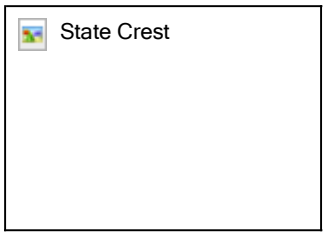

New South Wales Supreme Court

CITATION :	**ML Ubase Holdings Co Limited v Trigem Computer Inc. [2005] NSWSC 224**
HEARING DATE(S) :	17/03/05
JUDGMENT DATE :	17 March 2005
JURISDICTION :	Equity Division Commercial List
JUDGMENT OF :	Einstein J
DECISION :	Orders made including (1) grant of leave to enforce the Arbitral Award in same manner as a judgment of Supreme Court in the sum of US$10,745,292.57 plus interest accruing at the rate of 4.5 percent from 18 January, 2002 to the date of payment and (2) order that judgment be entered for the plaintiff in this sum plus interest so accruing.
CATCHWORDS :	Practice and Procedure - Service of process - Service out of jurisdiction - Application for leave to proceed before Supreme Court of New South Wales - Principles - Arbitral Award made in New York - UNCITRAL Arbitration Rules - Arbitral Award constituting "foreign award" pursuant to the International Arbitration Act 1974 (Cth) - Parties to Arbitral Award both parties to Convention on the Recognition and Enforcement of Foreign Arbitral Awards - Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea - No destructive tension between personal service effected on defendant under the Supreme Court Rules and service under Treaty - Treaty provisions held to be permissive
LEGISLATION CITED :	International Arbitration Act 1974 (Cth) Offshore Companies Act 1990 of Malaysia Supreme Court Act 1970 (NSW) Supreme Court Rules 1970 (NSW)
CASES CITED :	Agar v Hyde (2000) 201 CLR 552 Williams v Lips-Heerlen BV [1 November 1991, Giles J]
PARTIES :	ML Ubase Holdings Co Limited (Plaintiff)

	Trigem Computer Inc (Defendant)
FILE NUMBER(S) :	**SC** 50190/04
COUNSEL :	Mr P Silver (Plaintiff) No appearance (Defendant)
SOLICITORS :	Clayton Utz (Plaintiff) No appearance (Defendant)
LOWER COURT JURISDICTION :	

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION
COMMERCIAL LIST

Einstein J

Thursday 17 March 2005 ex tempore
Revised 18 March 2005

50190/04 ML Ubase Holdings Co Limited v Trigem Computer Inc.

JUDGMENT

The summons

1 There is before the Court a summons filed on 22 December 2004 by the plaintiff, ML Ubase Holdings Co Ltd, described in the summons as "a company organised and existing under the Offshore Companies Act 1990 of Malaysia having its registered office at Lot H, Level 7, Wisma Oceanic, Jalan OKK Awang Besar, 87007 Labuan F.T., Labuan, Malaysia".

2 The summons seeks the following relief:

· leave to enforce in the same manner as a judgment of this Court the Arbitral Award made in New York, United States of America on 31 August 2004 in the arbitration between ML Ubase Holdings Co. Ltd. as Claimant, and TriGem Computer Inc. as Respondent, by the Arbitral Tribunal composed of Chairman Gerald Askin, Esq. and arbitrators Richard W. Hulbert, Esq. and the Honourable George C. Pratt ("Award") in the sum of:

US$10,745,292.57 plus interest accruing at the rate of 4.5 percent from 18 January 2002 to the date of payment.

· an order that judgment be entered for the plaintiff in the sum of:

US$10,745,292.57 plus interest accruing at the rate of 4.5 percent from 18 January 2002 to the date of payment.

· costs.

The background

3 The summons makes the following claims:

· that the parties are overseas corporations, the defendant having its registered office in Korea (Summons A 1 and 2);

· that the parties concluded a Subscription Agreement and an Amended and Restated Shareholders Agreement ("the Agreements") which provided for disputes to be resolved by arbitration in Hong Kong (Summons A 3 and 5);

· that the plaintiff initiated arbitration proceedings against the defendant (A 9);

· that the parties agreed to change the location of the arbitration hearings from Hong Kong to New York (A 10);

· that the parties participated in and were represented at the arbitration (A 13);

· that the arbitral tribunal made the Award in favour of the plaintiff against the defendant which was published to the parties (A 14, 17);

· that the defendant has failed to make payment of the Award (A 18).

