payable at maturity in ten years in the amount of US$5million and arrangement of a bank letter stating their willingness to lend US$5million. |
| Intermediary: | Mr B Edqvist |

137. The firm (Mr Mathialagan) acted for Lean Cheng Sdn Bhd represented by Mr Tan Seang Leng.

138. On 9th August 2001 the firm issued a Confirmation of Instructions to Mr Leng.

139. Documentation on the client matter file included a draft contract of engagement between Lean Cheng Sdn Bhd and Volta Industries Inc (subsequently changed to Volta Industries Corp).

140. Mr Mathialagan had prepared the contract of engagement from a previous one which he had faxed to Mr Stanchich, who had made handwritten amendment. Draft letters

on the client matter file had been provided by Mr B Edqvist, described by Mr Mathialagan as a business client of Volta Industries Corp.

141. The client matter file contained a signed contract of engagement dated 12th October 2001 between Lean Cheng Sdn Bhd and Volta Industries Inc, represented by Mr T Venugopal as 'Consultant'.

142. The contract of engagement required an initial fee of US$75,000 to be paid to Mathis Solicitors being part of a total fee of US$475,000 (9.5% of face value of bank guarantee of US$5,000,000).

143. On 12th October 2001 Mr T Leng provided US$75,000 in travellers cheques. Mr Mathialagan did not know why travellers cheques were provided. In his oral evidence he said he had no reason to be suspicious as the travellers cheques had been issued by a reputable provider.

144. On 16th November 2001 two letters based on the draft letters were issued by a Luxembourg bank, Credit Europeen, addressed to Mr Edqvist. Mr Mathialagan described Mr Edqvist as the intermediary between Volta and Credit Europeen.

145. Mr Mathialagan confirmed that he carried out due diligence checks on the letters from Credit Europeen.

146. US$75,000 was paid to Volta Industries Inc by way of an internal transfer on 23rd November 2001.

147. The Credit Europeen letter was a letter of intent for which Lean Cheng Sdn Bhd were paying US$75,000. The letter was not a confirmation of a loan. Mr Mathialagan said it was a valuable document when negotiating for funding.

148. Mathis in dealing with the various client transactions passing through the US dollar client bank accounts issued confirmation of instruction letters to their clients. These instructions, in the majority of matters, were for the establishment of trust accounts on behalf of the clients. Mathis did not open individual trust accounts for the clients but dealt with the transactions through either of the firm's US dollar client bank accounts.

149. The FIO reported on the movement of monies on behalf of a number of clients.

(a) Mr C Campanella, Mr A Pasquale and Mr V Daniele

150. On 10th September 2001 Mathis issued Confirmation of Instruction letters to Mr Campanella, Mr Pasquale and Mr Daniele. The instructions were for the opening of trust accounts with Mathis with Mr Mathialagan acting as trustee.

151. Mr Mathialagan had met Mr Campanella before when he was acting for Volta under a power of attorney. Mr Pasquale and Mr Daniele were clients of Volta Industries Corp and they wanted to undertake an insurance transaction and open trust accounts with the firm. Mr Campanella had arranged an appointment for Mr Mathialagan to meet Mr Pasquale and Mr Daniele.

152. On 11th September 2001 Mr Campanella gave instructions for a number of payments to be made out of the US$2million that had been transferred from the ledger of Tema-Fond d.o.o. Included in these payments was a transfer of US$600,000 to the client ledger of Mr Pasquale and a transfer of US$300,000 to the ledger of Mr Daniele.

153. Mr Mathialagan told the FIO that he did not know what transfers of US$600,000 and US$300,000 to Mr Pasquale and Mr Daniele were for. He thought they formed part of the arrangements between them.

154. Mr Mathialagan said that the underlying purpose of the trust account for Mr Pasquale was that Mr Pasquale wanted to open an account in England to receive monies from Mr Campanella and disburse monies out of those funds. Mr Pasquale would use Mathis for future transactions. The information provided by Mr Pasquale concerning his business indicated that he represented Consorzio Nazionale Coopercredito.

155. Mr Mathialagan said that he had not provided any legal service to Mr Pasquale.

156. Mr Mathialagan confirmed that out of the US$600,000 payment of two amounts, being US$150,000 and US$200,000, had been made to two separate banks in Italy for Mr Pasquale.

157. Mr Mathialagan agreed that on the face of it he was just providing banking facilities for Mr Pasquale, but his purpose had been to obtain legal work when they were in London. He was trustee for the account. In respect of Mr Daniele, the underlying purpose of the trust account as in the case of Mr Pasquale. Mr Mathialagan had not provided any legal services to Mr Daniele.

