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HCCW 1134/2002

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**IN THE HIGH COURT OF THE**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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**COURT OF FIRST INSTANCE**

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COMPANIES (WINDING-UP) NO. 1134 OF 2002

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IN THE MATTER of KEEN LLOYD  
RESOURCES LIMITED (formerly  
known as KEEN LLOYD  
(HOLDINGS) LIMITED)

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IN THE MATTER of the Companies  
Ordinance (Cap. 32)

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Before: Hon Kwan J in Chambers

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Date of Hearing: 15 June 2004

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Date of Decision: 15 June 2004

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1. This is an adjourned determination hearing under rule 45(2) of  
the Companies (Winding-up) Rules, to resolve differences regarding the

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appointment and composition of a committee of inspection for Keen Lloyed Resources Limited (“the Company”).

2. The Company was ordered to be wound up on 23 July 2003. The first meetings of creditors and contributories were held on 26 August 2003.

3. At the time of the first meetings, 19 proofs of debt in the total amount of HK\$3,124,993,576.77 were received by the Official Receiver and admitted for voting purpose. The meeting was attended by 16 creditors whose aggregate claims admitted for voting purpose amounted to HK\$3,124,332,619.77.

4. The first meeting of creditors passed, inter alia, a resolution that a committee of inspection be appointed comprising 5 members:

- (1) the Bank of China (Hong Kong) Limited (“BOC”), which was the petitioning creditor;
- (2) Societe Nationale D’Operations Petrolieres de la Cote D’Ivoire-Holding, acting on behalf of Petroci Exploration Production SA (“Petroci”);
- (3) Ms Yip Choi Kuen (“Ms Yip”);
- (4) Hubei Changzhou Power Development Company Limited (“Hubei Changzhou”); and
- (5) Tanko Industrial Limited (“Tanko Industrial”).

5. The first meeting of contributories which was attended by the 2 contributories holding all the shares in the Company passed a resolution identical to the above.

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6. At the first meeting of creditors and subsequent thereto, BOC raised objection to the appointment of Hubei Changzhou, Tanko Industrial and Ms Yip to the committee, questioning the authenticity and validity of the claims in the proofs of debt filed by these creditors, and alleging they are parties associated with or related to the Company.

7. On 10 October 2003, I made an order for a determination hearing to be held and gave directions for advertisement in newspapers of a notice of the hearing, and for any creditors or contributories wishing to adduce evidence at the hearing to file the same in court and serve such evidence on the Official Receiver in advance.

8. At the first determination hearing on 13 November 2003, I made an order that Mr Alan Chung Wah Tang and Mrs Alison Wong Lee Fung Ying be appointed joint and several liquidators of the Company and there should be a committee of inspection in this liquidation, to be constituted at the adjourned hearing in accordance with further directions to be given. I should mention at that time, no submissions were made by any one that a committee should not be appointed. The only dispute then was the composition of the committee. I also gave directions on that occasion for evidence relating to the composition of the committee to be served by BOC on the Official Receiver and on each of the creditors who had been voted to serve on the committee or who have indicated willingness to serve, evidence in answer to be filed by such creditors, and evidence in reply from BOC.

9. The position at the hearing today is as follows.

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10. A total of 12 creditors, including the 5 creditors that had been voted to serve on the committee, have indicated their willingness to serve.

11. 8 of these creditors are represented by Ms Lorinda Lau. They are Winbest Resources Limited (“Winbest Resources”), Winko Motor Industries Limited (“Winko Motor”), Winko Foundation Limited, Tanko Industrial, Hubei Changzhou, Guangzhou City Min Lian Transportation Company Limited (“Min Lian”), Guangdong Winko Investment Company Limited (“Guangdong Winko”) and Zhejiang Yicheng Industry Company Limited (“Yizheng”). All these creditors are not opposed to the position of the Official Receiver and the liquidators today, which I will go into later. But in the event that the position of the Official Receiver and the liquidators is not upheld by the court, they will seek an order that the court should give effect to the resolution passed at the first meetings of the creditors and contributories as to the composition of the committee. In the further alternative, if some other order should be made as to how the committee should be constituted, each of them has asked to be appointed to the committee. Very substantial claims are made by these creditors in their proofs of debt. Winbest Resources claims HK\$224 million odd, Winko Motor \$46 million odd, Min Lian \$20 million odd, Guangdong Winko \$32 million, Hubei Changzhou \$750 million odd, Yicheng \$720 million odd. Their total claims represent over 70% of the total proofs of debt, if the secured part of the indebtedness to BOC is not taken into account.