Leave Required under Part 10 Rule 2 - the proper approach to applications for leave to proceed

4 In the absence of an appearance by the defendant, leave is required in terms of Part 10 Rule 2 of the Supreme Court Rules.

5 Leave will be granted if:

· service is proved;

· the requirements of the relevant Supreme Court Rules are satisfied.

6 The proper approach to applications for leave to proceed received close consideration in *Agar v Hyde* (2000) 201 CLR 552. That decision in particular drew a distinction between the situations:

· where an application for leave to proceed is made without notice to a defendant, in which event the holding (at [53]) was that there will be no occasion to consider any question about the strength of the plaintiff's claim;

· situations where the application for leave to proceed is opposed, and is joined with an application by parties served outside Australia to set aside or to have the Court decline to exercise its jurisdiction - in which circumstance other considerations arise [which may well include inter alia contentions that the claims made are not claims of a kind which are described in Part 10 Rule 1A, that the Court is an inappropriate forum for the trial of the proceedings and that claims made have insufficient prospects of success to warrant putting an overseas defendant to the time, expense and trouble of defending the claims] (at[55]).

7 The decision in *Agar* covers in careful detail the proper approach to applications for orders giving leave to proceed against defendants served outside Australia. For relevant purposes the joint judgment of Gaudron, McHugh, Gummow and Hayne JJ establishes the following:

· if a defendant served outside Australia has not entered an appearance, an applicant for leave to proceed must demonstrate that one or more of the cases set out in Part 10 Rule 1A applies (Judgment para 48)

· it is sufficient for the plaintiff to demonstrate that it falls within one of the relevant sub rules of Part 10 Rule 1A by making reference to *the allegations in the summons*

· it is not necessary to demonstrate that those allegations will be made good at trial

· once a claim is seen to be of the requisite kind, the proceeding falls within the relevant subparagraph, and service outside Australia is permitted, and prima facie the plaintiff should have leave to proceed (Judgment para 51).

8 If service was authorised by the rules, and has been properly effected, the Court s authority to determine issues that are raised by the proceeding has been regularly invoked. If the Court is *not* persuaded that it is an inappropriate forum for trial of the proceedings, it will have reached that conclusion having given due weight to the considerations of comity and restraint. Only then do the prospects of success of the claim made in the originating process served outside of Australia fall for consideration: cf paragraph 5 of the judgment.

9 The plaintiff has referred to the fact that the "*comity and restraint*" referred to above is discussed at paragraphs 42 43 of the judgment in *Agar*. I accept that the majority of the Court appear to have sought to downplay the contemporary significance of these limiting factors where rules of Court providing for service outside the jurisdiction are commonplace, and where communications and transport make the degree of "*inconvenience and annoyance*" to which a foreign defendant would be put, if brought to the Court, "*of a qualitatively different order to that which existed in 1885*".

10 The majority judgment commented that considerations of comity and restraint will often be of the greatest relevance in considering questions of forum non conveniens, but that the starting point must be the terms of the rules of Court, not general considerations of comity and restraint.

11 I accept as correct the proposition put by the plaintiff to the effect that in the present case issues of comity and restraint and the question of the appropriate forum are simply not relevant issues when the plaintiff has a statutory right to proceed in this jurisdiction by virtue of the *International Arbitration Act* 1974 (Cth) ("the Act").

12 It is convenient to further note that in *Williams v Lips–Heerlen BV*, 1 November 1991, Giles J had occasion to closely examine the material provisions of the Supreme Court Rules. Aside from the careful attention to what amounted to proper compliance with many of the rules and sub rules, Giles J dealt with the contention that non compliance with Dutch law had the effect of rendering the service in that case a nullity. The holding was that the validity of the service was to be judged by compliance with the Supreme Court Act and Rules. By no process of reading them with regard to international comity or the respect which one State has for the sovereignty of another could there be written into the rules there examined a requirement that service in accordance with the rules also comply with the law of the country of service. As his Honour observed at 20 the rules themselves in Part 10 rule 1 (1) provide for service outside of Australia in accordance with law of the country in which service is effected as an alternative to personal service, it being impossible to treat the alternative as a constant requirement. However, *Williams* is to be read in the light of the High Court of Australia decision in *Agar v Hyde* should

there be an inconsistency of approach.

