



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION  
IN THE MATTER OF THE ESTATE OF ISRAEL IGO PERRY DECEASED  
CAUSE NO. FSD 205 of 2017 (NSJ)**

**BETWEEN:**

**(1) LEA LILLY PERRY  
(2) TAMAR PERRY**

**Plaintiffs**

**and**

**(1) LOPAG TRUST REG.  
(2) PRIVATE EQUITY SERVICES (CURACAO) NV  
(3) FIDUCIANA VERWALTUNGSANSTALT  
(4) GAL GREENSPOON  
(5) YAEL PERRY  
(6) DAN GREENSPOON (7) RON GREENSPOON (8) MIA GREENSPOON  
(CHILDREN, BY HAGAI GREENSPOON, THEIR GUARDIAN AD LITUM)  
(9) ADMINTRUST VERWALTUNGSANSTALT**

**Defendants**

**AND**

**(1) ANDREW CHILDE  
(2) CHRISTOPHER ROWLAND**

**Third Parties**

**ON THE PAPERS**

**JUDGMENT ON CHALLENGED REDACTIONS**

**Introduction**

1. In her Notice of Motion (the *Notice of Motion*) of 23 March 2022 the Fifth Defendant claims, inter alia, that the First and Ninth Defendants (the *Trustees*) breached the terms of a proprietary injunction dated 17 October 2017 (as subsequently varied) (the *Injunction*) by entering into a litigation funding agreement dated 18 June 2022 (the *LFA*). In her summons of 22 April 2022 (the *Summons*) the Fifth Defendant sought, inter alia, an order that the Trustees produce the LFA for inspection.

2. Following a judgment of 31 May 2022 (the **Judgment**) and ruling of 8 July 2022 (the **Ruling**), the Court made an order dated 8 July 2022 (the **Order**). By paragraph 2 of the Order the Trustees were ordered to produce those parts (together the **Relevant Terms**) of the LFA and any deed of variation thereof (the **Deed**):
  - (a) that required or permitted the Trustees to have (or give the funder) recourse to (or which gave the Trustees or the funder rights over) assets of the Ypresto Trust for the payment of sums due under the LFA (and the terms which condition and regulate those rights of recourse or rights over the Ypresto Trust assets) including not only the main operative provisions but related and relevant definitions and terms.
  - (b) on which the Trustees rely in support of their case that the Trustees and the funders do not have and cannot exercise rights of recourse to those assets until after the Injunction has been discharged.
3. Paragraph 3 of the Order permitted the Trustees to redact any clauses or provisions within the LFA that (a) were irrelevant to and unconnected with the Relevant Terms, (b) were subject to privilege or (c) contained commercially sensitive information (the **Redaction Criteria**), subject to a proviso that the redactions made should not affect the ability of the Court and the Fifth Defendant to understand and interpret the nature and extent of the rights of recourse to and rights over the Ypresto Trust assets (the **Redaction Proviso**).
4. Paragraph 5 of the Order directed the Trustees to provide by 11 July 2022 an affidavit explaining why they contended that their proposed redactions were justified being as specific as possible without making disclosure of matters that the claim for privilege or commercial sensitivity was designed to protect (the **Specificity Requirement**).
5. On 11 July 2022 the Trustees served on the Fifth Defendant and the Plaintiffs an affidavit made by Ms Natasha Partos of Campbells, the Trustees' attorneys (**Partos 12**). The exhibit to Partos 12 contained a redacted copy of the LFA (the **Redacted LFA**) and a redacted copy of the Deed (the **Redacted Deed**). The Trustees provided explanations for their redactions at [6] of Partos 12 (“Redactions for commercial sensitivity are as the clause is commercially sensitive in the context of this litigation”) and in a table at Annex A to Partos 12 (**Annex A**).



6. On 15 July 2022 the Fifth Defendant’s attorneys, Priestleys, notified the Trustees’ attorneys (pursuant to paragraph 6 of the Order) that she challenged some of the Trustees’ redactions. Priestleys’ letter enclosed a list (the **List**) of the redactions challenged by the Fifth Defendant (the **Challenged Redactions**).
7. On 22 July 2022 the Trustees provided, by way of a letter from Campbells to Priestleys of that date (the **Campbells Letter**) “*additional information in respect of each of the Challenged Redactions*” (**Additional Information**). Campbells noted that their clients did not accept that the information and evidence previously provided regarding the redactions was in any way inadequate and that they were “*merely providing what we hope is useful further information solely in an attempt to avoid you raising non-issues regarding the redactions before the Court.*”
8. On 25 July 2022, the Fifth Defendant and the Trustees filed written submissions. On 28 July, the Fifth Defendant filed further written submissions dealing with and responding to the Trustees’ submissions. On 3 August 2022, the Trustees filed further submissions to respond, they said, to new arguments made in the Fifth Defendant’s further submissions as to the basis on which the Fifth Defendant had made the Challenged Redactions (pursuant to a reservation of their right to do so in their first set of submissions).
9. The Fifth Defendant submits that the Challenged Redactions were not permitted by or made in accordance with the Redaction Criteria, the Redaction Proviso, or the Specificity Requirement and that given the extensive nature of the Trustees’ redactions, it was necessary for the Court to and the Court should exercise its power to see an unredacted copy of the LFA and Deed so that it was able fairly and properly to determine the dispute concerning the redactions and decide whether the Challenged Redactions should be permitted.
10. I have carefully reviewed all the parties’ submissions and the evidence filed and concluded that the redactions to the LFA and the Deed have been properly made in accordance with the Order and that, subject to the Trustees filing the required further evidence, there is no need or justification for the Court to inspect the unredacted LFA and the unredacted Deed or to order that further clauses or wording be disclosed. That further evidence is a further affidavit putting on oath and in evidence the explanations and confirmations given by the Trustees in the annex to the Campbells Letter and an affidavit correcting the passage in Mr Boehler’s Sixth Affidavit which, as I understand it, the Trustees now disclaim and say is incorrect.

I have also concluded that the Trustees should provide a further brief explanation, in this further evidence, as to whether any security or other proprietary interest has been granted to the Fund over the assets of the Citizen Trust which are subject to the pledge held by the trustees of the Ypresto Trust and if it has been, whether it ranks prior to, *pari passu* with or after the Ypresto trustees' pledge.

### **The redacted LFA and the Redacted Deed**

11. The LFA contains 34 clauses, 9 schedules and two appendices. Much of the text of the LFA has been redacted although all the clause headings have been disclosed. The Trustees together with the BGO Foundation are parties (and together defined as the *Claimants*, with the funder, defined as the *Fund*). I set out in Appendix 1 to this judgment, the core terms of the Redacted LFA, with the parties and recitals and some other irrelevant text omitted. I set out in Appendix 2, the core terms of the Redacted Deed.
12. In Partos 12, Ms Partos stated that the redactions had been made in accordance with paragraph 3 of the Order and in each case were justified since the relevant clause or words that had been redacted was either (a) irrelevant; (b) commercially sensitive or subject to privilege. Commercial sensitivity in this context meant sensitive in the context of these proceedings. Furthermore, the agreements “as a whole” were “*both commercially sensitive and confidential.*” Ms Partos confirmed that the Trustee's Leading Counsel (Mr McPherson QC) had reviewed the LFA and the Deed of Variation and “*confirms that he is satisfied that the redactions comply with the terms of the Order and that the redacted agreements exhibited to this affidavit identify the Relevant Terms.*”
13. Ms Partos noted that to assist the Fifth Defendant the titles used to identify (in general terms) the clauses in the agreements had not been redacted. She also set out in Annex A to Partos 12 a table which provided a brief explanation of the reason why each redaction had been made. Annex A is set out below.



Clause	Heading	Reason
<b>Litigation Financing Agreement</b>		
	Identity of Funder (title page and page 1 of the LFA)	The identity of the Funder is both commercially sensitive and irrelevant.
1	Definitions and Interpretation	The approach taken is that if a defined term is used within the unredacted clauses of this agreement, then the relevant part of the definition is retained. Otherwise, the definitions have been redacted as they are irrelevant and commercially sensitive.
3	Warranties and Representations	The warranties and representations made by the parties when entering into this agreement are irrelevant. Some are also commercially sensitive.
4	Conditions Precedent	The conditions precedent which needed to be satisfied before the parties entered into this agreement are irrelevant. Some are also commercially sensitive.
5	Financing	Clause 5.1 sets out the main purpose of the agreement, namely, to provide litigation funding. The remainder of the clause deals with the use of funds and the mechanics of payment which are both commercially sensitive and irrelevant.
6	Adverse Costs and Security for Costs	The provisions regarding adverse costs and security for costs are irrelevant.
7	Undertakings	The undertakings given by the Trustees are irrelevant. Some are also commercially sensitive.
8	Confidentiality	The confidentiality provisions are irrelevant.
9	Privileged Information	This clause deals with privileged material including the extent of any waiver. It is irrelevant.
10	Claimant to have Sole Conduct of the Proceedings	This clause confirms that the Trustee retains control of the Proceedings. It is irrelevant.
11	Indemnification	The existence of the indemnity given by the Trustees to the Fund is (arguably) relevant on Yael Perry's case. The terms of any such indemnity are irrelevant.
12	Limitation of Fund's Liability	The fact that the Fund's liability is limited by clause 5 of the LFA is potentially relevant. The remaining
		clauses which seek to limit the liability of the Fund are not.
15	Appeals	This clause deals with the funding of any appeal. It is irrelevant.

17	Termination	<p>Clause 17.1 sets out the circumstances in which the Fund can terminate the LFA. The existence of the termination right is potentially relevant. The circumstances in which it can be exercised is both irrelevant and potentially commercially sensitive.</p> <p>Clause 17.2 deals with the mechanics following service of a Termination Notice. It is irrelevant.</p> <p>Clause 17.3.2 deals with information rights. It is irrelevant.</p> <p>Clause 17.5 deals with the survival of clauses following termination. It is irrelevant.</p>
18	Place and Account for Payments	This clause deals with payment mechanics. It is both irrelevant and commercially sensitive.
19	Interest on Late Payment	The interest provisions are both commercially sensitive and irrelevant.
20	Independent Assessment	This clause contains specific provisions dealing with a dispute between the Trustees and Funder regarding settlement or termination. It is both commercially sensitive and irrelevant.
21	Governing Law and Arbitration	<p>The governing law of the Agreement is relevant.</p> <p>The remainder of the dispute resolution and arbitration provisions are commercially sensitive and irrelevant.</p>
22	Tax Matters	The tax provisions are commercially sensitive and irrelevant.
23	Costs of This Agreement	The provisions dealing with the costs of agreement are irrelevant.
24	Communications and Notices	The provisions regarding giving notice are irrelevant.
26	Assignment	The fact that the Agreement binds the parties' successors, assigns and legal relevant is relevant. The remainder of this clause is not.
27	Claimants' Liability	Clause 27.1 is relevant. The remaining clauses which deal with the Claimants' liability are not.
28	Amendment and Waiver	The final part of this clause is irrelevant.
29	Severability	The wording of the severability clause is irrelevant.
31	Third Party Rights	The wording of this standard clause is irrelevant.
32	Counterparts	This standard clause is irrelevant.
33	Assignment of Potential Causes of Action to the Fund	The terms upon which there may be an assignment of causes of actions to the Fund is both commercially sensitive and irrelevant.
34	Explanation of the Agreement	This is irrelevant.