158. Two amounts of US$60,000 and US$120,000 had been paid to accounts of Mr Daniele at two separate banks in Italy. Two further payments were also made.

159. Mr Mathialagan had agreed costs of US$40,000 (£27,586) with Mr Campanella orally. The confirmation of instructions referred only to fixed costs for the trust account of US$7,050 per annum, Mr Mathialagan had agreed to a "one-off" fee of US$40,000 for this transaction on the basis that the fee was not hourly based and related to a specialised area of work.

160. The FIO expressed the view that there was not much work involved and the fee was disproportionate. Mr Mathialagan explained that it was for handling US$2million and holding it on trust. He had to have knowledge of insurance and had to read business objectives and that would have been the going rate in the market for this type of business.

Mr J S Diak

161. On 20th December 2001 Mathis issued a confirmation of instructions letter to Mr Diak. The instructions were for the opening of a trust account with Mathis with Mr Shuman and Mr Mathialagan acting as trustees.

162. Mr Mathialagan said that he had gone to India to represent a software company and Mr Diak was working for them as a banker. The company recommended Mr Diak to Mr Mathialagan for whatever services he wanted in London.

163. The trust account was like other trust accounts that the firm already had. Mr Shuman told the FIO that he had different types of transactions and worked very closely with Morgan Stanley in the USA.

164. Mr Diak had provided a sample letterheading of Banco BRJ to indicate his employment. Mr Shuman said that he had seen a business card and had also spoken to one of the bank officers in Brazil. He said that he had enough due diligence to confirm who Mr Diak was and that he was a member of that bank. Banco BRJ were not the firm's client and all the transactions were Mr Diak's.

165. Mr Shuman told the FIO that he had represented Mr Diak's business interests as a lawyer on several occasions and had given him advice/consultation on several matters. Mr Mathialagan said that he had done the first due diligence and dealt with the Graham Rouse matter. He said that Mr Diak had wanted to get a business permit to be BRJ's representative in this country.

166. In the period 14th February 2001 to 20th May 2002 various transactions passed through the firm's US dollar client bank accounts and sterling client bank accounts relating to Mr Diak.

167. Mr Mathialagan had not consciously intended to provide banking facilities for Mr Diak, it was part of his bigger business purpose to secure commercial work generated by the client.

168. The first receipt was on 14th February 2001 from Mr G Rouse of US$15,000. Mr Mathialagan thought that Mr Diak was buying a property with Mr Rouse. When asked by the FIO if the funds were received in respect of any legal transaction the firm was undertaking on behalf of Mr Diak, Mr Mathialagan said that they were forming a company which was to buy the property.

169. On 22nd February 2001 the firm received US$143,445.80 from Mr Lemoniatis who, Mr Shuman had informed the FIO, shared an office with Mr Diak and they were business partners.

170. Mr Mathialagan had not been able to recollect if funds were received in connection with any particular transaction - they must have been for some transaction they were doing and they were supposed to hold them on trust.

171. On 4th April 2001 US$299,989.35 (US$300,000 less bank charges of US$10.65) was received from the Alcyon Group, an American company, and a further US$499,989.49 (US$500,000 less bank charges of US$10.51) on 7th June 2001.

172. Mr Shuman said that he believed that he had been told by Mr Diak that such funds were to be received and that he subsequently spoke to Dana Milmeister at the Alcyon Group. She had said that she was sending a further US$500,000 and she confirmed that these funds were also for Mr Diak's discretion. Mr Shuman said that it had been explained to him that they were a joint interest. Mr Diak was working with the Alcyon Group to attempt to establish a type of business whereby they would fund some projects together, some in the movie business. He said he was subsequently told by Mr Diak that a large part of the funds were for "his own personal discretion" as a

fee. Mr Shuman said he had discussed it with Miss Milmeister and she had said she was very pleased with Mr Diak and the situation. Mr Shuman said that it was important to note that he made it clear to her that he was not her lawyer and that these funds were going into an account that he (Mr Diak) had full discretion on.

173. The FIO had shown Mr Shuman a copy of a letter dated 5th April 2001 from the Alcyon Group to Mr Diak and asked him where was the bank guarantee referred to. Mr Shuman said that he would have to research the file on a later occasion.

174. Mr Shuman told the FIO that Mr Diak had provided Miss Milmeister with a guarantee or promissory note from Banco BRJ. He said that she wanted some guarantee for her principal. The FIO also asked Mr Shuman what Alcyon Group got in the end for their payment of US$800,000. Mr Shuman said that he was not privy to all that information. He said that they were still working together to sort out their business. They had other business together of which he had no knowledge.