13 At this point it is also relevant to refer to the manner in which Giles J in *Williams* dealt with the fact that service pursuant to the particular convention there under consideration would have required service of a translation of the summons and of the notice given pursuant to Part 10 rule 2A. The matter provides some, but only tangential, relevance presently. His Honour (at 8-10) put the matter as follows:

> "Pursuant to Pt10 r4, subject to the Part and to any 'convention', the Rules apply to service outside New South Wales under Pt10 as they apply to service inside New South Wales. By Pt9 r2, originating process must be served personally, and what is meant by personal service of a document on a corporation is explained in Pt9 r3(2). Although the only evidence was that the defendant 'received' the documents I have mentioned, failure to serve the summons personally within the meaning of the Rules was not alleged and I take it that the documents were received by an officer of the defendant of the kind mentioned in Pt9 r3(2) in the manner described in Pt9 r3(1).
>
> The defendant s submissions addressed the qualification concerning a 'convention', not by saying. The defendant s submissions addressed the qualification concerning a 'convention', not by saying that the qualification applied to render the purported service ineffective but as a matter going to discretion. It is convenient to note what it said at this stage.
>
> The definitions in Pt1 r8(1) include that 'convention' means a convention regarding legal proceedings in civil and commercial matters, and Pt10 r7-r13 apply to the service of a document for the purpose of proceedings in the court 'in a convention country pursuant to a convention'. By Pt10 r8 a person requiring a document to be served in another country 'may' lodge the document and various other documents and request that a sealed copy of the document to be served be transmitted to the country concerned for service. Subsequent rules provide for the Prothonotary to seal the documents lodged and send them to the secretary of the Attorney-General s Department for transmission for service, and the documents are then served through official channels. Unless English is an official language of the country concerned, a translation of the document to be served must be lodged and will be transmitted for service. On 8 April 1935 Australia acceded to the convention between Great Britain and Northern Ireland and the Netherlands regarding legal proceedings in civil and commercial matters signed at London on 31 May 1932, and the procedure in these rules is in accordance with that set out in article 3 of that convention. However, article 4 of the convention expressly preserves the use of any mode of service recognised by the law existing at the time of service in the country from which the documents emanate, and the rules to which I have referred seem to reflect this. They apply only where the service is 'pursuant to a convention', and Pt10 r8 uses the word 'may' rather than 'shall'. The defendant conceded that it was open to the plaintiffs to serve the summons otherwise than pursuant to the convention, and the plaintiffs did not purport to serve the summons pursuant to the -

> convention. I proceed on the basis of that concession.
>
> The matter was raised because service pursuant to the convention would have required service of a translation of the summons and the notice pursuant to Pt10 r2A. While conceding that, in the events that happened, the plaintiffs were not obliged to serve a translation of those documents, the defendant said that the convention, and the rules relating to service pursuant to a convention, recognise the importance to international comity of service of translations of originating process and other documents where the language of the country of the person served is not that of the documents. It may be thought curious that in the absence of a convention, or even where there is a convention, a foreign defendant in a non English speaking country may be served with originating process or other documents unaccompanied by a translation."

14 It is next necessary to travel through a number of matters of detail. In that regard it is convenient to commence by reciting the materials presently before the Court. They were as follows: Summons filed 22 December 2004 affidavit by Sibylle Krieger made on 22 December 2004 affidavit made by Alexander Kent Anton Greenawalt on 1 December 2004 affidavit made by Douglas Lee on 17 December 2004 affidavit made by Douglas Lee on 11 January 2005 a copy of two affidavits made by Douglas Lee on 15 March 2005 affidavit by Alexander Kent Anton Greenawalt made on 7 March 2005 affidavit by Mira Kim made on 1 March 2005 and exhibit MK1 to the affidavit of Ms Kim sworn on 1 March 2005. There are a large number of annexures or other exhibits to these affidavits. They are before the Court in the form of the material in the court file and to an extent are supplemented by the documents appearing at tabs 1 to 9 inclusive in the tender bundle volumes 1 and 2 prepared by Clayton Utz, the plaintiff s solicitors. The convenient course is for the Court to mark tabs 1 to 9 of tender bundles volume 1 and 2 as exhibits 1 and 2 in the proceedings.

15 Returning, albeit it briefly, to the circumstance that the two affidavits by Mr Lee of 15 March 2005, which are before the Court, are presently only copies, the Court has been informed that arrangements have been made for the originals of those affidavits to be brought to Sydney today and that the originals will be sought to be filed in Court later today. I will return to that matter, but for present purposes it is convenient to proceed upon the assumption that the plaintiff s application is contingent upon regularising the position by the filing of those original affidavits before orders will be made of the type presently sought.