12. 2 other creditors, who are not legally represented, take a similar position to the above 8 creditors. They are Ms Yip, a former employee of the Company voted into the committee at the first meetings, and Messrs Alvan Liu and Partners, the former solicitors for the Company.

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13. The 2 remaining creditors, BOC and Petroci, are opposed to the appointment of any of the above 10 creditors to the committee, on the grounds that they are related to the Company and are not suitable to be appointed in view of the investigations to be carried out into the affairs of the Company. Further, the claims of most of these creditors are demonstrably non-existent, so their status as creditors is in doubt.

14. The Official Receiver's initial view was that as this is an insolvent liquidation, the committee should consist of a representative section of the independent financial creditors and it is not desirable for the committee to be dominated by members who are believed to be related to or associated with the Company. Subsequent to the first determination hearing and having consulted the liquidators, the Official Receiver has changed his position. The liquidators and the Official Receiver submit today that given the special circumstances of this case, it is in the best interests of all persons concerned in the winding up that no committee of inspection be appointed for the time being, and that it would be more appropriate to allow the liquidators to act under the continued supervision of the court.

15. The principles governing the exercise of the discretion are not in dispute.

16. The court has wide discretion in the matter and is not bound by the determinations of the meetings of the creditors and contributories. Although the court would have regard to the determinations at these meetings, in deciding on the question if the committee of inspection should be appointed and if so who should serve on the committee, the court acts on the principle of what is in the best interests of all the persons interested

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in the liquidation. I should also say that although on the last occasion, I have ordered that a committee of inspection is to be appointed, I may reconsider and revisit the order if there is a change of circumstances or if new materials are placed before me. Where the liquidators have formed a view on this, and as they carry the responsibility of investigating the affairs of the company and should have a fair idea of the practical difficulties they may encounter in a given situation, it is appropriate that considerable weight should be given to their views. Here the liquidators have been appointed for 7 months and they have been investigating the affairs of the Company.

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17. The function of a committee of inspection is to assist and supervise the liquidator in the conduct of the liquidation, and to avoid the need for time-consuming and costly applications to the court (*Re Goodway Limited* [1999] 1 HKC 141 at 148E). It is often more convenient for the liquidator to deal with a representative committee than a large number of individual creditors and contributories, if the liquidator should find it necessary or desirable to consult creditors and contributories or to seek directions from them. Further, by section 199(1) of Cap. 32, the liquidator in a winding up by the court would need the sanction of the court or of the committee of inspection before he can exercise certain powers. In a liquidation that is complex and involves assets of considerable value, it is usual for a committee of inspection to be appointed.

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18. The liquidation of the Company would certainly qualify as complex and substantial. What then are the special circumstances that would take this situation out of the usual rule? The liquidators have brought up the following matters as special circumstances.

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19. Firstly, the affairs of the Company are murky. The master mind of the Keen Lloyd Group, Mr Chin Kam Chiu, and a director of the Company, Ms Tsang Siu Lan, were convicted in April this year of conspiracy to defraud by false letters of credit transactions to obtain facilities from the Sin Hua Bank Limited. The liquidators think it likely there may be misfeasance proceedings against these directors in due course.

20. Secondly, on the preliminary investigation of the liquidators, there would appear to be significant diversion or transfer of assets and properties of the Company to connected parties and companies before and even after the winding up of the Company. These transactions will have to be investigated by the liquidators.

21. Thirdly, there has been continued denial by the directors and other parties of the liquidators' access to the books and records of the Company, and no amended statement of affairs has been filed by any of the directors.

22. Fourthly, almost all of the creditors who have expressed willingness to serve on the committee, with the possible exception of Petroci, are involved in transactions that the liquidators will need to investigate into with a view to avoiding or reversing these transactions. They will likely find themselves in a direct confrontational position with the liquidators. A ready example is Messrs Alvan Liu and Partners, the firm of solicitors heavily involved in advising and acting for the Company in various litigation. The liquidators will conduct extensive review and investigation with these solicitors on the services and advice provided by them to the Company. Procedural safeguards to prohibit a party from

voting or participating in a matter affecting his interest would not be of much assistance in the present situation.

23. Fifthly, of the 10 creditors whose appointment is opposed by BOC and Petroci, it does seem most if not all of them are apparently closely connected to the Company or to the directors. I do not propose to recite the evidence. It is dealt with in the evidence of BOC and analysed by liquidators and supplemented by further materials in the liquidators' investigation. The liquidators believe that investigations would be carried out on such parties closely connected to the Company or its directors. The lines of inquiries to be pursued are set out in a schedule annexed to the liquidators' letter to the Official Receiver dated 10 June 2004.

