IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 225 of 2010(CJ)

BETWEEN **AMBER FUND (CAYMAN) LTD.** **PLAINTIFF**

AND **(1) SAAD INVESTMENTS COMPANY LIMITED (IN OFFICIAL LIQUIDATION) (a company incorporated in the Cayman Islands)** **1ST DEFENDANT**

(2) BANQUE SYZ & CO. S.A. (a company incorporated under the laws of Switzerland) **2ND DEFENDANT**

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLLIE, CHIEF JUSTICE
THE 21ST DAY OF JANUARY 2011 & July 12, 2012

APPEARANCES: Mr. Marc Kish and Ms. Bachandale for the plaintiff
Mr. Haynes and Mr. McField Nixon for the 1st defendant
Mr. Walton and Mr. Stoute for the 2nd defendant

RULING

1. Amber Fund (Cayman) Ltd. ('the Fund') applies for interpleader relief. Its interpleader action is brought in respect of what the Fund regards as the competing and adverse claims if SAAD Investment Company Limited ("SICL"), a Cayman Islands Company in official liquidation, and Banque SYZ & Co, S.A (Banque SYZ), a Bank incorporated under the laws of Switzerland and carrying on business in Switzerland (together "the Defendants"). The Fund seeks the Court's leave to pay the amount underlying the competing and adverse claims into Court (the "Redemption

Proceeds" to be explained below), in escrow, or to one of the Defendants as trustee pending resolution of the dispute between them. In doing so the Fund seeks to discharge itself from any outstanding obligation in respect of the Redemption Proceeds. In addition, the Fund seeks leave to effect substituted service on Banque SYZ within the jurisdiction by way of substituted service or alternatively, leave to serve Banque SYZ out of the jurisdiction. Service is sought so as to join Banque SYZ in the interpleader proceedings and so as to ensure that it is bound by the outcome. In addition, the Fund seeks leave to serve the proceedings locally on SICL and for those purposes leave to commence the interpleader proceedings against SICL under Section 97 of the Companies Law, SICL being a company in liquidation.

Background

2. The Fund is a Cayman Islands' domiciled mutual fund and exempted limited liability company incorporated in 2005 under the laws of the Cayman Islands and has carried on business regulated by the Cayman Islands Monetary Authority (CIMA). The Fund is an offshore feeder fund in a master-feeder structure, in relation to which the master fund, Amber Master Fund (Cayman) SPC, and the onshore feeder, Amber Fund LP, are both in liquidation or receivership and there is no prospect of any future investment by either feeder fund into the Master Fund. In the course of winding up its business, the Fund has satisfied the claims of its known creditors and made distributions of capital in accordance with the provisions of its Articles of Association.

3. The competing and adverse claims by SICL and Banque SYZ are in respect of 3,429.584391 class U-3/2 shares of the Fund ('the Shares'), registered in the name of

Banque SYZ, that were redeemed on 26th August 2010; that is: the Redemption Proceeds. It is, however, common ground that the Shares and/or Redemption Proceeds represent SICL's investment in the Fund made on its behalf by Banque SYZ. The Redemption Proceeds, currently held by the Fund in cash in the amount of USD130,000 in a Cayman Islands bank account, represent the only outstanding payment to be made in connection with the Fund's wind-down process. Following payment out of the Redemption Proceeds, the directors intend to recommend a resolution to the shareholders to put the Fund into dissolution at the earliest opportunity. Accordingly, the competing claims of SICL and Banque SYZ (as well as the existence of a worldwide Freezing Order (the "WFO") to be discussed below) are preventing the Fund from following its intended course of dissolution.

4. Banque SYZ asserts that it is entitled to payment of the Redemption Proceeds in its capacity as the legally registered holder of the Shares. For their part, the joint official liquidators of SICL (the 'JOLs') claim that the shares are beneficially owned by SICL pursuant to a custodian agreement entered into with Banque SYZ and that SICL is entitled to payment of the Redemption Proceeds by the Fund, notwithstanding Banque SYZ's refusal to recognise the authority of the JOLs under Swiss Law, which Banque SYZ asserts governs the custodian agreement.