Compliance with Part 10 Rule 2A

1 The notice required by Part 10 Rule 2A is incorporated into the summons.

No appearance

17 No appearance has been filed by the defendant, Trigem Computer Inc. The defendant has its registered office in Korea (paragraph 2, affidavit of Douglas Lee sworn 11 January 2004, and paragraphs 5 7 of the affidavit of Douglas Lee sworn 15 March 2005).

18 The defendant did not appear when the matter was called on the return day set by the summons namely 25 February 2005. The orders made on 25 February were:

> “1. The matter be set down for hearing on Thursday, 17 March 2005.

> 2. The plaintiff file and serve on the defendant any additional evidence and written submissions by Monday, 14 March 2005;
>
> 3. The plaintiff serve these short minutes of order on the defendant on or before 5 pm on Monday, 14 March 2005."

19 The defendant did not appear today.

Service

20 I am satisfied that service overseas was permitted under Part 10 rule 1A(u)(iii) as it permits such service "*where the proceedings are for orders necessary or convenient for carrying into effect in the State the whole or any part of an arbitral Award wherever made*".

21 Service of an originating process on a foreign defendant resident outside Australia is governed by Divisions 1 and 2 of Part 10 of the Supreme Court Rules, and, in this case may also be facilitated in terms of the *Treaty on Judicial Assistance in Civil and Commercial Matters between Australia and the Republic of Korea* ("the Treaty"). The Treaty is referred to below.

22 In relation to Division 1:

· Part 10 rule 4 provides that:

> "Subject to this Part and subject to any convention, the rules apply to service outside the State under this Part as they apply to service inside the State";

· Part 9 rule 2(1) requires personal service of an originating process;

· Part 9 rule 3(2) provides that personal service on a corporation may be effected by serving the document on the president of the corporation, or on the secretary, treasurer or other similar officer of the corporation.

23 Division 2:

· applies to service in a country with whom Australia has entered a convention;

· is clearly permissive and not mandatory – see the use of the word "*may*" in Part 10 rule 8: cf *Williams v Lips-Heerlen* at 9.

24 I accept as correct the submission that because service under Division 2 is permissive and not mandatory, a party can elect to serve under the usual rules of service under Division 1, or pursuant to the procedures set out in Division 2.

The evidence before the Court

25 It is unnecessary to exhaustively detail the documentary evidence before the Court. Suffice it to say that the evidence before the Court establishes that:

· Service was effected on the president of the defendant at its registered place of business pursuant to Part 9 rule 3(2) [cf affidavits of Douglas Lee each made on 15 March 2005].

· Service was effected on 11 February 2005, which effectively gave 34 days for the defendant to appear by today's date.

The Treaty

2 A close examination of the Treaty satisfies me that there is no destructive tension between the personal service effected on the defendant under the rules and service under the Treaty.

27 The material provisions of the Treaty are as follows:

> "AUSTRALIA AND THE REPUBLIC OF KOREA (hereinafter referred to as "the Contracting Parties")
> REALI ING the advantages of promoting judicial assistance in civil and commercial matters in further strengthening the friendship between the Contracting Parties and serving the ideal of timely and fair trials
> DESIRING to provide more efficient judicial assistance in civil and commercial matters on the basis of respect for sovereignty, and each other s legal system, and common understanding of the importance of recent technological developments
> HA E AGREED as follows:
>
> CHAPTER I
> GENERAL PRO ISIONS
> Article 1
> Scope of the treaty
> The Contracting Parties shall afford each other, in accordance with the provisions of this treaty, judicial assistance with regard to service of judicial documents, taking of evidence and exchange of legal information in civil and commercial matters.
> Article 2
> Channels of judicial assistance
> 1. Requests for judicial assistance under this treaty shall be addressed to the Central Authority of the requested Contracting Party.
> 2. The Central Authority for the Republic of Korea is the Ministry of Court Administration, and the Central Authority for Australia is the Attorney General s Department of the Government of Australia.
> 3. A Contracting Party may, by written notice to the other Contracting Party, designate additional Central Authorities and determine the extent of their competence.
> 4. E ach Contracting Party shall promptly inform the other Contracting Party of any change in its Central Authority or Central Authorities.
> Article 3
> Translations
> 1. The Letter of Request and the accompanying documents shall be drawn up in the language of the requesting Contracting Party and translated into the official language of the requested Contracting Party.
> 2. Such translation shall be certified as correct in accordance with the law and practice of the requesting Contracting Party. No legalization or other equivalent formality shall be required.
> 3. The reply to the Letter of Request including the Certificate of Execution may be drawn up in the official

language of the requested Contracting Party and need not be translated into the official language of the requesting Contracting Party .