	Signature page	This has been removed as the identities of the signatories is irrelevant.
Schedule 1	Particulars	<p>The contact details of the Trustees are irrelevant.</p> <p>The identity of the Funder is commercially sensitive and irrelevant.</p> <p>The identities of the Trustees' External Counsel are irrelevant and commercially sensitive.</p> <p>Parts of the Financing Clause are relevant (as the definitions feed through into the Resolution Amount). However, the specific costs which may be funded are both commercially sensitive and irrelevant.</p> <p>The amount of any funding and the mechanism of payment (advancement) is commercially sensitive, irrelevant and potentially privileged.</p> <p>The proceedings which may potentially be funded is commercially sensitive, irrelevant and potentially privileged.</p>
Schedule 2	Resolution Amount	The fact that the Resolution Amount consists of repayment of sums advanced (Transaction Costs and Funded Amount) plus a return is relevant. How the return is calculated is commercially sensitive, irrelevant and potentially privileged.
Schedule 3	REDACTED	This schedule sets out the terms of a separate agreement which is of no relevance (and is commercially sensitive).
Schedule 4	Irrevocable Instructions	The terms of the Irrevocable Instructions are commercially sensitive, irrelevant and privileged.
Schedule 5	Assets <ul style="list-style-type: none"> <li>- Excluded Assets</li> <li>- Target Assets</li> <li>- Special Assets</li> </ul>	The specific assets which are Excluded, Target or Special are irrelevant and commercially sensitive, save that it is relevant that it is relevant that the Ypresto Assets are Special Assets.
Schedule 7	Security	The security obtained by the Trust is irrelevant (as no security is given over Ypresto assets).
Schedule 8	Potential Tax Liabilities	The Potential Tax Liabilities are commercially sensitive, irrelevant, and privileged.
Schedule 9	Proceedings	<p>The list of proceedings which could be funded is irrelevant commercially sensitive and privileged.</p> <p>For the avoidance of doubt, the Trustees confirm that the list of proceedings is not limited to the Cayman Proceedings and so it is possible for there to be "Success" without there being success in the Cayman Proceedings.</p>



Appendix 1	Engagement Letters	The terms of the Engagement Letters are commercially sensitive, irrelevant, and privileged.
Appendix 2	Budget for Claimant Costs	The Budget for the Trustees' costs is commercially sensitive, irrelevant, and privileged.
<b>Deed of Variation</b>		
Title page and page 1	Identity of Funder	The identity of the Funder is both commercially sensitive and irrelevant.
	Recitals	The Recitals that have been redacted are commercially sensitive and irrelevant.
1	Definitions and Interpretation	The approach taken is that if a defined term is used within the unredacted clauses of this agreement, then that definition is retained. Otherwise, the definitions have been redacted as they are irrelevant.
2	Cato and Global PTC	The clauses that deal with Cato and Global PTC (other Trustees) are irrelevant.
3	Financing	The redacted part of this clause sets out the changes to the amount of funding, budget and the amount of funding provided to date. This is commercially sensitive, irrelevant and privileged.
4	Resolution Amount	The fact that the Resolution Amount has been varied is relevant. The way in which it has been varied is irrelevant and commercially sensitive.

5	Quarterly Updates	The provisions regarding quarterly updates are irrelevant.
6	Special Provisions Regarding Cayman Assets	This clause is relevant but the identity of the agreement that is redacted at 6(a)(iii) is commercially sensitive and irrelevant.
7	Other	The redacted provisions are commercially sensitive and irrelevant.
8	Further Assurances	This clause is irrelevant, it relating to the execution of the DOV.
Appendix 1	LFA	This is just a copy of the LFA as executed and so the Relevant Terms have been disclosed separately.
Appendix 2	REDACTED	This schedule sets out the terms of a separate agreement which is of no relevance (and is commercially sensitive).
Appendix 3	Budget	The updated list of proceedings which could be funded is irrelevant commercially sensitive and privileged.
Appendix 4	Updated Schedule of Proceedings	The Budget for the Trustees' costs is commercially sensitive, irrelevant and privileged.

14. The Campbells Letter contained an annex with further particulars of the redactions as follows (and the explanations given in this annex are mirrored and largely duplicated in the annex to the Trustees' first set of written submissions).

<b>Clause</b>	<b>Redaction</b>	<b>Further explanation</b>
1.1	Target Asset Threshold	As is clear from the redaction, the only information redacted from this definition is the amount. This is (self-evidently) one of the most commercially sensitive pieces of information in the Funding Agreement as it sets out the minimum recovery that is required before any sum is payable to the Funder. Further, the threshold is of no conceivable relevance when considering whether entering into the agreement amounts to a breach of the terms of the Proprietary Injunction.  This redaction should remain.
	Proceedings	The definition has been provided. All that has been redacted is the non-exhaustive list of types of proceedings which is of no relevance when considering whether the Agreement breaches the Proprietary Injunction.  This redaction should remain.
	Proceeds	Again, the relevant part of the definition has been provided. The remainder of the clause is irrelevant as it merely gives examples of what Proceeds includes. This redaction should remain.
	Transaction Costs	This is not a definition that appears in this clause.
3	All redactions	This clause is entitled Warranties and Representations and sets out the various warranties and representations made when entering into the Funding Agreement. None of these representations or warranties relate to the Proprietary Injunction or the Ypresto Funds. This entire clause is irrelevant.
7	All redactions	This clause contains the undertakings that the Claimant gave to the Funder. None of the undertakings relate to the Proprietary Injunction or the Ypresto Funds. These are irrelevant to the issues before the Court.
11	All redactions	This clause has been carefully redacted.

		<p>The Trustees accept that the existence of an indemnity is potentially relevant. However, the terms upon which this indemnity is triggered is of no relevance to the issues before the Court. It is also commercially sensitive.</p>
17	All redactions	<p>This clause deals with termination.</p> <p>The Trustees accept that the fact that there is a termination right and the consequences of termination (insofar as these relate to payment of sums to the Funder) are relevant. However, the circumstances in which the Funder may exercise a termination right is both irrelevant and confidential (as it is obviously wrong for a counterparty to litigation to know the circumstances in which a termination right may be triggered). This is why the balance of clause 17.1 has been redacted.</p> <p>The remaining parts of the clause have been redacted as these relate to other consequences of termination which are of no relevance to the issues before the Court.</p>
Schedule Particulars	1 FUND	<p>This contains details of the Funder which is irrelevant as has been redacted throughout (without challenge).</p>
	FINANCING	<p>The redactions to this clause are justified both on the grounds of commercial sensitivity and irrelevance.</p> <p>The first set of redactions remove the types of expenses that the Funding Agreement can be used to discharge. This is commercially sensitive as the other parties to the litigation are not entitled to know what expenses fall within the scope of the Funding Agreement and which do not. This is plainly commercially sensitive.</p> <p>The remaining redactions remove information relating to the budget. Again, this is obviously commercially sensitive and is not information that a counterparty to litigation is entitled to know.</p> <p>The redacted parts of this clause also have no relevance to the issues before the Court.</p>

	PROCEEDINGS	<p>The list of proceedings which the Funding Agreement can be used to fund is commercially sensitive and so has been redacted.</p> <p>It is also of no relevance as the Trustees have accepted that it is possible for there to be Success without there being Success in the Cayman Proceedings (through proceedings in other jurisdictions).</p>
Schedule 2	Resolution Amount	<p>The Resolution Amount is the sum that needs to be paid to the funder on success. It consists of two components: Transaction Costs (related to the costs of entering into the Funding Agreement and Funded Amount (which is related to the sum incurred by the Funder). As is set out in Partos 12, the way in which these sums are calculated is commercially sensitive and irrelevant to the issues before the Court.</p>
Schedule 5	Assets	<p>The only relevant information in the table of assets (which is plainly commercially sensitive information) is that the assets of Ypresto are special assets. It is not necessary to know the other assets which are either Target or Excluded. This information is obviously commercially sensitive and privileged.</p>
Schedule 7	Security	<p>The security given by the Trustees in respect of property which is not covered by the Proprietary Injunction is of no relevance to the issues before the Court and is commercially sensitive.</p> <p>For the avoidance of doubt, we confirm that none of the security listed in Schedule 7 relates to the Ypresto Trust or any of the other assets which are subject to the Proprietary Injunction.</p>
Schedule 9	Proceedings	<p>See the response to the redactions relating to the definition of Proceedings set out above.</p>
General	Any redaction of any provision which refers to either “Proceeds” or “Resolution Amount” or which explains the connection between	<p>There are redacted clauses which refer to both Proceeds and Resolution Amount. However, these clauses are properly redacted for the reasons given dealing with the individual clause. The mere fact that the redacted term uses “Proceeds” or “Resolution</p>

	“Proceeds” and “Resolution Amount”.	Amount” is not a reason why the clause should be disclosed.  The link between Resolution Amount and Proceeds is set out in the unredacted definitions.
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### Deed of Variation

Recital B	Redactions relating to Global PTC	None of the redactions related to Global PTC.
Recital D	All	Recital D contains information which is subject to legal advice privileged and so is redacted.
Recital E	All	The redaction to recital E(i) redacts the increase in the Claimant Costs.  The redaction to recital E(ii) redacts how the Resolution Amount has been varied.  The redacted information is therefore self-evidently commercially sensitive and of no relevance to the issues before the Court.  Recital E(iii) is irrelevant and so has been redacted.
Clause 2	Redactions relating to Global PTC	The redactions which relate to Global PTC are of no relevance to the issues before the Court. The redacted information is also subject to legal advice privilege.
Clause 4	Resolution Amount	The is commercially sensitive and irrelevant for the reasons set out above.
Clause 6	6(a)(iii)	The redaction removes a reference to security which is of no relevance, and which is commercially sensitive.
Clause 7	Other	The Trustees accept that if ordered to disclose clauses in the LFA which are varied by this clause, the variation will also be unredacted.
Appendix 4	Updated schedule of proceedings	See the response to the redactions relating to the definition of Proceedings set out above.
General	Any redaction of any provision which refers to “Special Assets”.	There are no references to Special Assets in the Deed of Variation.