5. The Fund seeks leave, pursuant to GCR O.11, r.1(1)(i), to serve Banque SYZ out of the jurisdiction or alternatively by substituted service (in practice, by service in person on its Cayman Islands legal representatives, Appleby). The Fund has indicated that service out of the jurisdiction upon Banque SYZ would engage the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the 'Hague Service Convention') and that that process would

take several months to complete. Further, the Fund has only one remaining asset, the Redemption Proceeds, which is at risk of being dissipated by further delay and expense.

6. The parties agree that the Redemption Proceeds are beneficially owned by SICL and that, as such, they come within the ambit of the WFO made by this Court on 24th July 2009, as varied on 4th September 2009. The WFO prohibits any person having notice of its existence from assisting in "*The removal of any [of SICL's] assets located in the Cayman Islands up to the value of US$9.2 billion. …assets whether or not they are in the name of [SICL], whether they are solely or jointly owned and whether [SICL] is interested in them legally, beneficially or otherwise*."

7. Being on notice of SICL's beneficial interest in the Redemptions Proceeds, the Fund is prevented at pain of penalty from paying the Redemption Proceeds to Banque SYZ by the terms of the WFO which further provide that:

> *"It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.*

8. The Fund is well advised that this is the case, notwithstanding the existence of a 'Non-Recognition of Trusts' provision in the Fund's Articles of Association, in the following terms:

> *"The Company shall not be bound by or compelled to recognise in any way (even when notified) any equitable, contingent, future or partial interest in any Share, or (except only as is otherwise provide by these Articles or the Statute any other right in respect of any Share other than an absolute right to the entirety thereof in the registered holder."*

9. It is to be noted however that a 4th September 2009 variation (the 'Variation Order') to the terms of the WFO, appears to allow for payments to be made to

the JOLs (on behalf of SICL) in appropriate circumstances. Specifically, the Variation Order states that:

> *"Nothing in this order shall operate to prevent or restrict in any way steps taken by or under the Provisional Liquidators and/or Official Liquidators appointed in respect of [SICL]".*

10. As noted above, SICL is a company incorporated under the laws of the Cayman Islands and a member of the Saad Group of Companies (headquartered in Saudi Arabia) (The 'Saad Group'). The Saad Group was formed in 1980 by Mr. Maan Al-Sanea. By an order dated 18th September 2009, the JOLs were appointed with the power inter alia;

    (a) to bring or defend any action or other legal proceedings in the name and on behalf of SICL.

    (b) to carry on the business of SICL so far as may be necessary for its beneficial winding up; and

    (c) to take possession of, collect and get in the property of SICL for that purpose take all such proceeding as they consider necessary.

11. The JOLs are of the opinion that, on the documents that they have seen, Banque SYZ at all material times acted as SICL's nominee and custodian in respect of the investment. This is a natural inference to be drawn from the documents that have been made available to the JOLs, particularly the custodian agreement and portfolio valuations. [It is noted that the JOLs have indicated that they have not been provided with the nominee agreement, subscription agreement or any other documents which could be considered to govern the relationship between SICL and Banque SYZ].

12. The JOLs have requested that Banque SYZ, as SICL's custodian and nominee, instruct the Fund to pay the Redemption Proceeds to the JOLs, as the Court appointed liquidators of SICL. However, to date, Banque SYZ has not complied with this request.

13. Banque SYZ, via its legal representatives Appleby, has been provided with a copy of the WFO. Banque SYZ's position, as communicated by Appleby, is that neither the appointment of the JOLs nor the WFO has any application in respect of the Redemption Proceeds or any instructions Banque SYZ might give the Fund to pay over Redemption Proceeds. Accordingly, Banque SYZ has refused to instruct the Fund to procure the payment to SICL.

Interpleader

14. Interpleader relief falls within the ambit of GCR O.17, r.1 which provides;

> *"Entitlement to relief by way of interpleader*
> *1. Where-*
> *(a) A person is under a liability in respect of a debt or in respect of any money, goods or chattel and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto; or*
>
> *(b) Claim is made to any money, goods or chattels taken or intended to be taken by the Bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued*
>
> *The person under liability as mentioned in subparagraph (a) or (subject to rule 2) the Bailiff may apply to the Court for relief by way of interpleader.*

15. And Order 17 r.5 provides:

(i) Where on hearing the summons under this order all the persons by whom adverse claims to the subject matter in dispute (hereafter in this Order referred to as "the claimants) appear, the Court may order –

(a) That any claimant be made a defendant in any action pending with respect to the subject matter in dispute in substitution for or in addition to the applicant for relief under this Order; or

(b) That an issue between he claimants be stated and tried and may direct which of the claimants is to be plaintiff and which the defendant."