175. When asked why the Alcyon Group were not represented by its own lawyers in this transaction Mr Shuman said that he had asked Miss Milmeister that himself and she had mentioned that she was an experienced lawyer and handled client funds. He said he asked her if she wanted her own client account or for her lawyer to visit. She said no to both. She was adamant about putting funds at his discretion.

176. On 17th April 2001 Mr Diak faxed a letter to Mathis concerning the bank commitment with the instruction that it was amended to 'Alcyon Group Ltd/Ultragold'.

177. The FIO asked Mr Shuman about a telephone note dated 14th August 2001. Mr Shuman said that he was in Milan at the time: the note was from Steven Chalk. Mr Shuman said that Mr Diak mentioned he might call him. He said that he was asking about the client account and who controlled the funds and if it was mixed with other funds.

178. US$199,989.17 (US$200,000 less bank charges of US$10.83) was received on 28th August 2001. Mr Shuman said that it was in reference to Steven Chalk and his group and the bank advice was referenced in Mr Diak's name. Mr Shuman said that Mr Diak indicated clearly that the proposal of remitting the funds was for Mr Diak's complete discretion. That had been confirmed in telephone conversations with Steven Chalk.

179. Mr Shuman said that Mr Diak had indicated that it was funds owed to him. He said that if Mr Diak had private agreements they were not known to him. He said the main goal was to find out if the funds were coming with a condition or unconditionally.

180. Mr Shuman said that the specifics of the transaction were not given to him. He knew Steven Chalk and Mr Diak were doing business together.

181. The credit advice from National Westminster Bank plc records that the US$200,000 was received by order of William and Valerie Giarusso from Chase Manhattan Bank in New York.

182. Mr Shuman said that he was told that the money was sent from the Chalkman Group. They were funding the Chalkman Group's interests and kept calling him as to why the funds had not been received in time. They were for Mr Diak's discretion and he had explained to them that he was not their lawyer and made it very clear the funds were for Mr Diak's discretion.

183. Mr Shuman said that the funds were received for some escrow work. He said that Mr Diak and the Chalkman Group were doing business together as confirmed to him several times on the telephone. He understood that Mr Diak was arranging business and was given full discretion on the funds remitted.

184. On 28th August 2001 a further US$19,989.17 was lodged in the firm's US dollar client bank account at National Westminster Bank plc. The credit advice from the bank showed that the funds were remitted by order of United Jet Sales Inc and gave details as "REF.MIKE COMPANY". Mr Shuman and Mr Mathialagan said they would have to check the file when asked by the FIO if they knew those funds were to be remitted. The FIO asked if it was correct that the monies received for Mr Diak were for his benefit so in theory they could have been paid direct to him. Mr Mathialagan said that some were for specific purposes, the main one being the Ultragold transaction. Mr Shuman added that Mr Diak was doing business in London and needed the monies here.

185. The FIO reported on the fees earned by Mathis in connection with the dubious transactions. Amounts billed by the firm to the clients referred to in the FIO's report were as follows:-

| Date | Client | US$ | £ equivalent |
|---|---|---|---|
| 17/05/01 | Volta Industries | $36,000.00 | £25,000.00 |
| 07/06/01 | Volta Industries | $28,383.23 | £20,246.22 |
| 27/06/01 | Mr J Diak | $2,850.00 | £2,000.00 |
| 05/07/01 | Volta Industries | $31,157.50 | £22,000.00 |
| 06/07/01 | Mr J Diak | $7,060.00 | £5,000.00 |
| 11/09/01 | Mr C Campanella | $40,000.00 | £27,586.00 |
| 11/09/01 | Mr A Pasquale | $18,000.00 | £12,264.00 |
| 12/11/01 | Tema Fond | $ 4,900.00 | £ 3,333.33 |
| | | $168,350.73 | £117,429.55 |

186. In addition to the above, three further amounts of £10,000 on 4th December 2000, £4,036.07 on 6th December 2000 and £8,225 on 5th March 2001 in respect of Volta Industries Inc were transferred from sterling client account to office account. These amounts were expressed to be in respect of fees agreed with the client although no bills had been raised and no written intimation was found on the client matter file.

187. Mr Mathialagan informed the FIO that these fees had been agreed orally with the client. He agreed that he should have raised bills but he had failed to do so. There was no confirmation from the clients that these fees had been agreed.

188. In respect of Mr Diak's funds, based on documentation on the client file, Mr Mathialagan appeared to have received cash of £5,000 on 1st May 2001, £5,000 on 27th July 2001 and £2,000, date unknown.

189. In respect of Volta Industries, payments of £2,000 on 2nd June 2001, 12th June 2001 and 15th June 201 appear to have been made to Mr Mathialagan and Mr Shuman.