15. The List identified a large number of Challenged Redactions as follows:

***“Clause 1.1 – Definitions and Interpretation***

*The definitions of:*

*“Target Asset Threshold”*

*“Proceedings”*

*“Proceeds” (if, which is unclear, this has been redacted).*

*“Transaction Costs”*

***Clause 3 – all redactions.***

***Clause 7 – all redactions***

***Clause 11 – all redactions***

***Clause 17 – all redactions.***

***Schedule 1 – Particulars***

*Redactions under the headings “FUND”, “FINANCING” and “PROCEEDINGS”*

***Schedule 2 – Resolution Amount***

*All redactions*

***Schedule 5 – Assets***

*Redactions to tables of “1. Excluded Assets” and “3. Special Assets”*

***Schedule 7 – Security***

*All redactions*

***Schedule 9 – Proceedings***

***General***

*Any redaction of any provision which refers to either “Proceeds” or “Resolution Amount” or which explains the connection between “Proceeds” and “Resolution Amount”.*

***Deed of Variation dated 26 March 2021***

***Recital (B)***

*Insofar as the redactions relate to Global PTC*



***Recitals (D) & (E)***

*All redactions*

***Clause 2 – CATO and Global PTC***

*Insofar as the redactions relate to Global PTC*

***Clause 4 – Resolution Amount***

*All redactions*

***Clause 6 – Special Provisions Regarding Cayman Assets***

*The redaction at 6(a)(iii)*

***Clause 7 – Other***

*Insofar as the redacted parts relate or refer to unredacted provisions in the LFA or provisions in the LFA which are listed above.*

***Appendix 4 – Updated Schedule of Proceedings***

*All redactions*

***General***

*Any redaction of any provision which refers to “Special Assets”.*

**The Fifth Defendant’s submissions**

16. The Fifth Defendant submitted that the main operative provisions of the LFA and Deed which concern the Trustees’ liability to the Fund were clauses 13 (“*Success in Proceedings*”) and 17 (“*Termination*”) of the LFA and that paragraph 2 of the Order required that these clauses together with the related and relevant definitions and terms should be disclosed, but this had not been done. The Fifth Defendant argued that the full definitions of the following terms needed to be disclosed: Resolution Amount, Proceeds, Funded Amount, Proceedings, Target Asset Threshold and Assets.
17. The Fifth Defendant objected to the partial redaction of clause 17. Despite their obvious relevance to the circumstances in which the Trustees or the Fund might have recourse to the Ypresto Trust’s assets, the Trustees had redacted sub-clauses 17.1.1. to 17.1.4 **and** 17.2 and 17.4 of the LFA which clarified the Trustees’ obligations and the Fund’s rights in the event of service of a “*Termination Notice*.” She argued that it appeared from the unredacted parts that the “*Resolution Amount*” would be immediately payable by the Trustees to the Fund in the event that the Fund served a “*Termination Notice*” pursuant to clauses 17.1.3 and 17.1.4 merely

by virtue of the Trustees having retained the Ypresto Trust assets. Although the extensive redactions to the Redacted LFA make this impossible to verify, the Fifth Defendant understood from the Trustees' evidence that the grounds for service of a "*Termination Notice*" by the Fund included a material breach of the LFA by the Trustees or the appointment of a new trustee without their consent, and that, in such an event, the Fund will have a "*direct right*" against the Ypresto assets. Mr Boehler's Sixth Affidavit had contained (at [23]) the following statement:

*"One specific point I will make is as to the position of the Ypresto Trust under the LFA. Even if the Cayman claim fails and it is confirmed that the Ypresto Trust assets are properly trust assets, the Funder only obtains a direct right to assets of the Ypresto Trust in circumstances where there has been a prior termination of the LFA by the Funder (either as a new trustee has been appointed without consent or if there has been a material breach of the agreement)."*

18. The Fifth Defendant submitted that since a breach of the LFA by the Trustees made the adjusted "*Resolution Amount*" immediately payable to the Fund and, apparently, gave the Fund a direct right against the Ypresto Trust's assets, the "*Warranties and Representations*", "*Undertakings*" and "*Indemnities*" given by the Trustees in clauses 3, 7 and 11 of the LFA (which had been redacted in their entirety) were also relevant and related to clause 17 and, accordingly, fell within paragraph 2 of the Order.
19. The Fifth Defendant challenged the Trustees' reliance on the commercial sensitivity of certain clauses and wording. Given its ordinary meaning, commercially sensitive material was material of a confidential nature which, if disclosed, would prejudice the commercial interests of the disclosing party. Material could not be commercially sensitive if it was not confidential and it was difficult to see how material which had been already referred to in evidence in these proceedings could be said to be commercially sensitive "*in the context of this litigation*". Yet most of the Trustees' redactions had been referred to and summarised in documents in evidence in these proceedings. This applied to the Resolution Amount, the Fund, the Funded Amount, Proceedings, the Target Asset Threshold, the Special Assets, the Excluded Assets and the Assets and to the redacted sub-clauses of clause 17.1 and other sub-clauses of clause 17. These had been referred to or summarised in Mr Boehler's evidence in these proceedings and the Champerty Application (defined in the Judgment), the Withers' letter (also defined in the Judgment), the Champerty Ruling (defined in the Judgment) and the note prepared by the Trustees' counsel of the hearing of the Champerty Application.
20. The Fifth Defendant also submitted that the definition of "*Proceeds*", the provisions in the LFA which explained the connection between "*Proceeds*" and the Trustees' liability to the Fund, and

clauses 3, 7 and 11 should be disclosed since it was necessary for the Court and the Fifth Defendant to see these provisions properly to understand and interpret the nature and extent of the Trustees' and the Fund's rights and their recourse to, and rights over, the Ypresto Trust's assets. Accordingly, these redactions fell within the Redaction Proviso.

21. The Fifth Defendant challenged the Trustees' reliance on privilege. Only two of the redactions in the List related to redactions based on the Trustees' claim of privilege. These were the list of "Proceedings" in schedule 9 of the LFA and the updated list in appendix 4 of the Deed. The Fifth Defendant argued that a list of the worldwide proceedings involving the Trustees and the Plaintiff was not confidential because it had been referred to or summarised in the documents mentioned above. Even if it was confidential, the Fifth Defendant did not accept that the nature of any legal advice given to the Trustees could be inferred from a list of proceedings which might potentially be funded subject to legal advice and, accordingly, did not accept that Schedule 9 and Appendix 4 met the relevant test for redaction on the grounds of privilege as set out in *Lyell v Kennedy (No 3)* (1884) 27 Ch 1 (explained in *Ventouris v Mountain* [1991] 1 WLR 607 at 615F and applied in *Re Edwardian Group Ltd* [2017] EWHC 2805).
22. The Fifth Defendant submitted that understanding what was covered by the "Proceedings" was necessary to understand the meaning of clause 13 and "Success". The Fifth Defendant said that this had been acknowledged by the Trustees in the annex to Partos 12, where they made the following comment in relation to Schedule 9 of the LFA:

*"For the avoidance of doubt, the Trustees' confirm that the list of proceedings is not limited to the Cayman Proceedings and so it is possible for there to be "Success" without there being success in the Cayman Proceedings."*
23. The Fifth Defendant said that this represented a concession and admission that the case relied on by the Trustees at the hearing on 28 April 2022 (both in written and oral submissions) was without foundation and had been abandoned without any explanation. That case was that there could be no question of the Trustees having breached the Injunction by entering into the LFA (and, accordingly, they should not be required to disclose or produce any part of the LFA) as the LFA "gives rise to no liability in respect of any assets which are subject to the [Injunction] unless and until the Injunction is discharged" as the only way in which the Trustees could achieve "Success" for the purposes of the LFA was by obtaining "Control" over assets subject to the Injunction which could only happen if the Injunction was discharged.

24. The Fifth Defendant sought an order that the Trustees provide to the Fifth Defendant the unredacted versions of schedule 7 of the LFA and the unredacted sub-clause 6(a)(iii) of the Deed, (together with any other terms of the LFA and DOV relevant to any security provided to the Fund by the Trustees and which are not included in the List). The Fifth Defendant noted that the Trustees had justified the redactions relating to security on the basis (as set out in the annex to Partos 12) that *“The security obtained by the [Fund] is irrelevant (as no security is given over the Ypresto assets).”* But the Fifth Defendant complained that the redactions meant that it was impossible for the Fifth Defendant to verify the Trustees’ assertion in relation to Schedule 7. Given that the Trustees’ case had turned out to be entirely without foundation, the Fifth Defendant was, she said, understandably unwilling simply to accept what was asserted in the annex to Partos 12. Since the Trustees had redacted all the other provisions in the LFA which referred to the *“Security”* it was impossible for the Fifth Defendant to identify which of the redactions refer to the *“Security”* but she has assumed these were the redacted parts of Schedule 1 under the heading *“FINANCING”* which were included in the List.

25. The Fifth Defendant also objected to the redaction in clause 6(a)(iii) of the Deed. The disclosed wording is as follows (underlining added):

*“if there is a discharge of the Freezing Injunction by the Grand Court, the Cayman Islands Court of Appeal (the **“Appeal Court”**) or the Judicial Committee of the Privy Council (the **“Privy Council”**) before the final determination of the Cayman Proceedings (including pursuant to any appeal to the Appeal Court and/or the Privy Council) (a **“Final Determination”** and a **“Discharge”**), then the Claimants shall take all reasonable steps promptly to grant or procure the grant of one or more pledges in respect of the Cayman Assets on terms substantially similar to those of the [redacted] (subject to Clause 7(i)) (the **Cayman Pledges**).*

26. The Fifth Defendant commented that the deleted wording appeared to refer to assets which were the subject matter of one or more pledges granted by the Trustees to the Fund. Ms Partos in the annex to Partos 12 had said that *“the identity of the agreement that is redacted at 6(a)(iii) is commercially sensitive and irrelevant”*. The Fifth Defendant however did not accept this assertion without further explanation (noting that the Trustees did not assert that schedule 7 was commercially sensitive). The Fifth Defendant also noted that the assets of the Ypresto Trust included the benefit of a pledge given by the trustees of the Citizen Trust to the Ypresto trustees to secure loans made to the Citizen Trust out of BHO6 dividends which had been paid to the Ypresto Trust. This pledge was an asset representing those dividends for the purposes of the Injunction. The Fifth Defendant said that without sight of any of the provisions in the LFA which concern the security granted to the Fund, it was impossible for her to tell whether this

pledge had been affected by the security granted to the Fund (by the Fund having been granted security over the Citizen Trust which ranked in priority to the pledge granted to the Ypresto trustees).