16. The Fund's interpleader proceedings are recognised and supported by the JOLs who agree that there is a dispute which could and should be tried within the Cayman Islands. However, Appleby, as legal representative for Banque SYZ, submits that the objective threshold test for an interpleader action has not been met and as such the interpleader application brought by the Fund is premature. Appleby further submits that that threshold test requires that there should be a real foundation for the expectation of being sued by at least one of the competing claimants and not a mere adumbrated claim. Specifically, at a minimum, there must be the articulation of a justiciable cause of action and a threat to pursue that cause of action. Here, before the fund can be entitled to interpleader relief, it must at least satisfy the threshold test by showing that it has a real expectation of being sued either by SICL or Banque SYZ and neither has expressed such an intention.

17. It is Appleby's submission that in this instance, the dispute between the Defendants does not even concern the same property. Specifically, this is so because there is a claim by Banque SYZ to the cash comprising the Redemption Proceeds which it says

it is legally and beneficially entitled to as shareholder. In contrast, Appleby submits that the claim that the JOLs have on behalf of SICL against Banque SYZ, is a personal claim arising under its contract of investment with Banque SYZ. Further, notwithstanding that the JOLs may have a chose in action against Banque SYZ (in the nature of SICL's beneficial interest through Banque SYZ in the Redemption Proceeds), no proper claim has been advanced and hence there is no threatened pursuit of that chose by legal action against Banque SYZ, let alone against the Fund. Accordingly, Appleby further submits that it is wrong to conclude that the Fund requires protection from the ongoing or imminent threat of proceedings.

18. *In Royal Bank of Canada v Mclean [1997] CILR 296,* in the context of interpleader relief, this Court emphasized the need for '*…a real foundation for the expectation of being sued*'. But the use of the word "expectation" in this context confirms that a claim need not be an actual legal proceeding but could take the form of a formal assertion of legal rights. Further, as required by GCR O.17, the Fund is under a liability in respect of the Redemption Proceeds and this liability accrues either to Banque SYZ as registered holder of the Shares or to the JOLs as beneficial owners in the right of SICL. The Fund has admitted this and it is clear from the evidence that both Defendants have asserted rights to the Redemption Proceeds. In addition I note that;

a) The Fund has redeemed all of its investors and is now unable to trade;

b) The Fund is prevented from making a disposal of its last remaining assets because of the WFO and the threats of litigation against it;

c) If the Fund waited for a natural resolution to the problem – and given that it no longer has a reserve which could be employed – those underwriting the

Fund would in due course suffer the inevitable prejudice of paying legal and filing fees and independent directors' salaries out of their own pockets; denial of interpleader relief could result in undue prejudice to those persons who must support the Fund's activities which it continues to exists.

I am satisfied that within the meaning of GCR O.17, the Fund expects to be sued for the Redemption Proceeds by two or more persons making adverse claims thereto. Notwithstanding that no writs have been issued, the Defendants have reserved their rights at different times in correspondence. The natural inference from these reservation of rights made is that any further steps by the Fund would invoke one or the other of those implicit threats of litigation and accordingly the parties are to be regarded as being on the verge of proceedings.

19. In the circumstances it would be absurd to insist that the proceedings actually be issued before permitting an interpleader action to be brought.

Jurisdiction

20. In the context of resolving the issue raised by Banque SYZ under GCR O. 11 of the jurisdiction of this Court to grant service ex juris in Switzerland upon Banque SYZ I note the following;

(1) The application concerns adverse claims to an asset belong to a Cayman Islands company (the Fund) whose assets are situated in this, the Cayman Islands Jurisdiction. The asset in question is now the Redemption Proceeds being held within the Cayman Islands rather than the shares in the Fund but, in any event, the *lex situs* of the shares in the Fund which is a Cayman Islands

company, would be the Cayman Islands: ***McMillan v Bishopgate (No. 3) [1996] 1 WLR 387; Treasurer of Ontario v Aberdein [1947] A.C. 24.***

(2) SICL is also a Cayman Islands company, and the liquidation of SICL is an official liquidation being carried on under the control and supervision of the Cayman Court;