190. The FIO went on to report that on 10th April 2000 an amount of £34,000 was incorrectly lodged in the firm's Natwest office bank account. This amount was received from Mr Imerio Polinari and it should have been lodged in the firm's Natwest client bank account for the benefit of Volta Industries Corp. The firm's bank had refused to transfer the monies out of office bank account as the firm's overdraft limit would have been exceeded. Mr Mathialagan told the FIO that Mr Stanchich agreed to treat it as a loan and that it had been repaid in full. The FIO was able to determine that £8,000 had been repaid. There was no evidence to support Mr Mathialagan's assertion that the balance of £26,500 had been repaid.

**The Submissions of the Applicant**

191. Mr Shuman was held out as a partner of Mr Mathialagan in the practice of Mathis. As well as that information having been supplied to the Law Society in, for example, the firm's annual Accountant's report on a number of occasions when client care letters had been provided to clients (and signed by Mr Shuman) Mr Shuman was described as "lead partner".

192. Mr Mathialagan had admitted the breaches of the Solicitors Accounts Rules. He had admitted the breach of the Solicitors Publicity Code. As it was permitted under the Business Names Act 1985 to state that a list of partners could be viewed at an address only if there were 20 partners or more. A note to this effect on Mathis's letterhead made it appear that a small firm with only two partners, as in the case of Mathis, was a rather more substantial firm than was in fact the case.

193. The involvement of solicitors in dubious financial transactions was a matter which had been of concern to the Law Society for a number of years. In September 1994 the Society circulated to all solicitors on the Roll a warning card about money laundering. The warning card specifically warned against unusual instructions and large sums of cash being deposited in a solicitor's client account for no particular purpose. In the light of the warning cards issued in connection with prime bank instrument fraud by the year 2000 solicitors should at the very least have been extremely cautious about becoming involved in the type of schemes that were the subject of the warning cards. The practice of Mathis had in fact been a magnet for such schemes.

194. The Applicant put allegation 3 on the basis that no solicitor could properly have involved himself in such transactions. The transactions bore many of the hallmarks of dubious investment schemes, bank instrument frauds and/or money laundering transactions, or indeed both.

195. In other cases the deposit of money was purportedly in relation to (albeit a dubious) transaction, but nonetheless vast amounts in cash were paid out by the firm. For example, the account relating to Mr Campanella showed cash payments totalling US$68,449.11.

196. In addition the clients and other intermediaries involved in these transactions generally had no relationship with the UK and there was no apparent reason why money should pass through an English solicitor's client account.

197. Where transactions were purportedly the reason for the movement of money, these were at best dubious. The documentation relating to such transactions bore the hallmarks of bank instrument fraud. For example, the documents contained a number of phrases such as "Both parties agree to respect the terms of non-disclosure and non-circumvention, as indicated by the International Chamber of Commerce ("ICC") of Paris, France, latest edition and revisions" and "maturity date one (1) year and one (1) day".

198. Even where the wording of the documentation was not obviously meaningless, the structure of the purported transactions was improbable. One proposed investment was to yield 50% per month. In another transaction where Volta (another client of the firm) was paid US$120,000 by a company called Balamore Management Ltd to provide a purported letter of intent from a bank (Credit Europeen) to agree "to negotiate a loan facility for your client" the offer letter (if genuine) was completely meaningless as its wording provided no commitment on behalf of the lender. Nonetheless both Mr Mathialagan and Mr Shuman were willing to involve themselves in such a transaction and Mr Mathialagan was willing to provide a letter on his firm's letterhead confirming the authenticity of the lender's offer.

199. A further example was a file concerning Kirbyville Company SA and Orion Technology Holdings Inc. Mr Mathialagan was engaged in the drafting of the contract of engagement. The terms of that agreement were commercially fanciful. For example, under the heading "Procedure" Orion was not required to provide details of its assets and recent accounts, it merely had to provide certificates of incorporation and a letter of reference from its bankers. In short, that transaction bore the hallmarks of an advance fee fraud.

200. The FIO had obtained a report from the Assistant Director of the International Chamber of Commerce Commercial Crime Services. He had considered the documents used in the dubious transactions in this case. It was his view that some defined the mechanics of what appeared to be an advance fee lending proposition that had all the hallmarks of financial instrument fraud. There were a number of references to "bank rated A or better by Standard & Poors or Moodys" which related to official standard credit rating agencies and represented an attempt by the fraudsters to add credibility to the overall transaction. References to "Western European bank rated A" had no meaning in legitimate banking.