27. The Fifth Defendant in her written submissions claimed (without explaining the basis for doing so) that there was an issue as to whether one of the trustees of the Ypresto Trust, Global PTC, is bound by the Deed and that the Withers' letter suggests that the redacted parts of clause 2 of the Redacted Deed refer to how Global PTC is said to be bound by the LFA and the Deed. The Trustees have redacted recital (B) and clause 2 of the Redacted Deed insofar as they refer to Global PTC and recital (D) which only appears to relate to Global PTC. The Fifth Defendant argues that it is important to know whether all the trustees of the Ypresto Trust are bound by the LFA and the Deed when considering the Trustees' and the Fund's right of recourse to the assets of the Ypresto Trust and therefore the content of clause 2 should be disclosed.
28. The Fifth Defendant also objected to the redaction of the heading to and contents of schedule 3 of the LFA and the contents of appendix 3 to the Deed. She notes that Ms Partos in the annex to Partos 12 states that in both cases the schedules "*set out the terms of a separate agreement which is of no relevance (and is commercially sensitive).*" The Fifth Defendant argues that this explanation does not satisfy the Specificity Requirement. Priestleys had, in their letter of 15 July 2021 to Campbells, asked for a brief summary of the agreements in schedule 3 and appendix 2 so that the Fifth Defendant could assess their potential relevance but no such summary had been provided.

### **The Trustees' submissions**

29. The Trustees' primary position is that their redactions to the LFA and the Deed meet the criteria set out in the Order and that there was no justification for the Court to conclude otherwise. On this basis, there was no need for the Court to inspect the LFA and the Deed.
30. The explanations given in Partos 12 explained why each proposed redaction from the LFA and Deed had been made. As anticipated by paragraph 3 of the Order, it explained whether a redaction had been made because the relevant clause or wording was irrelevant to or unconnected with the Relevant Terms, was subject to privilege or contained commercially sensitive information. Partos 12 complied with paragraph 5 of the Order.

31. The Fifth Defendant's criticisms of Partos 12 were unjustified (as was her criticism of the Trustees' expansion in the Campbells Letter of the explanations given in Partos 12, which were intended to be and were of assistance to the Fifth Defendant). The Trustees argued that the Fifth Defendant's approach was based on a misunderstanding of the purpose and effect of the Order. She had lost sight of the fact that what the Trustees are obliged to provide is inspection of the Relevant Terms. The issue before the Court on the Notice of Motion was whether, by entering into the LFA and the Deed, the Trustees had breached the terms of the Injunction. That was why paragraph 2 of the Order was worded in the way it was. The Trustees were ordered to provide inspection of those parts of the LFA and the Deed that were relevant to that issue. But the Fifth Defendant appeared to want to inspect parts of LFA and the Deed that had no relevance to, and were wholly unrelated to, that issue.
32. Furthermore, the Fifth Defendant was wrong to rely on arguments based on the substantive merits of the Notice of Motion and had misrepresented the Trustees' case:
- (a). the Trustees argued that save in one respect, the Fifth Defendant's arguments as to the substantive merits of the Notice of Motion were irrelevant to the task presently before the Court, which was only to adjudicate on the Fifth Defendant's challenge to the Challenged Redactions. But the Fifth Defendant's arguments on the merits were revealing and relevant in one respect because they showed that despite maintaining that she needed to have sight of further clauses and provisions in the LFA and the Deed in order to be able to argue her case on the Notice of Motion, she appeared to be perfectly capable of articulating her case now by reference to the Redacted LFA and the Redacted Deed as provided by the Trustees.
  - (b). it had never been the Trustees' case that it was impossible for Success to be achieved in other proceedings outside the Cayman Islands. The Trustees' case is (and always has been) that there is no possibility of an indemnity or incumbrance being obtained over any assets which are subject to the Injunction (which would include the Ypresto Trust's assets) absent success in Cayman and a discharge of the Injunction. There was nothing in the LFA or the Deed which suggested the contrary and nothing in the Trustees' evidence or submissions which could be said to be an acceptance to the contrary. The Trustees' position remains that they did not breach the Injunction by entering the LFA and the Deed.

- (c). the Trustees accepted that Mr Boehler’s reference in [23] of his Sixth Affidavit to the Fund obtaining a “*direct right*” to assets of the Ypresto Trust (in circumstances where there has been a prior termination of the LFA by the Funder) was wrong.
33. The Trustees accepted that if the Court was not satisfied that the redactions had been properly made it had a discretion under GCR O.24, r.14(2) to review the LFA and the Deed for the purposes of establishing whether the Redacted LFA and the Redacted Deed had been redacted in accordance with the Order. The Trustees argued that in the present case, the Court should not and did not need to require inspection.
34. GCR O.24, r.14(2) states as follows:
- “Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of a document privileged from such production or supply is claimed or objection is made to such production or supply on the ground that it contains confidential information or on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.*
35. The Trustees submitted that the Court’s discretion must be exercised in accordance with the principles established by the relevant authorities and should not be exercised readily. This was the case in particular because the starting point when the Court was considering whether to exercise its discretion was that the sworn statement made by the party’s attorney should be accepted, absent evidence from the challenging party that the exercise has not been carried out correctly.
36. The Trustees relied on the five-stage test set out at [37] in the judgment of Ramsey J in *Atos Consulting Limited v Avis PLC Number 2* [2007] EWHC 323 (TCC) (*Atos*):

*“I accept and adopt the principle that looking at the documents should be a matter of last resort. In my judgment the appropriate course to be adopted in an application under r 31.19(5) where the right being relied on is privilege or irrelevance, is for the court to proceed by way of stages as follows:*

- (1). *The Court has to consider the evidence produced on the application.*
- (2). *If the Court is satisfied that the right to withhold inspection of a document is established by the evidence and there are no sufficient grounds for challenging the correctness of that asserted right, the Court will uphold the right.*
- (3). *If the Court is not satisfied that the right to withhold inspection is established because, for instance, the evidence does not establish a legal right to withhold inspection then the Court will order inspection of the documents.*

- (4). *If sufficient grounds are shown for challenging the correctness of the asserted right then the Court may order further evidence to be produced on oath or, if there is no other appropriate method of properly deciding whether the right to withhold inspection should be upheld, it may decide to inspect the documents.*
- (5). *If it decides to inspect then having inspected the documents it may invite representations.”*
37. The Trustees submitted that the English cases which post-dated the introduction of the CPR remained of assistance in applying GCR O.24, r.14(2) and accepted that in subsequent cases the reference to inspection being a last resort had been deprecated. The proper approach was set out by the English Court of Appeal in *WH Holding Limited v E20 Stadium LLP* [2018] EWCA Civ 2652 (in the context of a challenge to a claim of privilege), where the court stated (at [40]):
- “The court may inspect the documents in relation to which privilege is claimed in order to see whether the test has been correctly applied, although it should be cautious about doing so and should be alive to the dangers of looking at documents out of context. The discretion must be exercised in accordance with the overriding objective, which requires balancing dealing with cases justly, proportionately and at proportionate cost and allocating an appropriate share of the court’s resources. Among the factors which will be relevant to the exercise of the discretion are (a) the nature of the privilege claimed (b) the number of documents involved and (c) their potential relevance to the issues.”*
38. The Trustees argued that in order for there to be inspection by the Court, there needed to be some evidence that the exercise carried out by the Trustees’ attorneys had not been carried out correctly. They relied on the judgment of Hoffmann LJ (as he then was) in *GE Capital Corporate Finance Group Ltd. v. Bankers Trust Co* [1995] 1 WLR 172 where he said as follows(in respect of a party giving discovery):
- “The oath of the party giving discovery is conclusive, “unless the court can be satisfied-not on a conflict of affidavits, but either from the documents produced or from anything in the affidavit made by the defendant, or by any admission by him in the pleadings, or necessarily from the circumstances of the case-that the affidavit does not truly state that which it ought to state”: per Cotton L.J. in Jones v Andrews (1888) 58 L.T. 601 , 604”*
39. The Trustees said that there was no evidence that the exercise carried out by their attorneys had been flawed and that even were there some concern as to the redactions, the correct approach would be to order further affidavit evidence to be produced, not order inspection (point 4 of the *Atos* approach).
40. The Trustees also argued that there was a further reason why the Court should be cautious before inspecting the unredacted documents. It was, they submitted, unsatisfactory that the

Court should be asked to make a decision where the information available to the parties was different. The evidence on which the Court makes a decision must be open to the judge and available to both sides so that they could make submissions for the judge to consider. A judge could and should not take into account secret information made available to him only by one side. Judicial decisions must be made on material common to both sides. The Trustees relied on a passage from Mr Hollander's book *Documentary Evidence 14th ed.* at [15-12]. The extract from Mr Hollander's book concluded with the following comment:

*“Unless both parties consent to inspection by the court, problems may therefore arise in the parties not having equal access to the court, which gives rise to ECHR art.6 problems as well as under CPR r.1.1(2)(a) and thus makes the exercise less attractive to the court.”*

41. CPR r.1.1(2)(a) is the paragraph in the CPR dealing with the overriding objective and what is required by the direction to deal with cases justly and at proportionate cost. It states that this includes ensuring so far as practicable that the parties are on an equal footing and can participate fully in proceedings. While this is not made explicit in this jurisdiction's version of the overriding objective in [1.1] of the preamble to the GCR (as the preamble is based on an earlier version of the CPR), there can be no doubt that the principle set out in the CPR is to be understood as part of the requirement in [1.1] of the preamble to deal with cases justly. ECHR article 6 is reflected in section 7 of the Cayman Bill of Rights.
42. The Trustees objected to the Court reviewing the unredacted documents absent the informed consent from both the Plaintiffs and the Fifth Defendant. They considered that the history of this case (including but not limited to the attempt on appeal to set aside my judgment in the proceedings on the grounds of apparent bias) suggested that absent such consent being obtained further satellite litigation was inevitable.
43. As regards the Challenged Redactions, the Trustees made the following main points:
  - (a). when considering the Challenged Redactions the Court should first consider whether the redacted clauses or words were or could be relevant to the issue before the Court on the Notice of Motion. Disclosure was required by the Order so as to enable the Court to decide and the Fifth Defendant to have adequate information relating to the issue of whether any rights or recourse to or over the Ypresto Trust assets had been created or given by the LFA and the Deed). If the redacted clauses were and could not be relevant, the Order should not be understood as requiring their disclosure. If the redacted clauses

or words were relevant, the Court should then consider whether they were commercially sensitive and privileged.