(3) The WFO, its terms and effect upon the ability of the Fund to meet its contractual obligations to its shareholders, are governed by Cayman Islands law and so the Cayman Court is best placed to interpret its effect on the Fund and to make any appropriate orders, if necessary, in respect of it; and

(4) Other than Switzerland being the location of the registered office of Banque SYZ, there is nothing to recommend Switzerland (or any other country) as the more appropriate forum than the Cayman Islands for the resolution of this dispute. On the contrary, I also have in mind here Banque SYZ's declared position as being bound to submit SICL's claim to Swiss bankruptcy proceedings, an issue discussed more fully below.

21. I conclude that the Cayman Islands is the appropriate forum for the trial of this dispute.

22. Accordingly, on the basis of the evidence before me, I am satisfied that there is a justiciable cause of action, a sufficient expectation of a threat to pursue that cause of action and that there is subject-matter jurisdiction vested in this Court by way of interpleader proceedings under Order 17 of the Grand Court Rules.

23. To further ground the Fund's application for service of the interpleader summons ex juris upon Banque SYZ; Maples, as legal representative for the Fund, submit that

their interpleader application falls within one of the following three grounds under GCR O.11,r.1(1)

(i) O.11, r(1)(1)(i) - *the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary of possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction.*

(ii) O.11, r(1)(1)(j) - *the claim is brought for relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed in accordance with the laws of the Islands or in respect of the status, rights or duties of any trustee thereof in relation thereto.*

(iii) O.11, r(1)(1)(ff) – *the claim is brought against any person who is … a member of a company registered within the jurisdiction … and the subject matter of the claim relates in any way to such company…or to the status, rights or duties of such…member.*

24. I accept that the grounds for service ex juris upon Banque SYZ are made out.

Substituted service

25. Banque SYZ also complains against the method by which service upon it was actually effected by way of substituted service upon its attorneys in the Cayman Islands.

26. The United Kingdom and Switzerland are both signatories to the Hague Service Convention which was signed at The Hague on 15th November 1965. The United Kingdom's instrument of ratification was deposited with the Government of the Netherlands on 17th November 1967, and the Hague Service Convention entered into

force on 10th February 1969. This Convention was extended to the Cayman Islands, under Article 30 – the Territorial Provision – on the 19th July 1970. Further, *the Permanent Bureau of the Hague Conference on Private International Law* indicates that the Clerk of Courts (of the Grand Court) is the Central Authority in the Cayman Islands. Accordingly, and as such its provisions are to be recognised by this Court and followed unless prohibited by some rule of domestic law and unless contrary to the interest of justice to do so. It is Appleby's submission on behalf of Banque SYZ that under Swiss law and generally, a foreign defendant's entitlement is to be served in accordance with the applicable convention as to service and there was no attempt to serve Banque SYZ by that method which is the method set down by the Hague Service Convention. Appleby further submits that, to allow substituted service on the grounds of administrative convenience would subvert the principles of the Hague Service Convention.

27. It is clear that the Hague Service Convention is applicable in the Cayman Islands.

28. Appleby further submits that in its ex parte application for substituted service the Fund failed to discharge its duty for full and frank disclosure when it relied on *Knauf UK GmbH v British Gypsum Ltd. [2002] 1 WLR 907 (CA)* where it was held that an applicant for substituted service merely had to show 'good reason' – the requirement under the new civil procedure regime in England where the test is different. As was held in *Chile Holdings (Cayman) Ltd v Santiago de Chile Hotel Corporations SA [1997] CILR319 ('Chile Holdings')*, the correct test for substituted service is that actual service is a *'practical impossibility'*

29. Maples acknowledges that it was regrettable that *Chile Holdings* was not put before the Court at the ex parte hearing, however this was not deliberate and there was no

intention to mislead the Court. Further, *Chile Holdings* was helpful to the Fund's position in that it also declared that:

> *"The fundamental principle in English and Cayman law is that any person sued in our Court shall have effective notice of the proceedings instituted against him. And therefore substituted service can only be resorted to when there is a 'practicable impossibility' of actual service and the method of substituted service will in all reasonable probability be* ***effective to bring the proceedings to the notice of the party or person being served.***" (emphasis added)

30. It is Maples' submission that it is clear that the principle being protected by the case and by the case law in general, is that the party served should have ample notice to protect their position and to take local legal advice. Thus the method of service should be seen as a secondary consideration. Further, the Court in granting substituted service upon Banque SYZ by service upon its lawyers Appleby, had clearly contemplated whether there was actual effective service rather that whether service was a 'practical impossibility'. The three key points noted by the Court were knowledge, notice and absence of prejudice. In this case there had been no suggestion that Banque SYZ did not have notice of the proceedings, as they had already instructed their Cayman Islands legal representatives from whom they were receiving advice and were therefore actively engaged on the issues.