201. Guarantees did exist in legitimate banking and were the taking of responsibility for the payment of a debt or the performance of an obligation. They did not accrue interest, so describing a bank guarantee as non-interest bearing was nonsensical. Genuine guarantees did not mature as they were valid until a specific date and were transmitted via the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system.

202. It was a common practice by fraudsters to require an initial fee, the advance fee, to be deposited with a solicitor in order to instil confidence in the victim. It made the victim feel that his own money was not at risk.

203. Reference to "a 30 day bank letter" was a procedure not known in legitimate banking. The fraudsters wanted transactions to appear as plausible as possible and liked a solicitor to add his credibility by confirming that "letters" were genuine.

204. Another common feature of financial instrument fraud was for the victim to be instructed to request a bank to issue a "letter of credit paying an annual interest". A letter of credit is one form of a documentary credit which is a method of financing overseas trade whereby the contracting parties insert in the sales contract a provision that payment shall be made by a banker under the provisions of a documentary credit. Under this system a banker undertakes to pay the amount stated in the documentary credit or accept a bill of exchange in return for the delivery to him or her by the exporter of the commercial and shipping documents, provided they are in strict conformity with the terms and conditions of the documentary credit. This financial instrument cannot generate a return.

205. Reference to non-circumvention and confidentiality was another characteristic of fraud. It was an attempt to stop the victim from seeking any advice from a third party.

206. In many cases the fraudsters ensured the victims and their employees, such as lawyers and accountants, completed certain templates of documents. The documents had no legitimate purpose. They formed part of the fraudsters' own due diligence process after they had confirmed the intended victim's identification and credit-worthiness. If the intended victim or employee raised concern about the documents or phraseology used the fraudsters then knew they needed to sever those relationships and redirect their efforts. Fraudsters manipulate professionals to protect themselves.

207. The phrase "these funds are clean cleared, legitimately earned or obtained and is of non-criminal origin" was a fabricated phrase. No prudent bank would sign such a document.

208. The scam relied on letters from credible entities referring to financial instruments that did not exist. Banks do not work through intermediaries, there was no reason why a company could not approach a bank direct and save a lot of money. The bank was probably unaware that its reputation was being used during such a transaction. In one example a company seemed to be happy to pay US$400,000 for a letter which said nothing. Both the draft and the actual letter from the bank stated "In our position" which presumably should have stated "In our possession". This might have been an indicator that the bank letter was a forgery.

209. The Applicant accepted that the majority of the transactions involved Mr Mathialagan and there was nothing from the available documents to indicate the involvement of Mr Shuman. However Mr Shuman was a willing participant in some transactions. Mr Mathialagan said that the commercial work and the clients had been introduced to the firm by Mr Shuman and Mr Shuman had played a significant role in the transactions. Even if that were so, Mr Mathialagan was a solicitor and he had a high duty to ensure that his firm was not being used for the nefarious purposes of others.

210. The Applicant did however put the case against Mr Mathialagan higher than that. In being implicated in the type of work set out and in allowing persons to pass money

through the firm's client account whilst being fully aware of the Law Society's warnings about prime bank instrument fraud, advance fee fraud and money laundering, Mr Mathialagan had been dishonest.

211. The Applicant accepted that in making the allegation of dishonesty he had to meet a high standard of proof. The appropriate test to be applied by the Tribunal was that in the case of Twinsectra -v- Yardley and Others [2002] UKHL 12, namely did Mr Mathialagan act dishonestly by the ordinary standards of reasonable and honest people, and if so was he aware that by those standards he was acting dishonestly.

212. Mr Mathialagan had not acted as an honest solicitor would have acted - at best he turned a blind eye to those aspects of the transactions that bore the hallmarks, according to the Law Society's warnings, of fraud.

**The Submissions of Mr Mathialagan**

213. When the FIO inspected Mathis that firm mainly undertook immigration law cases. When Mr Shuman became a partner in July/August 2000 approximately 14 commercial and banking matters were introduced by him to the firm. He had conduct and control of those cases.

214. Mr Mathialagan's Malaysian firm acted for a number of companies. He acted for a shipping public company in the due diligence exercise of their prospectus for the raising of debt capital in the Malaysian Stock Exchange for the purpose of acquiring two petroleum carrying liners for US$70million. He had also been involved in another due diligence exercise for another listed company whilst he served a pupillage at a firm in Malaysia.

215. Mr Mathialagan had wished to expand the firm to undertake commercial work although until then the firm derived the bulk of its fees from legal aid matters.

216. Mr Mathialagan had always acted reputably and he was viewed by his clients and others with whom he dealt professionally as honourable. Mr Mathialagan became involved in the transactions via Mr Shuman.

