Neutral Citation Number: [2026] CIGC (FSD) 23

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 297 OF 2025 (NSJ)

IN THE MATTER OF A SETTLEMENT KNOWN AS THE D TRUST

AND IN THE MATTER OF SECTION 64A OF THE TRUSTS ACT (2021 REVISION)

AND IN THE MATTER OF THE GRAND COURT RULES 1995, ORDER 85, RULE 2(2)(a)

BETWEEN:

THE TRUSTEES

Applicant

AND:

(1) AB
(2) CD
(3) EF
(4) GH
(5) IJ
(6) KL
(7) MN

Respondents

Before:	**The Hon. Justice Segal**
Appearances:	**Ms Bernadette Carey and Ms Katie Turney of Carey Olsen for the Trustee**
	Mr Robert Lindley and Ms Sally Peedom of Conyers Dill & Pearman for the First to Sixth Respondents
Disposal:	**On the papers**
Date:	**31 March 2026**

Originating Summons by current trustee - application for declarations that a deed of exclusion made by previous trustees was void ab initio - statutory Hastings-Bass principle - Trusts Act (2021 Revision), section 64A – when application should be dealt with on the papers – when tax authorities should be notified

JUDGMENT

The Application

1. The current trustee (the ***Trustee***) of the D Trust (the ***D Trust***) has applied (the ***Application)*** by way of originating summons dated 25 November 2025 for a declaration (the ***Declaration***) that a deed of exclusion made by the previous trustees on 30 March 2017 (the ***Deed of Exclusion***) is void *ab initio* and should be set aside and an order (the ***Costs Order)*** that the costs of and occasioned by the Application of all parties be paid on an indemnity basis out of the assets of the D Trust. The Application is supported by an affidavit sworn by a representative of the Trustee (the ***Trustee Affidavit***).

2. The Trustee requested that the Application be dealt with on the papers without a hearing and I have acceded to that request although I make some comments below on the need for caution in dealing with these types of application without a hearing since they often involve a detailed factual record and points of law that are not entirely straightforward and must not be seen as a rubber-stamping exercise.

3. The Declaration is sought on the basis that the exercise of the trustees' power to exclude was made by the previous trustees in reliance on incomplete and erroneous UK tax and trust law advice. In these circumstances the Trustee invokes the statutory Hastings-Bass jurisdiction as set out in section 64A of the Trusts Act (2021 Revision) (***Section 64A***).

4. The Respondents to the Application are as follows:

   (a). the First Respondent is the Settlor's Wife, and she has filed an affidavit in support of the Application (the ***Beneficiary Affidavit***).

   (b). the Second, Third and Fourth Respondents are the children of the Settlor and the First Respondent. The Third and Fourth Respondents are minors.

   (c). the Fifth and Sixth Respondents are the Settlor's adult sons from his previous marriage.

   (d). the Seventh Respondent is the current protector of the Trust (the ***Protector***). The Protector has been notified of the Application and confirmed in writing that it does not wish to participate in these proceedings but fully supports and agrees with the Application.

5. The Trustee and the First to Sixth Respondents filed detailed written submissions which I have found very helpful. The Trustee is represented by Ms Bernadette Carey and Ms Katie Turney of Carey Olsen. The First to Sixth Respondents are represented by Mr Robert Lindley and Ms Sally Peedom of Conyers Dill & Pearman. The First to Sixth Respondents support the Application.

The D Trust

6. The D Trust is a discretionary trust with a large class of discretionary beneficiaries comprising: (a) the children of the Settlor; (b) the children and remoter issue of the children of the Settlor; (c) the wife for the time being or widow of the Settlor; (d) the trustees of any trust or superannuation fund or foundation of which any of the persons specified in (a) or (c) is a beneficiary (discretionary or otherwise) or member; (e) any

company under the control of or owned by the persons or bodies specified in (a) – (d) and (f) any person or charity declared to be a beneficiary under the power the D Trust's trust deed (being the power of addition).