31. The Court notes that in *Bayat and Others v Cecil and Others [2011] EWCA Civ 135*, it was held that;

> *"[68] Service by alternative means may be justified by facts specific to the defendant, as where there are grounds for believing that he has or will seek to avoid personal service where that is the only method permitted by the foreign law, or by facts relating to the proceedings, as where an injunction has been obtained without notice, or where an urgent application on notice for injunctive relief is required* to be made after the issue of proceedings."

32. It is, moreover, an aggravating and not a mitigating circumstance that Banque SYZ has itself intimated that, being on notice in Switzerland of the bankruptcy proceedings against SICL in that country, it would be obliged under Swiss law to hand over the Redemption Proceeds to SICL's trustee-in-bankruptcy who would, in turn, be obliged under Swiss law to use them to satisfy SICL's Swiss creditors before any others. Expatriation of the Redemption Proceeds to Switzerland would therefore preclude the JOLs of SICL from satisfying SICL's creditors' claims on the *pari passu* basis required by Cayman law. SICL is a Cayman Islands company already in liquidation in this jurisdiction and so it can do no violence to the principle of the universalism in liquidation proceedings to require its assets to be dealt with here rather than in Switzerland under the regime there that would operate contrary to the pari passu principle. This, in my view, is a further compelling reason to require Banque SYZ to submit to the jurisdiction of this Court in the interpleader proceedings rather than allow it to compel the Fund and SICL to submit to the Swiss jurisdiction. See also in this regard, the persuasive reasoning of Kawaley J (now Chief Justice) of Bermuda in ***In the Matter of the Liquidation of Founding Partners Global Fund Ltd. [2011] SC (Bda) 19 Com (8 April 2011).*** There, at pages 12-15, that learned judge examined the private international law rules which determine the question which of two competing claimants are entitled to control assets held in a Bermudian bank for the account of a Cayman company in liquidation.

33. The outcome which recognised, in favour of the Cayman Court-appointed liquidators, that the law of place of incorporation shall determine who are the corporation's officials authorised to act on its behalf, applies equally in this case in respect of assets which may be determined by way of interpleader to belong beneficially to SICL.

34. For the purposes of determining whether SICL's Swiss trustee-in-bankruptcy or its Cayman Court-appointed liquidators shall be regarded as authorised to collect in its assets, I am bound to recognise the primacy of the latter.

35. Here the facts specific to Banque SYZ were apparent, and were also properly to be considered, when the practical difficulty and delays involved in direct personal service upon it in Switzerland were also considered by this Court in directing substituted service.

36. Similarly, in *Marconi v PT Pan Indonesia Bank Ltd TBK [2004] EWHC 129 (Comm), [2004] 1 Lloyd's Rep 594*, it was held by:

> *"[45] Whilst it* ***cannot be said that service was impractical*** *in Indonesia, it would involve very extensive delay in a claim which was already stale. Furthermore the inference I draw, given the apparent lack of merit in the defence, is that delay was the sole aim of the Defendant rather than any genuine desire to ensure that the proprieties of service [were] met. It is notable that Panin Bank had appointed Messrs Thomas Cooper and Stibbard in September 2002 in response to service of Marconi's petition out of the jurisdiction by courier post to their principal office some time in August. Albeit the petition was dismissed, it does not appear to be in issue that Thomas Cooper and Stibbard were still actively involved in the proceedings on the question of costs. In all these circumstances I regard the Claimants as having* ***established a sufficiently good reason to justify the alternative mode of service."***

37. Similar concerns arise here in light of Banque SYZ's declared intention not to recognise the appointment of the JOLs as being effective in Switzerland, saying it is precluded from doing so by Swiss law. By refusing to accept service here (and indeed by refusing to acknowledge the Court's jurisdiction over it to deal with the subject-matter of the dispute) Banque SYZ is prone to criticism (at least from the point of view of this Court) of simply seeking to take the path of least resistance

expecting an easier passage if it simply complies with the directions of Swiss trustee-in-bankruptcy.