217. Mr Mathialagan had been introduced to Mr Shuman through a client of the firm in about 1999. Mr Shuman said that he was the attorney for his client Mr Frederick Stanchich and they wished to instruct Mr Mathialagan to do due diligence work in respect of a banking transaction. Mr Shuman also said that he was a banking lawyer and had substantial experience in banking law. He had worked in a bank in New York. They had many banking clients and managed client funds.

218. All commercial banking, loan financing and high yield clients were introduced to Mathis by Mr Shuman and/or his client Mr Stanchich. Mr Shuman assured Mr Mathialagan that the proposed schemes were within his field of expertise and there would be no difficulties. Mr Mathialagan completely trusted and relied on Mr Shuman's representation and indeed Mr Mathialagan trusted and relied upon Mr Shuman. At all times Mr Mathialagan complied with what he considered to be his duty by ensuring that all monies held in escrow were properly accounted for and he did all necessary due diligence and always acted on clients' instructions.

219. If on completing due diligence checks Mr Mathialagan found any fraudulent documentation he made a report to the police. He did so in the case of the Deutsche Bank letter. This was a matter dealt with by Mr Shuman.

220. The London Capital Inc matter was the first matter in which Mr Mathialagan was instructed by Mr Shuman. Mr Mathialagan carried out due diligence by contacting the Bank Brussels Lambert London. He confirmed the authenticity of the term loan and Credit Europeen, the issuing bank, were deemed satisfactory by Bank Brussels. Mr Mathialagan saw the passport of Mr Bach. That transaction was successfully completed. Mr Mathialagan had no concerns about its bona fides. There had been no complaint about it. Bank Brussels had authenticated the term agreement; the transaction was valid. Mr Mathialagan agreed to accept instructions in the London Capital Inc matter first because he had done due diligence work for listed companies in connection with the floatation of shares or for debt raising in the listed markets and secondly as a business strategy. Mr Mathialagan wanted to move away from legal aid work and introduce commercial work to his practice.

221. The scope of the due diligence exercise undertaken had been limited to authenticating and verifying the issuance of a "term sheet" for a bank guarantee for US$5million issued by Credit Europeen, Luxembourg. Mr Mathialagan transferred the monies held on trust in accordance with his instructions from London Capital Inc. All instructions in relation to the commercial matters before the Tribunal had come through Mr Shuman.

222. Mr Mathialagan came to know Mr Shuman and trusted him. Mr Mathialagan suggested that Mr Shuman join Mathis as fee earner, not a partner.

223. A few days later Mr Shuman indicated to Mr Mathialagan that Mr Stanchich was a high net worth client and that Mr Stanchich would not instruct him or the firm. Mr Shuman was not a partner. The situation was discussed over a period of six months and it was agreed that Mr Shuman should become a partner and that he should develop a commercial and banking department. What Mr Shuman asserted in his statement to the Court of Appeal was completely incorrect.

224. In all matters of concern to the FIO Mr Mathialagan had undertaken due diligence on all bank offers and letters issued by banks as required by his escrow instructions. All clients had or confirmed that they had their own legal counsel. Mr Mathialagan always acted according to clients' instructions for their monies held in escrow.

225. After he became a partner, all commercial and banking clients from America were introduced to the firm by Mr Shuman and he had conduct, control and knowledge of all transactions.

226. Mr Shuman dealt with Mr Stanchich directly and billed him separately for his other services which the firm did not provide. Instructions for Volta Industries always came from Mr Shuman as Mr Stanchich's American attorney. Mr Shuman dealt with all banks directly or through Mr Stanchich and/or his agents. He did due diligence work himself.

227. Just after Mr Shuman became a partner in the firm Mr Mathialagan became sick as his diabetes had gone out of control and he had injured a nerve in his back. He could not walk for almost six months and was bedridden for several weeks. He had to concentrate on managing his diabetic condition as it took control of him more and more in his mind. Both of Mr Mathialagan's parents suffered acute diabetes-related problems.

228. During his period of illness Mr Mathialagan lost control of keeping the US dollar client accounts up to date. When he came back to work his personal and health problems continued. There was much to catch up with and he also had serious disputes with the Legal Services Commission. Attempts to sell the practice came to nothing.

229. Mr Shuman resigned from the firm just before the Law Society's investigation. The Law Society intervened in the firm shortly before Mr Mathialagan could deal with the FIO's request for more information. Mr Mathialagan was very ill during those periods.

230. There had been no complaint from any client about Mr Mathialagan. There were more than 1,000 live files (mostly immigration files) and 8,000 closed files. There were around 14 commercial and banking files. Every file had been gone through thoroughly.