7. The D Trust was governed by New Zealand law until 25 November 2019, when the proper law of the trust and forum of administration was changed to the Cayman Islands by way of a deed of change of proper law and forum for administration.

8. The Trustee has confirmed that (a) charity is not included in any beneficial class, so it has not been necessary to involve the Attorney General in the Application and (b) there are no live taxation issues that would warrant the joinder or involvement of relevant tax authorities in respect of the Application.

The Deed of Exclusion

9. Immediately after the D Trust was settled in May 2011 a series of important transactions took place as follows:

   (a). the Settlor transferred a substantial sum of money, which was non-UK situs property, into the D Trust.

   (b). the Settlor transferred a nominal sum of money into the H Trust. The H Trust was also settled by the Settlor and is governed by Guernsey law. It is also a discretionary trust but the class of beneficiaries of the H Trust is narrower than that of the D Trust. The Trustee is also the trustee of the H Trust.

   (c) the trustee of the D Trust at the time lent the substantial sum of money at its disposal to itself as trustee of the H Trust (the ***Loan***).

   (d) the trustees of the H trust then used the funds available in the H Trust to purchase through a nominee company a residential property in the UK (the ***UK Property***).

10. The Trustee says that these arrangements were routine estate planning arrangements at the time, put in place with a view to mitigating the charge to inheritance tax in the UK

(***UK IHT***) on the death of the Settlor, on the value of the UK Property. It was confirmed at [36] of the Trustee Affidavit that "*This sort of planning was not unusual in 2011, but it was not at that time known whether HM (then, Her Majesty's, and now, His Majesty's) Revenue and Customs (HMRC) accepted the validity of it."*

11. Following these transactions, the property in the D Trust (being the rights of the then trustee of the D Trust against the trustee of the H Trust in respect of the Loan) was considered non-UK situs property and therefore "*excluded property*" for the purposes of the UK IHT regime in place at the time. Essentially, the UK tax planning anticipated the removal of the value of the purchase price of the UK Property from the charge to UK IHT on the Settlor's death (see the Trustee Affidavit at [35]). The effect was that the value of the assets of the D Trust would be shielded from significant deductions for IHT on the Settlor's death and their value maintained for the discretionary beneficiaries.

12. Some five and a half years after the establishment of the D Trust, in or around early 2017, proposed changes to UK IHT laws were published and scheduled to take effect on 6 April 2017. Upon learning of the proposed changes, the trustees of the D Trust at that time (the ***previous trustees***) identified that these changes were likely to challenge the efficacy of the tax planning put in place in 2011 with the result that the D Trust would be exposed to UK IHT on the Settlor's death (see the Trustee Affidavit at [37]).

13. The previous trustees therefore considered it prudent to seek further specialist legal advice regarding the UK IHT laws and instructed a specialist English private client law firm (the ***London Law Firm***) to advise as to what options might be available to address and mitigate the impact of the forthcoming changes. Following their engagement, the London Law Firm prepared its advice on possible structuring options to mitigate the consequences of the anticipated UK IHT tax changes. In early March 2017, with the IHT changes imminent, the London Law Firm presented four options to the previous trustees with a view to addressing the changes and mitigating their effect (the ***Advice***). Ultimately, the option selected by the previous trustees on the recommendation of the London Law Firm, referred to as Option 3, comprised various steps including retaining the two-trust structure but proceeding to declare the Settlor an Excluded Person (as defined in the trust deed) of the D Trust to prevent him from being able to benefit under the terms of the D Trust; to enter into an amended and restated property loan agreement and to agree to the

trustee of the H Trust granting a legal charge over the UK Property. The previous trustees followed this advice and on 30 March 2017 (very shortly before the new UK IHT changes came into effect on 6 April 2017) they executed a deed of exclusion to declare the Settlor to be an Excluded Person in connection with the D Trust (the ***Deed of Exclusion***).

14. With the Deed of Exclusion in effect, it was assumed that a deduction for the debt owed by the trustee of the H Trust to the previous trustees would be permitted in full on the Settlor's death when valuing the assets of the H Trust to be included in the Settlor's death estate for UK IHT purposes.