38. In this case, the facts before this Court indicate that;

a) Banque SYZ does have a claim which could be resolved through interpleader proceedings.

b) Banque SYZ was on notice of the claim of the JOLs on behalf of SICL.

c) Banque SYS had notice of these proceedings and had had the opportunity to instruct its legal representatives and to engage in correspondence with the Fund and SICL about these proceedings.

d) Banque SYZ had engaged Cayman Islands attorneys who have argued the case against the interpleader relief on the merits. They did not merely assert that Banque SYZ should not have been served and so is not subject to the jurisdiction of this Court.

e) There is clear evidence of actual and effective service.

39. Further, it is also clear from the evidence provided by the Fund that;

a) Banque SYZ's Cayman Islands legal representatives, Appleby, appear on one hand, to have had instructions to freely engage with the parties in the correspondence but, on the other hand, no instructions to accept service of these proceedings.

b) Banque SYZ would have suffered no prejudice from instructing its Cayman Islands legal representatives, Appleby, to accept service.

c) The creditors of the Fund have been suffering prejudice from the delay in its dissolution and the Fund was therefore motivated to bring an interpleader action as soon as possible.

d) The Court is mindful of the Overriding Objective which complements the Grand Court Rules. Specifically paragraph 1.2(b)-(d) provides;

"1.*2* *Dealing with a cause or matter justly include, as far as is practicable-*

(a ….

(b) ensuring that the normal advancement of the proceedings is facilitated rather than delayed;

(c) saving expense;

(d) dealing with the cause or matter in ways which are proportionate-

(i) to the amount of money involved;
(ii) to the importance of the case; and
(iii) to the complexity of the issues."

e) In relation to paragraph 1.2(d) of the Overriding Objectives, it is to be noted that the amount of Redemption Proceeds remaining is not substantial and the longer the proceeding continue with three parties involved, the greater the likelihood that their value would continue to be reduced.

f) In insisting on service by way of the Hague Service Convention, and given that providing instructions to Appleby to receive service would have been a simpler option, Banque SYZ could be seen as attempting to use the Hague Service Convention in an evasive manner or for an ancillary purpose.

g) Banque SYZ, although not required to, has provided only formal but no compelling reasons why it objects to substituted service through its attorneys.

40. Accordingly, on the basis of the facts specific to this case, this Court finds that the Fund has established a sufficiently good reason to justify substitute service. Further, service on Banque SYZ's Cayman Islands legal representatives does not involve the international transmission of a judicial or extrajudicial document and as a result the

Hague Service Convention is not, strictly, invoked. If I'm wrong in this, the Court's discretion may be exercised as I would exercise it, to cure any defect. In *Haque v National Commercial Bank CA (civil division) 24 February 1994*, it was held that;

> *"[I]n a case where the irregularity was administrative only and where the essential requirement of delivering the documents to the defendant at his business address was achieved in accordance with local law…. Similarly, in Boocock v Hilton International Co. [1993] 4 All ER 19, [1993] 1 WLR 1065 (CA) and Barclays Bank of Swaziland Ltd. v Hahn [1989] 2 All ER 398, [1989] 1 WLR 506 (HL) (where the question arose in regard to service under O. 10 R1(2)), the Court's discretion was exercised in favour of the plaintiff, in circumstances where there was no doubt that the proceedings had, in fact, come to the knowledge of the defendant, despite any irregularity in the method of service. … The Court's discretion can be exercised in the plaintiffs' favour without any risk, in my judgment, to the principles of international comity which underlie the need for special caution in cases of service under O. 11.*

41. Accordingly, I confirm the order granting leave to serve *ex juris* upon Banque SYZ by way of substituted service of the interpleader proceedings upon its legal representatives in the Cayman Islands. The Fund may now proceed to seek an order for interpleader relief in keeping with GCR O.17 r.5 by the joinder of Banque SYZ and SICL to the proceeding.

Hon. Anthony Smellie
Chief Justice

Decision delivered on 21st January 2011
Written reasons provided on 12th July 2012