Article 5

Correspondence

1. The Central Authority of the requested Contracting Party may, in order to prevent the request from being refused to be executed due to minor inaccuracy or insufficiency of information, inquire as to the accuracy of the information provided in the Letter of Request or as the Central Authority of the requesting Contracting Party for additional information.

2. The Central Authority of the requesting Contracting Party may as the Central Authority of the requested Contracting Party for information on progress in executing the Letter of Request .

Article 7

Service

hen judicial documents drawn up in the territory of one Contracting Party are required to be served in the territory of the other Contracting Party, such documents may be served on the addressee in the manner provided in Articles 8 or 13.

Article 8

Letter of Request

1. A Central Authority of the Contracting Party from which the documents originate may forward the Letter of Request for service of judicial documents to a Central Authority of the other Contracting Party.

2. The documents to be served or a copy thereof shall be attached to the Letter of Request.

Article 9

Particulars of the Letter of Request

The Letter of Request shall include the following particulars:

(a) the title, address and other contact details of the requesting court including telephone number, facsimile number and e-mail address if any;

(b) the nature of the proceedings, and where appropriate, the amount in dispute;

(c) the names and addresses of the parties to the proceedings and their representatives, if any;

(d) the name, address and other contact details of the addressee to whom service is to be made including telephone number, facsimile number, and e-mail address, if any;

(e) such information as may be necessary concerning the nature of the documents to be served and any requirement or specific form to be used;

(f) an underta ing for payment of fees and expenses

incurred on the occasions specified in Article 4
(g) such information as may be necessary concerning any special method or procedure of service to be followed when executing the Letter of Request.

Article 10
Prompt notice of objection
1. If the Central Authority of the requested Contracting Party considers that the request does not comply with the provisions of this treaty, it shall promptly inform the Central Authority of the requesting Contracting Party and specify its objections to the request.
2. However, if the request, with corrected or supplemented information provided by the requesting Contracting Party under Article 5, Paragraph 1, complies with the provisions of this treaty, the Central Authority of the requested Contracting Party shall arrange to execute it .

28 There is no provision in the Treaty which requires that judicial documents or process drawn up in the territory of one contracting party must be served in the territory of the other contracting party by the mode stipulated for in the Treaty. In short the treaty provisions are permissive rather than mandatory.

29 The Treaty is designed to provide "*judicial assistance*" rather than a compulsory method of service (see the introductory recital and Articles 1, 2 and 7).

30 A party has a choice whether to take advantage of the mechanisms designed to facilitate service in Korea provided by the Treaty.

31 Were it relevant, which it is not, it appears that the law governing service in Korea is set out in S R Grubbs (ed) *International Civil Procedure* (Kluwer Law International, The Hague: 2003) at page 398 marked as MFI P1 before this Court . The methods of service include service by registered or ordinary mail, posting by notice on the court s bulletin board and personal service by a court officer at the defendant s place of business.

32 Personal service is the most effective method of service insofar as ensuring the defendant has proper notice of the proceedings.

33 I accept that there is nothing to indicate that personal service on the president of a corporation involved in international business and which was an active party to arbitration proceedings is contrary to Korean public policy or prejudicial to its sovereignty or security.

Part 10 Rule 1A (u) (iii)

34 As has already been pointed out, the allegations in the summons if correct mean that the plaintiff s cause of action falls squarely within Part 10 rule 1A(u)(iii).

The relief sought in the summons

35 The plaintiff relies upon the provisions of the Act, which allow for the enforcement of foreign arbitral awards if the following requirements are met:

· there is a written arbitral award

· each party to the arbitral award is a party to the Convention on the Recognition and nforcement of Foreign Arbitral Awards ("the Convention") ;

· the arbitral award was handed down outside Australia;

(sections 8 (1), 8(2) read together with the definition section 3, and Articles I.2 and II.1 of the Schedule 1 of the Act).

36 Section 9 (1) of the Act requires production of an authenticated or certified copy of the arbitral award and arbitration agreement under which the award was made.

37 Section 9(2) provides that a copy of the award and agreement shall be deemed to have been duly certified if they have been authenticated or certified to the satisfaction of the Court.