- (b). the Fifth Defendant had failed to demonstrate that any redacted Defined Term has any bearing on the issue that the Court is to determine in the Notice of Motion. The ability of the Court and the Fifth Defendant to understand (from the substantive clauses and appendices to the LFA and the Deed, including those which use any redacted Defined Term) whether any rights of recourse to or over the Ypresto Trust assets are created or given by the LFA and the Deed is unaffected by any of the redacted Defined Terms.

The redacted Defined Terms had no bearing on the point of construction and interpretation of the LFA and the Deed that the Court has to determine.

- (c). the Fifth Defendant had challenged the redaction of the amount specified in the Target Asset Threshold on the basis that any confidentiality or privilege in that figure had been lost by prior reference to that figure. That was wrong but in any event the actual figure for the Target Asset Threshold had no relevance to the issue of construction and interpretation that the Court has to determine.
- (d). it was common ground that what happened after a Termination Notice had been served could have a bearing on the issue that the Court has to decide. The Trustees argued that the redacted version of clause 17 gave the Court and the Fifth Defendant all that was needed in order to be able to decide and properly make submissions on the issue before the Court on the Notice of Motion. From the part-redacted clause 17.1 the Court and the Fifth Defendant could see that there were four circumstances in which the Fund was entitled to serve a Termination Notice on the Trustees (contained in sub-clauses 17.1.1 to 17.1.4). It was true that the Fifth Defendant could not see what those circumstances were but the Trustees submitted that it was unnecessary for the circumstances in which a Termination Notice could be issued to be disclosed. What was relevant was what occurred after the notice had been served. From clause 17.3.1 the Court and the Fifth Defendant could see what followed if Success occurred after a Termination Notice had been served in the first or second of those four circumstances and from clause 17.4 the Court and the Fifth Defendant could see what followed if Success occurred after a Termination Notice had been served in the third or fourth of those four circumstances.

Clauses 17.2 (mechanics following service of a Termination Notice), 17.3.2 (information rights) and 17.5 (survival of clauses in the LFA following Termination) were irrelevant to the issue before the Court. So, from Clause 17 in its part-redacted form the Court and the Fifth Defendant knew precisely what consequences followed if a Termination Notice was served pursuant to any/each of the four grounds on which such a Termination Notice could permissibly be served and it was that, and that alone, that was potentially relevant to the issue before the Court, since the Court will be able to ask and answer the question “if a Termination Notice was to be served pursuant to Clause 17, is recourse to the assets of the Ypresto Trust thereby triggered under the LFA”?

- (e). the warranties and representations made by the parties when entering into the LFA were irrelevant to the issue before the Court (and some were commercially sensitive). Undertakings given by the Trustees were also irrelevant to the issue before the Court (and once again some were commercially sensitive). While the existence of the indemnity given by the Trustees to the Fund might be relevant to the issue before the Court (which was why the first sentence of clause 11 of the LFA had been disclosed), the terms of that indemnity were irrelevant to the issue before the Court.
- (f). it was also unnecessary for the Court and the Fifth Defendant to see the full list of the Proceedings in order to dispose of the issue arising on the Notice of Motion. The Trustees had accepted that there were Proceedings other than the Cayman proceedings and that it was possible that there may be a sufficient recovery in other Proceedings to trigger Success. That was all that mattered for present purposes. The jurisdiction in which Success (for the purpose of Clause 13 of the LFA) occurred was irrelevant to the issue of construction before the Court. What mattered was whether Success had occurred.
- (g). as regards the issue of security, Partos 12 and the Campbells Letter provided a sufficient justification for the redactions of the contents of schedule 7 to the LFA (*Security*) and in clause 6(a)(iii) of the Deed. Partos 12 had confirmed that “*The security obtained by the Trust is irrelevant (as no security is given over Ypresto assets)*” and the Campbells Letter had confirmed that “*The security given by the Trustees in respect of property which is not covered by the [Injunction] is of no relevance to the issues before the Court and is commercially sensitive. For the avoidance of doubt, we confirm that none of the security listed in Schedule 7 relates to the Ypresto Trust or any of the other assets which are subject to the [Injunction].*” Partos 12 had confirmed that “*This clause [6] is relevant but*

*the identity of the agreement that is redacted at clause 6(a)(iii) is commercially sensitive and irrelevant.”* The Campbells Letter had confirmed that *“This redaction removes a reference to security which is of no relevance and which is commercially sensitive”* The Fifth Defendant had failed to advance any coherent case that the redactions were impermissible under the terms of the Order.

- (h). whether Global PTC was bound by the Deed (which was a matter of Liechtenstein law) was irrelevant to the issue of construction that the Court has to determine.
- (i) as regards schedule 3 of the LFA, Partos 12 had confirmed that *“This schedule sets out the terms of a separate agreement which is of no relevance (and is commercially sensitive)”* and as regards schedule 2 of the Deed, Partos 12 confirmed that *“This schedule sets out the terms of a separate agreement which is of no relevance (and is commercially sensitive.”* The Fifth Defendant had failed to advance any coherent case that the redactions are impermissible under the terms of the Order.

## **Discussion and decision**

44. I noted in the Judgment that:

- “54. .... *the only terms or provisions that need to be inspected are those which define and determine when the Trustees must, or the funder is entitled to, have recourse to (or acquires rights over) the assets of the Ypresto Trust for the purpose of discharging sums payable under the Litigation Funding Agreement. In other words, only some of the terms of the Litigation Funding Agreement are relevant to the issues raised by the Notice of Motion. It seems to me that what the Fifth Defendant and the Court need to see, and what I should order needs to be made available for inspection, are those parts of the Litigation Funding Agreement (and any amendment thereof) (i) that require or permit the Trustees to have (or give the funder) recourse to (or which give the Trustees of the funder rights over) assets of the Ypresto Trust (in particular the Ypresto Dividends) for the payment of sums due under the Litigation Funding Agreement (and which condition and regulate those rights of recourse) and (ii) on which the Trustees rely in support of their case that they and the funder do not have and cannot exercise rights of recourse to those assets until after the Injunction has been discharged. The Trustees will need to disclose not only the main operative provisions but related and relevant definitions and terms. From a review of these terms, the Court can determine whether the Fifth Defendant’s case is made out. Without seeing them, it cannot do so.*
- 55. *As I have said, I do not consider that the Fifth Defendant or the Court need to see the whole of the Litigation Funding Agreement. Most of its terms will be irrelevant to the question of whether the effect of that agreement is to give the Trustees or the funder rights over or to have recourse to the Ypresto Dividends before the*



*Injunction is discharged. In particular, the terms governing the cost of the funding and the relationship between the Trustees and the funder are irrelevant.”*

45. For this purpose it is necessary to understand when the Trustees become liable to pay the Resolution Amount under the LFA as amended by the Deed; the nature of their liability (is it non-recourse and subject to conditions?); how the Resolution Amount is to be paid and satisfied; what rights of recourse the Trustees have to the assets subject to the Injunction to discharge the liability under the LFA as amended by the Deed (and under the applicable general law) and whether the Trustees have granted any pledges or charges to the Fund over any assets covered by the Injunction (or are obliged to do so). These are the core issues that arise on the Notice of Motion.
46. The Order sought to ensure that the Notice of Motion could be adjudicated fairly and justly by requiring that the key terms dealing with these issues were disclosed subject to the need to avoid the disclosure of provisions which were subject to privilege and to take into account the prejudice and damage that would be suffered by the Trustees if they were required to disclose confidential and commercially sensitive material. The assessment of what is commercially sensitive needs to take into account in particular the context. That is that disclosure is sought of the details of one party's litigation funding in litigation that is continuing (in multiple jurisdictions) and that has been hard fought and acrimonious.
47. It seems to me that the Redacted LFA and the Redacted Deed, together with the confirmations given on oath by the Trustees, provide the Court and the Fifth Defendant with the details needed for a fair hearing and adjudication of the Notice of Motion. In my view, there is no basis for refusing to accept the Trustees' clear statements on oath that the list of Proceedings is not limited to the Cayman Proceedings and that they have not granted security over the assets of the Ypresto Trust or the assets subject to the Injunction (subject to the need for the Trustees to file a further affidavit to put in evidence and on oath the statements made in the Campbells Letter and the annex thereto). I do not accept that the Fifth Defendant has shown that the Trustees' have not taken proper care in the preparation of the redactions. As the Trustees argue, and largely for the reasons given in their submissions, the additional disclosure that the Fifth Defendant seeks is unnecessary as the material which the Fifth Defendant wishes to see is not relevant to or needed to enable the Court fairly to determine the core issues. The Redacted LFA and the Redacted Deed set out the Relevant Terms subject to redactions which were, in my view, properly made in accordance with the Redaction Criteria and the Redaction Proviso.