24. Sixthly, although the liquidators are not adjudicating on the proofs of debt at this stage, they have expressed major doubts on the basis and validity of the claims of many of these creditors. Again, I do not propose to go into the evidence of BOC, the evidence in answer by the creditors concerned, and the preliminary analysis of the liquidators. The liquidators are of the view that of all the 12 creditors that have expressed willingness to serve on the committee, only the claims of Petroci and Messrs Alvan Liu and Partners would seem to be prima facie undisputable in liability and quantum.

25. For the above reasons, the liquidators do not perceive or believe their work would benefit from having a committee of inspection. Indeed, they are of view that if a committee is appointed, they would require to spend a substantial amount of time and costs in dealing with disputes, arguments and even litigation among the members of the



committee. In short, a committee might well hamper investigation and result in additional expense.

26. Mr Bernard Man who appeared for BOC submitted that the status of BOC as a creditor cannot be in doubt. The liquidators' query as to the quantum of the claim of BOC may or may not be justified, this is not something that I need to resolve at this stage. The fact remains that the liquidators have been and will be investigating BOC's claim as well as other transactions involving BOC, as the successor corporation of the Sin Hua Bank Limited. I have read the letter sent to BOC by the liquidators on 27 May 2004 requesting various information. There have been previous requests for information from the liquidators to BOC for several months. In another application in this liquidation that I dealt with in May 2004, leave has been given to BOC to bring proceedings against the Company to enforce its security over a number of properties. The liquidators may be involved in litigation with BOC if they should decide to challenge the validity of the security. I think I should defer to the liquidators' view in this instance. The liquidators may wish to consider their position again when their investigation with BOC is over, or the possibility of litigation concerning the enforcement of BOC's security is resolved. For the time being, it may be prudent not to appoint BOC to the committee of inspection. I do not think BOC would refuse to assist the liquidators with their investigation merely because it is not serving as a member of the committee.

27. Ms Lau submitted for the 8 creditors she represents that it is mere speculation they are related to or associated with the Company. I do not agree with this. Nor do I accept her submission that doubts about the basis and validity of the claims of these creditors are without basis. It is

not necessary to come to a view, for the purpose of this hearing, whether the claims of these creditors are demonstrably non-existent, as contended by BOC. I certainly do not think the evidence filed in answer by these creditors comes anywhere near to answering the doubts raised as to their claims. It is sufficient that their claims will be the subject of extensive investigations by the liquidators and that their appointment on the committee may hamper such investigations, apart from other transactions in which they were involved that the liquidators would need to investigate with them.

28. I am persuaded in this instance that the matters advanced by the liquidators are of considerable weight.

29. For the above reasons, I make the following orders. The order made on 13 November 2003 is varied in respect of paragraph (ii) thereof. I order that no committee of inspection is to be appointed for the time being, with liberty to the liquidators to seek directions under section 200(3) on the appointment and composition of a committee of inspection if and when the need should arise.

30. I make the following order as to costs:

- (1) the Official Receiver's costs of the application and the two hearings on 13 November 2003 and today are to be paid out of the assets of the Company;
- (2) the costs of the BOC and of Mr Alvan Liu of the hearings on 13 November 2003 and today are to be paid out of the assets of the Company; and

(3) the costs of Yicheng on 13 November 2003 are to be paid out of the assets of the Company.

31. I decline to order a certificate for two counsel for the costs of BOC at the first hearing, as I do not think the difficulty of the application is such to justify two counsel. I also decline to award costs of the 8 creditors for the adjourned hearing. The determination hearing was adjourned on the last occasion because of the late filing of evidence by Yicheng and the late indication of a large number of these creditors that they wish to serve on the committee of inspection. That necessitated an adjournment and directions for the existing evidence to be served on them with a further round of evidence to be filed. In the end, these creditors have not made out a case for their appointment to the committee of inspection, so for the above reasons I do not think they should have their costs for the adjourned determination hearing paid out of the Company's assets.

(S Kwan)  
Judge of the Court of First Instance  
High Court

Mr Bernard Man, instructed by Deacons, for the Petitioner

Ms P Mckenna, for the Official Receiver

Ms Lorinda Lau, instructed by C Y Chan & Co., for the following 8 creditors (1) Winbest Resources Ltd., (2) Zhejiang Yicheng Industry Co. Ltd., (3) Winko Motor Industries Ltd., (4) Hubei Changzhou Power Development Co. Ltd., (5) Winko Foundation Ltd., (6) Tanko Industrial Ltd., (7) Guangzhou City Min Lian Transportation Co. Ltd., (8) Guangdong Winko Investment Co. Ltd.

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Ms Yip Choi Kuen, acting in person

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Mr Alvan Liu, of Messrs Alvan Liu & Partners, acting in person

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