38 The evidence establishes that there is a written agreement to arbitrate:

· See the affidavits of:

i. Douglas Lee ("Lee") sworn on 17 December 2004 ("Lee's December Affidavit");
ii. Mr Greenawalt sworn on 16 December 2004;
iii. Mr Greenawalt sworn on 7 March 2005 ("Greenawalt's March Affidavit");

· As appears from Mr Lee's December affidavit, he is an attorney of the firm who acted for the plaintiff in respect of the agreements which gave rise to the arbitration proceedings to which the current proceedings relate. The agreements are exhibits "DL1" and "DL2" to Mr Lee's December affidavit. The arbitration agreement is contained in clause 6.4 of exhibit "DL1" and clause 7.5 of exhibit "DL2" at page 47;

· Mr Lee was present at the closing of the agreements and initialed each page of the executed original agreements. Mr Lee swears that the exhibited agreements are true copies of the originals. Further, the agreements in which the arbitration agreement is found and the clauses of those agreements containing the arbitration agreement are referred to in the award (pages 2 – 11 of the award);

· the parties, by letters, varied the arbitration agreement by changing the location of the hearings from Hong Kong to New York and by waiving certain procedural time limits (see paragraphs 10 and 11 of the summons, and page 3 paragraph 3 of the award). Mr Greenawalt, an attorney of the law firm which acted for the plaintiff and who assisted in the arbitration (paragraphs 1 and 2 of his December affidavit), authenticates the letters (see paragraph 4 of Mr Greenawalt's March affidavit and exhibits "AKAG–2", "AKAG–3" and "AKAG-4").

39 The evidence further establishes that each party to the arbitral award is a party to the Convention:

· proof that the parties are parties to the Convention is facilitated by section 10 of the Act, in terms of which:

i. a certificate of the Secretary to the Department of Foreign Affairs stating that a country specified in the certificate is, or was at a time so specified, a Convention country is, upon mere production, prima facie

> evidence of that fact (section 10(1) of the Act);
>
> ii. a copy of the Gazette containing a Proclamation fixing a date under subsection 2(2) is, upon mere production, receivable as prima facie evidence of: the fact that Australia has acceded to the Convention, and the fact that the Convention entered into force for Australia on or before the date so fixed;

· the affidavit of Sibylle Krieger sworn 22 December 2004 attaches as "A" and "B" the Proclamation and Certificate envisaged by the Act;

· it is noted that in terms of the arbitration agreement, the arbitration proceedings and award rendered in the arbitration was governed by the Convention (clause 6.4 (e) of exhibit "DL1" and clause 7.5 (f) of exhibit "DL2");

· that the Award was handed down outside Australia is evident from page 26 of the Award where it is stated that the Award was made in New York.

The Award

40 It is to be noted that the tribunal, in rendering its final award, ordered as follows:

> "1. Respondents Trigem Computer, Inc., Hong Soon Lee and Dae Yong Park shall pay to Claimant ML Ubase Holdings Co., Ltd., within thirty (30) days from the date of receipt of this Final Award, the sum of Ten Million Seven Hundred Forty-Five Thousand Two Hundred Ninety-Two United States Dollars and Fifty-Seven-Cents (U.S. $10, 745,292.57), plus interest accruing at the rate of 4.5 percent from January 18, 2002 to date of payment.
>
> 2. Simultaneously with the payment prescribed in paragraph 1 above, Claimant ML Ubase Holdings Co., Ltd. shall deliver to Respondents Trigem Computer, Inc., Hong Soon Lee and Dae Yong Park certificates representing the five million Ordinary Shares of Ubase, Inc. that Claimant holds."

41 For those reasons I am satisfied that the plaintiff is entitled to a grant of leave to enforce the award in Australia.

42 It should be noted that the orders sought in paragraph 2(i) of the summons are derived from section VI paragraph 1 of the award.

43 It is, as the plaintiff has conceded, appropriate for the orders to include not only the orders sought in paragraphs 1 and 2 of the summons but also an order that simultaneously with the payment the plaintiff deliver to the defendant certificates representing the 5 million ordinary shares of Ubase Inc. that the plaintiff holds.

44 For all of those reasons, subject only to the provision of the originals of the two affidavits of Mr Lee of 15 March 2005 to my associate in chambers as soon as they become available, the orders to be made are those set out in the document entitled Orders, which has been furnished to the Court on the application [MFI P2] and those orders are to be entered forthwith.

I certify that paragraphs 1 - 44
are a true copy of the reasons
for judgment herein of
the on. ustice instein
given on 17 March 2005 ex tempore
and revised 18 March 2005

Susan Piggott
Associate

18 March 2005

Last Modified: 03/23/2005