48. The Redacted LFA and the Redacted Deed, and these confirmations, show when the Trustees become liable to pay the Resolution Amount under the LFA. They show the status of the Trustees' obligations (i.e. *qua* trustees). They show that while the Trustees have granted security over the assets of various trusts to secure their liabilities to the Fund they have not granted pledges or charges over the assets subject to the Injunction.
49. The Trustees' obligation to pay the Resolution Amount is governed by clause 13 of the LFA. This is disclosed in full. The Fund is entitled to be paid and the Trustees (the Claimants) are obliged to pay the Resolution Amount each time Success occurs (subject to the condition that payment would not leave the Trustees only controlling Assets with an aggregate market value lower than USD 10,000,000). Success (simplifying the definition) occurs where a Trustee maintains, obtains or regains directly or indirectly Control over Target Assets meeting the Target Asset Threshold. Because the definitions of Target Assets and the Target Asset Threshold have not been disclosed it is not clear precisely when the liability accrues and since the definition of Resolution Amount has not been disclosed it is not clear precisely how much the Trustees are liable to pay. The definition of Proceedings is also not disclosed. The definition of the Proceedings covers the litigation in which the Fund can be required to invest pursuant to the LFA. It is to be inferred that Success only occurs where Target Assets are recovered pursuant to one or more of those Proceedings. Because the Trustees have confirmed on oath that the list of Proceedings is not limited to the Cayman Proceedings, it is clear (and the Trustees admit) that Success can occur, and a liability to pay the Resolution Amount can accrue, while the Injunction remains in force and before and without there being a recovery of Control over any assets subject to the Injunction. Clause 6 of the Deed deals with what happens when the Injunction is discharged. At that point, the Trustees are required to take reasonable steps to grant pledges over the assets formerly subject to the Injunction. If they do so, no liability to pay the Resolution Amount accrues if and when the Injunction is discharged.
50. Accordingly, on the basis of the Redacted LFA and the Redacted Deed, and the Trustees' confirmations, the Notice of Motion falls to be decided on the basis that the Trustees have agreed and will become liable to pay the Resolution Amount when Success is achieved and that Success can be achieved in proceedings in other jurisdictions which do not relate to the assets subject to the Injunction. The effect of incurring and of the accrual of such a liability on the assets subject to the Injunction (and the construction and effect of the Injunction) will need to

be considered at the next hearing of the Notice of Motion. Furthermore, it is not clear that such liability has to or will be discharged only out of the assets recovered. Because the terms governing the quantification of the Resolution Amount have not been disclosed it is unclear whether, and the Trustees will be unable to show that, the Resolution Amount payable in those circumstances will and must be equal to or less than the net value or the net proceeds of the assets recovered in those other proceedings. It therefore appears to be possible that the Trustees will be subject to a liability in excess of the value of the assets recovered (clause 2.1.1 of the LFA deals with the nature of the Trustees' liability by stipulating that the Trustees' liabilities are incurred solely in their capacity as a trustees of the Trusts). The risk of such a shortfall then raises the question, *inter alia*, of how the shortfall would be covered and discharged. The Court will need to consider, in these circumstances, the nature of the Trustees' rights of indemnity (under applicable law) against trust assets, how those rights are to be characterised – are they proprietary or merely personal rights (under applicable law) - and how they can be exercised, the extent to which the Fund may be subrogated to the Trustees' rights, the impact of the Injunction on the Trustees' rights of indemnity and any rights of subrogation and the interpretation and effect of the Injunction. Because the Trustees have not granted any pledges or charges over the assets subject to the Injunction no question arises as to the impact of the Fund having rights to enforce a security interest over those assets.

51. These issues will need to be and can be the subject of submissions and legal argument at the next hearing of the Notice of Motion. They can be fairly dealt with without the need to have or understand the detail of precisely which Assets are Target Assets, precisely what value of Target Assets have to be recovered in order for the liability to pay the Resolution Amount to accrue and precisely which Proceedings are included in the definition of Proceedings. Nor is it necessary to know the quantum of the Resolution Amount or to have the full definition of the Proceeds, the Funded Amount or the Transaction Costs.
52. Nor is it necessary for there to be disclosure of further terms or wording relating to the service of a termination notice. In my view, the Trustees' submissions on this point, as summarised above, are correct. The critical issue for the purpose of the Notice of Motion is what are the effects and consequences of the service of a Termination Notice. The LFA as amended by the Deed imposes obligations on the Trustees and gives the Fund rights in such an event. The question that arises on the Notice of Motion is whether those obligations and rights, understood

in the context of the amended LFA as a whole, resulted or will result in a breach of the Injunction.

53. Clause 13.2.1, as modified by clause 17.3 of the LFA, and as applies where Success occurs after a Termination Notice has been served pursuant to Clauses 17.1.3 or 17.1.4, states that Success is deemed to occur where a Trustee achieves, receives and/or otherwise directly or indirectly assumes, obtains, maintains, recovers, (re)affirms, (re- asserts) or (re)gains Control over Target Assets or the Special Assets. The Redacted LFA discloses that the Special Assets include assets (bank accounts) of the Ypresto Trust. As I have noted, the Fifth Defendant considers that these provisions indicate that the Resolution Amount becomes immediately payable by the Trustees to the Fund in the event that the Fund served such a Termination Notice merely by virtue of the Trustees having retained the Ypresto Trust assets. Whether that is the case is a question of the construction of the Redacted LFA and if it is, whether the accrual of such a liability results or will result in a breach of the Injunction, will be a matter for submissions and consideration at the next hearing of the Notice of Motion. But the disclosure of further clauses and wording is not needed in order to put the Court in a position to deal with the issue or to ensure that there can be a fair hearing on the point.
54. I also consider that it is unnecessary for there to be further disclosure of the contents of schedule 7 to the LFA (*Security*) and in clause 6(a)(iii) of the Deed. I agree with the Trustees' submissions on this point. The Trustees had confirmed (subject to the confirmation in the Campbells Letter being put in evidence on oath) that none of the security listed in Schedule 7 related to assets of the Ypresto Trust or any of the other assets which are subject to the Injunction. Accordingly, the grant of security by the Trustees cannot be relevant to the Notice of Motion because such security does not affect the assets subject to the Injunction (although as I have noted above I can see that the Trustees may wish to say that the security that they have granted over other assets means that in the event of Success being achieved in other Proceedings and there being a shortfall of the kind I have described above, their and the Fund's first recourse would be to the Assets subject to such security – but to do so the Trustees are likely to have to disclose further parts of the LFA). Having said that, I agree with the Fifth Defendant that the Trustees should clarify the impact of the grant of security on the pledge held by the trustees of the Ypresto Trust over the assets of the Citizen Trust. The Trustees have confirmed that no security has been granted over the assets of the Ypresto Trust (which obviously includes this pledge) but not whether prior or *pari passu* ranking security has been



granted over assets which are charged to the Ypresto Trust. If it has been, a question might arise as to whether on a proper construction of the Injunction, the rights of the Ypresto Trust trustees in respect of the pledge were caught by the Injunction and whether the grant of a charge which ranked ahead of or *pari passu* with that pledge could be said to constitute a disposal of, encumbrance over or dealing with those rights. The Fifth Defendant would need to file evidence to make good her claim that the pledge was granted to secure loans made to the Citizen Trust out of BHO6 dividends paid to the Ypresto Trust and consider whether it is even arguable (and whether she wishes to argue) that the granting of prior ranking or *pari passu* charge could be treated as a disposal of, encumbrance over or dealing with assets of the Ypresto Trust, namely the Ypresto trustee's rights under the pledge. But I consider that she should be given the opportunity to raise this issue and that the Trustees should provide a further brief explanation, in the further evidence they need to file, as to whether any security or other proprietary interest has been granted to the Fund over the assets of the Citizen Trust which are subject to the pledge held by the trustees of the Ypresto Trust and if it has been, whether it ranks prior to, *pari passu* with or after the Ypresto trustees' pledge.

55. I agree with the Trustees, for the reasons they give, that there is no need for the disclosure of the representations and warranties given by the Trustees in the LFA. I also accept that there is no need for further disclosure of the indemnity given by the Trustees to the Fund in clause 11 of the LFA. It is clear from the Redacted LFA that the Trustees have assumed a liability by way of the indemnity. The question for consideration on the Notice of Motion is whether any such liability gave rise or will give rise to a breach of the Injunction. The precise terms of the indemnity are not needed to deal with that question.
56. Furthermore, I agree with the Trustees' submissions as to why the further disclosures sought by the Fifth Defendant in relation to the terms of the Deed are unnecessary.
57. As I have said, I do not see that there is a sufficient justification for refusing, or that the Fifth Defendant has adduced evidence justifying a refusal, to accept the clear confirmations given by the Trustees as to terms of the LFA and the Deed as they relate to the definition and effect of Proceedings, the security granted by the Trustees. The Fifth Defendant's reliance on her allegation that the Trustees' case had turned out to be entirely without foundation was at best premature and in view of the Trustees' second set of submissions, probably unsustainable.

It was certainly insufficient to justify disregarding the Trustees' confirmations and an inspection of the unredacted documents by the Court. As I have also already said, I do not regard the Trustees' explanations for their redactions as unsatisfactory or inconsistent. Each redaction was addressed and explained, albeit briefly and on occasions in general terms, but those limits on the explanations were reasonable and justifiable having regard to the Trustees' legitimate concerns about disclosing material that could be damaging to its interests and position in the continuing multi-jurisdictional and aggressively fought litigation and to the fact that the explanations clearly set out the basis on which the redaction was made. I do, however, accept that if the Trustees wish, as they clearly do, to rely on the explanations set out in the annex to the Campbells Letter (even if only as elaborations of the explanations given in Partos 12), the explanations must be given on oath and put in evidence. The Trustees will therefore need to file a further affidavit for this purpose. Nor do I consider that the merits of and issues raised concerning the evidence of Mr Zechberger and Ms Rebholz (given in their affidavits dated 22 July 2022) in relation to the misleading statement made before the Liechtenstein Court on 3 July 2018 justify the conclusion that the Trustees' evidence on this application should be ignored or given only limited weight (no doubt further consideration will need to be given to what further steps are needed in relation to that evidence and that matter). I would note that I place some reliance on the confirmation given by Ms Partos that the Trustees' Leading Counsel, Mr McPherson QC, had reviewed the LFA and the Deed of Variation and confirmed *"that he [was] satisfied that the redactions [complied] with the terms of the Order and that the redacted agreements exhibited to [Partos 12][identified] the Relevant Terms."* Of course, Mr McPherson QC is advising the Trustees and the confirmation given by Ms Partos is provided in that context. Nor is he a guarantor of his clients' evidence. Nonetheless, Ms Partos has assured the Court that Mr McPherson QC has been closely involved in the process of settling the redactions and ensuring compliance with the Order and I treat his involvement as giving credibility to and suggestive of the reliability of the process conducted by the Trustees.

58. The Fifth Defendant objected to the Trustees' redactions of terms and wording in the LFA based on commercial sensitivity where those terms had been referred to and summarised in documents in evidence in these proceedings. I can see the force in this argument. However, I do not consider it necessary or appropriate on this application to analyse and review each such reference or summary and form a view as to whether their use and deployment in the evidence and documents concerned was sufficient to remove all and any confidentiality and how the references and summaries relate to the particular redactions made by the Trustees.

The Fifth Defendant will be able to refer to and rely on those references and summaries at the next hearing of the Notice of Motion, to the extent that their inclusion in the evidence prevents the Trustees relying on their confidentiality (I note that the Trustees have challenged the Fifth Defendant's right to use and rely on the Wither's letter).