231. Mr Mathialagan always acted only as escrow agent on clients' instructions and in good faith on all commercial and banking matters. He accepted only escrow account work from clients introduced to the firm by Mr Shuman, an attorney from the USA and a registered foreign lawyer. Mr Mathialagan believed that all proposed transactions in the contract between Mr Stanchich, Volta Industries and their clients were above board at all times. He was assured of this by Mr Shuman. Mr Mathialagan only became involved in the drawing up of documents as instructed and the carrying out of due diligence where necessary. The transactions were always subject to due diligence which included Mr Mathialagan's making enquiries of the relevant banks and satisfying himself on the authenticity of the documents.

232. The precedents for all commercial contracts came from Mr Shuman. Mr Mathialagan relied upon him. The firm had no experience in this field before he joined. All contracts and related documents were based on the one that was used in London Capital Inc. This was provided by Mr Shuman.

233. Mr Mathialagan always undertook due diligence before acting or accepting any instructions. In the case of individuals he always asked for their passports and took photocopies of them. He requested their business cards and took down their addresses, telephone numbers etc.

234. Mr Mathialagan accepted that there had been breaches of the Solicitors Accounts Rules but he had not been dishonest in any way. He was convinced that Mr Shuman and Mr Stanchich were persons of proper standing in society and in the business world. All monies were received from reputable banks.

235. All monies in the proposed S&P schemes were sent back to the client's bank or their attorney's account when on due diligence Mr Mathialagan discovered that Mr

Campanella did not have appropriate qualifications to enable him to trade in the UK. As part of the due diligence exercise Mr Mathialagan went twice to a reputable stock brokerage firm and then found out that Mr Campanella could not trade in the UK and/or manage client funds.

236. Mr Mathialagan had no recollection, nor had he seen any of the documents relating to Mr Oncel until he received the Applicant's documents. A file in that name did not exist in the Mathis database. The numbers apparently allocated to the matter files were not numbers that would have been generated under the firm's file numbering system.

237. The Power of Attorney seemed to have been prepared by Mr Shuman. The witness signature looked like that of Mr Mathialagan but he had no recollection of it.

238. A document which Mr Mathialagan had never seen before had been signed by Mr Shuman who had initialled "PM". A number of other documents had not been seen by Mr Mathialagan prior to the disciplinary proceedings and what purported to be his signature on some of them was in fact a forgery.

239. Mr Mathialagan had paid a heavy price as a result of relying upon and trusting Mr Shuman. He owed a lot of money to the Law Society, to Counsel and to friends. His previous landlords were pursuing him in bankruptcy for rent and service charges under his lease. Apart from these very stressful disciplinary proceedings, Mr Mathialagan had faced more than ten pieces of litigation in the past three years arising out of the intervention.

240. The costs of the intervention alone amounted to £140,000. Mr Mathialagan had had no income for the last three years and had been jobless since the intervention. His marriage had broken down.

241. Until Mr Shuman joined Mathis there had been no difficulties. Since his involvement and as a result of it the Law Society had intervened. All of Mr Mathialagan's years of hard work, including much pro bono work for the local community, had gone.

242. The Tribunal was invited to find that Mr Mathialagan had not been dishonest. He had taken steps to establish that transactions, documents and individuals were genuine. He had trusted Mr Shuman, a USA attorney and registered foreign lawyer. He had acted in accordance with the client's instructions as was his duty as a solicitor.

243. A bundle of references in support of Mr Mathialagan was handed up at the hearing. It was clear that he was highly thought of and conducted himself in an admirable way within his local community.

**The Findings of the Tribunal**

244. The Tribunal found all of the allegations to have been substantiated against Mr Mathialagan, indeed they were not contested.

245. The one area where there was a contest was whether or not Mr Mathialagan had acted dishonestly in relation to allegation 3.

246. The Tribunal recognised in making such a serious finding against a solicitor it must apply the highest standard of proof. The Tribunal also has applied the test in Twinsectra -v- Yardley: namely, in the context of this case did Mr Mathialagan act dishonestly by the ordinary standards of reasonable and honest people and, if so, was he aware that by those standards he was acting dishonestly.

247. The Tribunal accepts Mr Mathialagan's evidence that he did have in his mind the warnings issued by the Law Society to solicitors that they should be on their guard in connection with transactions that might have a money laundering element or involve a form of banking instrument or advance fee fraud.