59. On the basis of these conclusions I do not need and do not propose to consider whether the two redactions based on a claim by the Trustees to privilege can be separately justified on that basis.
60. I have considered the authorities cited by the parties regarding the manner in which the Court should approach the exercise of a discretion to inspect documents to check that a claim to withhold and redact parts of the document are justified and that the applicable test has been correctly applied. The cases mainly concerned the inspection of documents in relation to which privilege is claimed to see whether the test for privilege had been properly applied. This is obviously not the occasion on which to consider the authorities and the related law in any detail (when the citation of authority has been limited and there has been no oral argument). All I will say is that it seems to me that the approach set out by the English Court of Appeal in *WH Holding Limited* (in the passage set out above) in the context of claims to privilege is the proper approach to apply even where in this case the redactions are based on the terms of a prior order and go beyond claims to privilege. It seems to me that, for the reasons I have given, this is not a case in which I need to or should exercise the discretion to inspect the unredacted LFA or Deed. I note and can see the force of the Fifth Defendant's submission that the concerns expressed in the passage from Mr Hollander's book referred to by the Trustees related to potential prejudice to the party without sight of the document in question, so that there can be no issue when that party, in this case the Fifth Defendant, requests that the Court undertakes the inspection. However, I did not understand the Trustees to be disagreeing with that interpretation of the rule and proposition of law. Their concern was prudential. In view of the history of this litigation, any consent would need to be clearly and formally given and cover the Plaintiffs as well as the Fifth Defendants. That did not seem to me to be unreasonable. However, in view of my decision on whether the discretion otherwise falls to be exercised, the consent issue does not arise.
61. I would conclude by making the following further points:
  - (a). as I noted at [66] of the Judgment, because I heard the Champerty Application I have a number of years ago now seen the unredacted version of the LFA. This is a matter which the parties have accepted. However, I have no recollection of its terms beyond those

referred to in the Champerty Ruling and as disclosed in the Redacted LFA (and the Redacted Deed).

- (b). as I noted at [67] of the Judgment, on the Champerty Application the Court was only asked to consider, and in the Champerty Ruling I made clear that the Court was only dealing with the champerty and maintenance issue. The effect of the Injunction on the LFA and the question of whether entry into the LFA might result in the Trustees being in breach of the Injunction did not arise on and was not raised in the Champerty Application. I was therefore concerned to see Campbells say, in their letter to Harneys dated 18 March 2022 (which was included in the Fifth Defendant’s bundle for this application but not otherwise referred to) that:

*“Further, if the Funding Agreement was a breach of the injunction, Segal J would not have granted the relief sought but would have informed the Trustees that the proposed agreement was a potential contempt of court.”*

- (c). as noted at [7] of the Judgment, the Trustees have previously indicated that they do not see the need for the filing of further evidence. This is clearly a matter for them. But I note that in the same letter from Campbells it is said that:

*“It has at all material times been and remains clear that there are more than sufficient funds available in the structure (notably within BH06 and under the control of the Receivers), to discharge any liability under the Funding Agreement without recourse to the Ypresto Trust, whatever the eventual outcome of the challenges to the Solid Distribution and the Solid Dividend.”*

- (d). if the Trustees intend to rely on facts such as these they will obviously need to be put in evidence.
- (e). the question also arises as to whether any evidence of Liechtenstein (or other) law will be relied on and needed for the next hearing of the Notice of Motion. If it is, a suitable direction for the filing of such evidence will be needed.



- (f). if any further evidence does need to be filed, it will need to be prepared so as not to affect, and a timetable for the filing and exchange of evidence will need to be put in place that does not disturb the listing now fixed for 1-2 December.

A handwritten signature in blue ink that reads "Segal".

---

**Mr Justice Nick Segal**  
**Judge of the Grand Court,**  
**Cayman Islands**  
**12 August 2022**

## Appendix 1

### The Redacted LFA

#### 1. DEFINITIONS AND INTERPRETATION

"**Assets**" shall mean the Excluded Assets, the Target Assets and the Special Assets.

"**Control**" shall mean any actual control, in each case whether direct or indirect, any legal, equitable, beneficial, signatory, or other control exercisable by or on behalf of a Claimant (whether alone or together with another Claimant), including any rights of distribution

"**Excluded Assets**" shall mean the assets specified in paragraph 1 of Schedule 5 (*Assets*).

"**Proceedings**" shall mean the enforcement proceedings of which particulars are set out in Schedule 1 (Particulars) as the same may be varied or enlarged by the addition of claims and/or additional parties from time to time, and shall include but not by way of limitation [redacted]

"**Proceeds**" shall mean (A) any and all gross, pre-tax monetary awards, damages, recoveries, judgments or other property or value awarded to, recovered by or on behalf of (or reduced to a debt owed to) the Claimants on account or as a result or by virtue (directly or indirectly) of the Proceedings, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or otherwise, and includes all of the Claimants' legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise, plus (B) any recovered interest, penalties, solicitors' fees and costs in connection with any of the foregoing, plus (C) any consequential, actual, punitive or exemplary damages awarded or recovered on account thereof; plus (D) any interest awarded or later accruing on any of the foregoing except post-judgment interest payable separately to the Fund, plus (E) any recoveries against solicitors, accountants, experts, officers or other related entities in connection with any of the foregoing or the pursuit of the Proceedings.

"**Resolution Amount**" shall mean, in the event of Success, Settlement, judgment or other resolution of the Proceedings or any receipt of Proceeds, the amount payable to the Fund calculated in accordance with paragraph 2 of Schedule 2 (*Resolution Amount*) and payable in accordance with Clause 13.

"**Special Assets**" shall mean the assets specified in paragraph 3 of Schedule 5 (*Assets*).

"**Success**" shall have the meaning given in Clause 13.2.

"**Target Asset Threshold**" shall mean the Target Assets representing an aggregate market value equal to or greater than [redacted]

"**Target Assets**" shall mean the assets specified in paragraph 2 of Schedule 5 (*Assets*) and shall:

- (a) in addition, include any and all assets over which a Claimant had Control at any time in its existence prior to, but not on the date of, this Agreement; and
- (b) for the avoidance of doubt, exclude the Excluded Assets and (other than in the case of Clause 17.3.1 (a)) the Special Assets.

**"Trusts"** shall mean the following trusts, further details of which are set out in Schedule 6 (*Trusts*): The Lake Cauma Trust; The Heritage Trust; The Damerino Trust; The Citizen Trust; The Ypresto Trust; The Thalassoma Trust; The Liza Trust; The Mola Trust; The Diodon Trust; the Girella Trust and the Ronquilus Trust.

## **2. PARAMOUNTCY OF CLAIMANTS' SPECIAL STATUS**

2.1 The Parties acknowledge and agree that:

2.1.1 each Trustee has entered into this Agreement solely in its capacity as a trustee of the Trusts; and

2.1.2 nothing in this Agreement shall in any way be construed as conflicting, fettering or otherwise impinging upon the Claimants' duties under Liechtenstein law in their capacities as trustees of the Trusts.

## **3. WARRANTIES AND REPRESENTATIONS**

[Redacted]

## **4. CONDITIONS PRECEDENT**

[Redacted]

## **5. FINANCING**

5.1 Subject to and in accordance with the terms of this Agreement (including the Conditions Precedent), the Fund agrees to invest in the Proceedings the amounts set out in and subject to and in accordance with Schedule 1 (*Particulars*) and remainder of this Clause 5.

[other sub-clauses redacted]

## **6. ADVERSE COSTS & SECURITY FOR COSTS**

[Redacted]

## **7. UNDERTAKINGS**

[Redacted]

## **8. CONFIDENTIALITY**

[Redacted]

## **9. PRIVILEGED INFORMATION**

[Redacted]

## **10. CLAIMANT TO HAVE CONDUCT OF PROCEEDINGS**

[Redacted]

## 11. INDEMNIFICATION

11.1 The Claimants agree to indemnify, defend and hold the Fund, their Affiliates and Representatives free and harmless from and against [redacted]

## 12. LIMITATION OF FUND'S LIABILITY

12.1 For the avoidance of doubt, other than as set out in Clause 5 of this Agreement, the Fund shall have no obligation to fund any fees, expenses or other sums in relation to the Proceedings or otherwise under or in connection with this Agreement, and all such fees, expenses or other sums shall be the sole responsibility of the Claimants [remainder of 12.1 and other sub-clauses redacted]

## 13. SUCCESS IN PROCEEDINGS

13.1 Subject to Clause 17.4, the Fund shall be entitled to the Resolution Amount if:

13.1.2 any Success occurs; and

13.1.2 payment of the Resolution Amount would not result in Control over Assets representing an aggregate market value lower than USD 10,000,000.

13.2 "Success" shall:

13.2.1 be deemed to occur where a Claimant has, achieves, receives and/or otherwise directly or indirectly assumes, obtains, maintains, recovers, (re)affirms, (re- asserts) or (re)gains Control over Target Assets meeting the Target Asset Threshold; and

13.2.2 for the avoidance of doubt, include circumstances where:

(a) any receiver appointed any receiver appointed in connection with the Proceedings (including any receiver appointed by a Court in the Cayman Islands in connection with the Proceedings) is granted any right of distribution over any Assets resulting in Control over such Target Assets; and/or

(b) the SFPF or any of its Affiliates or any other entity or vehicle designed to expropriate Target Assets from a Trust is unwound and such unwinding directly or indirectly results in Control over any Target Assets.

13.3 The Resolution Amount shall be calculated in accordance with Schedule 2 (*Resolution Amount*).

## 14. RESOLUTION AMOUNT

14.1 For the avoidance of doubt:

14.1.1 where there are successive instances of Success, the duty under Clause 13 to pay a Resolution Amount to the Fund shall apply cumulatively to each such instance; and

14.1.2 the Resolution Amount may be paid in tranches subject to and in accordance with the terms of this Agreement.

14.2. The Claimants shall make all payments of the Resolution Amount due to the Fund under Clause 13 within five (5) Business Days of an instance of Success giving rise to such payment. Each such payment shall be made without set-off, deduction or counterclaim.

## 15. APPEALS

[Redacted]

## 16. NO SUCCESS IN PROCEEDINGS

If none of the Claimants Succeeds and no Termination Notice has been served by the Fund, the Resolution Amount shall not be payable by the Fund.