248. The Tribunal accepted that Mr Mathialagan had taken the view that he had a duty to seek verification of documents and the identity of individuals. He considered that if he was satisfied about these matters, having made enquiry, he could safely ignore the type of words and phrases about which he had been warned by the Law Society as being indicative of mala fides in these types of transactions. The Tribunal accepts that Mr Mathialagan genuinely believed that it was acceptable for him, as a solicitor, to hold money in a client account as a "trustee" and to disburse it in accordance with the clients' instructions without playing any part as a solicitor in a relevant transaction and without any consideration for his wider duty as a solicitor to be sure that purported transactions were bona fide transactions and that receipts into and payments from his client account were not being made for any nefarious purpose.

249. The Tribunal accepts that Mr Mathialagan placed his trust in Mr Shuman and all of these events took place at a time when Mr Mathialagan was suffering from debilitating ill health. Whilst the Tribunal considers that Mr Mathialagan exhibited an extraordinary degree of stupidity and his actions might well be regarded by other members of the solicitors' profession, and indeed the public, as being dishonest, the Tribunal accepts that the second part of the Twinsectra test has not been satisfied as it finds that Mr Mathialagan was not aware that by the standards of reasonable and honest people he was acting dishonestly. He cannot set his own standard of honesty, but he held a genuine belief that he could act as he did provided he was satisfied as to the veracity of documents provided to him. In this respect he seriously misdirected himself and acted with extraordinary foolishness and lack of judgement.

**The Tribunal's Decision and its Reasons**

250. The Tribunal has not had to make any ruling in respect of Mr Shuman. The Tribunal accepts Mr Mathialagan's evidence that he had not been involved in the type of dubious transactions that the Tribunal had to consider in this matter before he became involved with Mr Shuman. The Tribunal accepts that Mr Mathialagan placed reliance on Mr Shuman's qualifications and expertise. The Tribunal gives Mr Mathialagan credit for the frank and detailed way in which he gave his evidence and has taken into account the fact that at the material time Mr Mathialagan suffered considerable ill health. The Tribunal has also taken into account the fact that Mr Mathialagan has already suffered the loss of his practice, the costs of the intervention and found himself in a difficult financial position as well as having suffered the breakup of his marriage.

251. Having taken into account all of those factors the Tribunal, as it has already stated, considers that the part played by Mr Mathialagan in encouraging the use of his firm and its client account and the cloak of respectability that the involvement of an English solicitor gives to fraudulent transactions to be a matter for very grave concern. Even though the Tribunal has not made a finding of dishonesty against Mr Mathialagan the Tribunal does consider that his extraordinary lack of judgement and crass stupidity, when he acted as he did in the face of clear warnings given to him by the Law Society, renders him unfit to continue to practise as a solicitor. It was proper in the light of the facts in this case that the Law Society should have made an allegation of dishonesty. The Tribunal was deeply concerned by the fact that Mr Mathialagan allowed his practice to be used as he did. The Tribunal was further deeply concerned that Mr Mathialagan's position was that he was acting properly by simply acting on his clients' instructions. Every solicitor is required to look behind the narrow remit of his clients' instructions and to consider the wider picture. He has clear legal obligations in any case where there might be a possibility of money laundering. The Tribunal has a duty to protect the public and a second duty to protect the good reputation of the solicitors' profession. The Tribunal is of the view that it can only fulfil those two important duties by ordering that Mr Mathialagan be struck off the Roll of Solicitors.

252. The Tribunal considered representations made to it by both sides on the question of costs. The Tribunal concluded that even though Mr Mathialagan had succeeded in his argument that he had not been dishonest, that argument added little to the overall work undertaken in connection with this case. Mr Mathialagan found himself answering allegations before the Tribunal because of his own stupidity and failure to pay due heed to warnings given to him by the Law Society. He was the author of his own misfortune. It was both right and proportionate that Mr Mathialagan should pay the whole of the costs of the application and enquiry. The Tribunal was informed of the costs of the FIO and was given an estimate of the Applicant's costs. Mr Mathialagan as the only solicitor partner in the practice had a duty to ensure that the practice complied in all respects with the rules binding solicitors in practice and for ensuring that the practice complied with the law. He could not abdicate his responsibilities by asserting that his registered foreign lawyer partner had a greater degree of culpability than he did himself. The Tribunal considered it right that Mr Mathialagan should pay the whole of the FIO's costs and decided in the interests of saving time and further expenditure to fix the Applicant's costs to be paid by Mr Mathialagan at a level slightly below that of the Applicant's estimate. The Tribunal therefore ordered that Mr Mathialagan be struck off the Roll of Solicitors and that he pay the Applicant's costs in the sum of £17,037.50 inclusive of Value Added Tax and that he pay the costs of the FIO (in the Order referred to as the Investigation Accountant of the Law Society) fixed in the sum of £24,958.04.

Dated this 10th day of April 2006
On behalf of the Tribunal

W M Hartley
Chairman