## 17. TERMINATION

17.1 If:

17.1.1 [Redacted]

17.1.2 [Redacted]

17.1.3 [Redacted]

17.1.4 [Redacted]

then the Fund shall be entitled to serve notice on the Claimants terminating all of its obligations under Clause 5.1 to meet the Claimants' legal costs in accordance with this Agreement (a "**Termination Notice**").

17.2 [Redacted]

17.3 If any Success occurs after a Termination Notice served pursuant to Clauses 17.1.3 or 17.1.4 takes effect in accordance with Clause 17.2.1:

17.3.1 the provisions of Clause 13 as to the payment of the Resolution Amount shall apply as if this Agreement had continued in force, save that:

(a) all references in Clause 13.2 to "Target Assets" shall for these purposes be deemed to include both Target Assets and Special Assets; and

(b) the Target Asset Threshold shall not apply (that is, the words "Target Assets meeting the Target Asset Threshold" in Clause 13.2.1 shall be deemed to be replaced with the words "any Target Assets or Special Assets"); and

17.3.2 [Redacted]

17.4 If the Fund serves a termination Notice pursuant to Clauses 17.1.1 or 17.1.2, then (without prejudice to any right to the Resolution Amount accrued under Clause 13.1 prior to such Termination Notice taking effect in accordance with Clause 17.2.1), the Fund shall not be entitled to the Resolution Amount

17.5 [Redacted]

## **18. PLACE AND ACCOUNT FOR PAYMENTS**

[Redacted]

## **19. INTEREST ON LATE PAYMENT**

[Redacted]

## **20. INDEPENDENT ASSESSMENT**

[Redacted]

## **21. GOVERNING LAW AND ARBITRATION**

21.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the laws of England and Wales.

21.2 and other sub-clauses [Redacted]

## **22. TAX MATTERS**

[Redacted]

## **23. COSTS OF THIS AGREEMENT**

[Redacted]

## **24. COMMUNICATIONS AND NOTICES**

[Redacted]

## **25. ENTIRE AGREEMENT**

25.1 This Agreement and the other Transaction Documents shall constitute the entire agreement between the Parties and shall supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.

25.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty

(whether made innocently or negligently) that is not set out in this Agreement or another Transaction Document.

25.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement or any other Transaction Document.

## **26. ASSIGNMENT**

The Agreement shall inure for the benefit of and be binding upon the Parties hereto and their respective successors, assigns and legal representatives. [Remainder of the sub-clause redacted].

## **27. CLAIMANTS' LIABILITY**

27.1 All obligations of the Claimants under the Transaction Documents, including this Agreement and any documents provided by way of security, are intended to survive any Insolvency Proceedings of the Claimants, subject to the operation of applicable law. The Claimants acknowledge and agree that any future trustee of the Trusts shall be bound by this Agreement in the same manner as the Claimants.

27.2 [Redacted]

27.3 [Redacted]

## **28. AMENDMENT AND WAIVER**

Any amendment or modification of any provision of this Agreement must be in writing and bear the signature of a duly authorised representative of each party. No term or provision of this Agreement may be waived except in a written instrument that bears the signature of a duly authorised representative of each party.

## **29. SEVERABILITY**

[Redacted]

## **30. INCONSISTENCY**

In the event of any inconsistency between the provisions of Schedules 1 and 2 and the provisions of this Agreement, such Schedules shall prevail

## **31. THIRD PARTY RIGHTS**

[Redacted]

## **32. COUNTERPARTS**

[Redacted]

## **33. ASSIGNMENT OF POTENTIAL CAUSES OF ACTION TO THE FUND**

[Redacted]

### 34. EXPLANATION OF AGREEMENT

[Redacted]

### SCHEDULE 1 - PARTICULARS

Details of the parties save for the Fund disclosed. Details of external lawyers redacted. Terms regarding the financing (including what the funds advanced by the Fund can be used for) are largely redacted but the following is disclosed:

#### FINANCING

The Funded Amount shall be used solely to pay for [redacted] ("**Claimant's Costs**") [redacted] ("**Advisory Costs**")

The Fund will invest the following amounts in connection with the Proceedings, subject to and in accordance with this Agreement and the Budget (the "**Committed Capital**"): [redacted]

The aggregate sum of all amounts actually paid by the Fund hereunder, excluding for the avoidance of doubt the Transaction Costs, shall constitute the "**Funded Amount**".

The provisions relating to the advancement of the Claimant's costs and the limits applicable to Transaction Costs that the Claimants may incur are also largely redacted.

### SCHEDULE 2 – RESOLUTION AMOUNT

1. The Funded Amount shall be provided to or paid on behalf of the Claimants on a non-recourse basis, and the Resolution Amount shall be computed on the basis of and paid in accordance with the remaining provisions of this Schedule 2.
2. The "**Resolution Amount**" shall be equal to the aggregate of:
  - (i) the Transaction Costs; plus
  - (ii) the Funded Amount; plus
  - (iii) [redacted]

SCHEDULE 3 – [Heading and all paragraphs redacted]

**SCHEDULE 4 – IRREVOCABLE INSTRUCTIONS – [redacted]**

**SCHEDULE 5 – ASSETS**

The Excluded Assets are listed in a table as certain bank accounts but the details have been redacted.

The Target Assets are listed in a table as certain bank accounts but the details have been redacted.

The Special Assets are listed and include a bank account with a balance of US\$39,315,868 in the name of and a loan (I assume) owed to the Ypresto Trust

**SCHEDULE 6 – THE TRUSTS**

Further details of the eleven trusts listed in the definition of the Trusts in the LFA are disclosed.

**SCHEDULE 7 – SECURITY**

The schedule includes a table but the contents have been redacted.

**SCHEDULE 8 – POTENTIAL TAX LIABILITIES**

The contents of the schedule has been redacted.

**SCHEDULE 9 – PROCEEDINGS**

The content of this schedule has been removed.

**Appendix I – Engagement Letters**

The content of this schedule has been removed

**Appendix II – Budget for Claimants’ Costs**

The content of this schedule has been removed.

## Appendix 2

### The Redacted Deed

The Redacted Deed contains recitals to indicate that Cato had been appointed as an additional trustee of the Trusts save for the Ypresto Trust and was willing to become a party to the LFA and thereby become a Claimant; that Global GTC had been appointed as an additional trustee of the Ypresto Trust and that the Parties were willing to increase the Claimant Costs, to vary the calculation of the Resolution Amount and “to make special provision in respect of the Cayman Assets following a Discharge and prior to Final Determination of the Cayman Proceedings; that is, concerning the grant of the Cayman Pledges and the payment of the Resolution Amount (each as defined in Clause 6(a)(i))”.

### The following is a summary of the operative provisions as disclosed

#### 1. DEFINITIONS AND INTERPRETATION

In this Agreement, expressions defined in the Financing Agreement and used in this Agreement shall have the meaning set out in the Financing Agreement, unless otherwise set out in this Agreement or the context otherwise clearly requires. The rules of interpretation set out in the Financing Agreement shall apply to this Agreement as if references therein to the "Agreement" were references to this Agreement.

Various definitions are set out, but a number have been redacted. The following relevant definitions were disclosed:

“**Cayman Assets**” shall have the meaning given in Clause 6(a)(i)

“**Cayman Pledges**” shall have the meaning given in Clause 6(a)(iii)

“**Cayman Proceedings**” shall have the meaning given in Recital (B)(i) [this recital has been redacted]

#### 2. CATO

The provisions have been redacted.

#### 3. FINANCING

The provisions in the LFA as to the budget are amended but the amendments are redacted.

#### 4. THE RESOLUTION AMOUNT

The provisions in the LFA as to the calculation of the Resolution Amount are amended but the amendments are redacted.

#### 5. QUARTERLY UPDATES

The provisions are redacted.

## 6. SPECIAL PROVISION REGARDING THE CAYMAN ASSETS

- (a) The Parties acknowledge and agree that
- (i) the Assets that are the subject of the Cayman Proceedings (including *inter alia* the accounts held by Britannia Holdings (2006) Ltd. and Britannia Guarantee National Insurance Company, each as set out in Paragraph 2 of Schedule 5 to the Financing Agreement) (the "**Cayman Assets**") remain as at the date of this Agreement subject to a freezing injunction issued by the Grand Court of the Cayman Islands (the "**Grand Court**") in the Cayman Proceedings on 17 October 2017 (the "**Freezing Injunction**");
  - (ii) the Cayman Assets are subject to proprietary claims in the Cayman Proceedings as at the date of this Agreement;
  - (iii) if there is a discharge of the Freezing Injunction by the Grand Court, the Cayman Islands Court of Appeal (the "**Appeal Court**") or the Judicial Committee of the Privy Council (the "**Privy Council**") before the final determination of the Cayman Proceedings (including pursuant to any appeal to the Appeal Court and/or the Privy Council) (a "**Final Determination**" and a "**Discharge**"), then the Claimants shall take all reasonable steps promptly to grant or procure the grant of one or more pledges in respect of the Cayman Assets on terms substantially similar to those of the [redacted] (subject to Clause 7(i) (the **Cayman Pledges**)).
  - (iv) provided the Claimants comply and remain in compliance with Clause 6(a)(iii), the Resolution Amount shall not be payable by the Claimants in respect of the Cayman Assets as a result of the Discharge except to the extent that a Final Determination upholds the Trustees' rights in the Cayman Assets.

## 7. OTHER

A number of the provisions are redacted but the following relevant terms are disclosed:

### Proceedings

- (d). The contents of Schedule 9 of the [LFA] (Proceedings) shall be replaced with [the] updated schedule of Proceedings set out in Appendix 4.

### No prior breach:

- (h). Each Party acknowledges and agrees that neither any Original Claimant nor the Fund has committed a breach of the Financing Agreement prior to the date of this Agreement or – to the extent that a breach has occurred – waives any and all rights hereunder in respect of any such breach.

### Discharge of Cayman Pledges:

- (i). The terms of each Cayman Pledge made pursuant to clause 6 of this Agreement shall provide that such Cayman Pledge shall cease to have effect over the Cayman Assets in

respect of which it has been provided if the Final Determination of the Cayman Proceedings is such that no Claimant is held to have any ownership interest in any of the share capital of Britannia Holdings (2006) Ltd.

**APPENDIX 1 – COPY OF THE ORIGINAL LFA – REMOVED**

**APPENDIX 2 – THE HEADING AND THE CONTENTS ARE REDACTED**

**APPENDIX 3 - BUDGET (PERRY CASE- SCENARIOS (FEBRUARY 2021) – REDACTED**

**APPENDIX 4 – UPDATED LIST OF PROCEEDINGS - REDACTED**