15. In or around January 2025, the Settlor engaged another specialist private client law firm in London (the ***W Firm***) to conduct a review of his estate planning arrangements. That review included a consideration of the Settlor's status as an Excluded Beneficiary of the D Trust. In the course of that review the W Firm was provided with the London Law Firm's advice. The W Firm considered that the London Law Firm's Advice was incomplete and in places erroneous and that the Deed of Exclusion was highly problematic. The W Firm concluded that the London Law Firm's Advice had failed to address and communicate a number of important tax and trust law points that the previous trustees should have been made aware of and taken into consideration before executing the Deed of Exclusion.

16. The W Firm advised that the London Law Firm had not considered the possibility that the then existing UK IHT legislation might treat the Settlor as having incurred the liabilities of the H Trust with the result that a deduction for those liabilities would be denied under associated anti-avoidance legislation. The W Firm have advised that in their view there was (and is) a material risk that section 102 of the UK Finance Act 1986 would treat the Settlor as having incurred the liabilities of the H Trust. The W Firm also considered that there had been a failure to consider whether creating the charge over the UK Property would amount to "*an incumbrance created by a disposition made by [the Settlor]*" within section 103 of the UK Finance Act 1986 (if it did so that section would prevent the secured liabilities being allowed as a deduction for UK IHT purposes) and that in their view granting the charge did amount to such an incumbrance. The W Firm also advised that there had been a failure to consider GAAR and how it might apply to the arrangements, in particular to the changes which were made in 2017.

The relief sought by the Trustee and the applicable law

17. As I have noted, the Application is brought pursuant to section 64A. As the Trustee noted in its written submissions, since Section 64A was only enacted relatively recently (in 2019) its terms have only received limited judicial consideration. This was one of the reasons why I was initially reluctant to deal with the Application on the papers without the benefit of oral argument.

18. Having identified the problems with the London Law Firm's advice and the real risk of unintended tax liabilities, the Trustee is now taking steps to ensure that the beneficiaries of the D Trust are not exposed to such liabilities. As matters currently stand, the full value of the UK Property would be taxable to UK IHT on the Settlor's death without any deduction of the liabilities owed by the trustee of the H Trust to the Trustee. Therefore, to facilitate an appropriate restructuring, the Trustee now seeks to have the Deed of Exclusion set aside. The Trustee says that if such relief is granted it will continue to assess how to address any remaining deficiencies with the current trust structure in consultation with its current specialist tax advisors (see the Trustee Affidavit at [58]). The proposed setting aside of the Deed of Exclusion was therefore part of a wider restructuring. The Trustee confirmed that including once again the Settlor as a potential beneficiary of the D Trust will not change any UK tax charge already incurred or have any other retrospective UK tax effective.

19. Section 64A is in the following terms:

> *"(1) If the Court, in relation to the exercise of a fiduciary power, is satisfied by a person specified in subsection (5) that the conditions set out in subsection (2) have been met, the Court may —*
>
> *(a) set aside the exercise of the power, either in whole or in part, and either unconditionally or on such terms and subject to such conditions as the Court may think fit; and*
>
> *(b) make such order, consequent upon the setting aside of the exercise of the power, as it thinks fit.*
>
> *(2) the conditions referred to in sub-section (1) are:*
>
> *(a) in the exercise of the power, the person who holds the power did not take into account one or more considerations (whether of fact, law or a*

combination of fact and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power; and

(b) but for that person's failure to take into account one or more such relevant considerations or that person having taken into account one or more such irrelevant considerations, the person who holds the power —

(i) would not have exercised the power;

(ii) would have exercised the power, but on a different occasion to that on which it was exercised; or

(iii) would have exercised the power, but in a different manner to that in which it was exercised.

(3) If and to the extent that the exercise of the power is set aside under this section, to that extent the exercise of the power shall be treated as never having occurred.

(4) The conditions specified in subsection (2) may be satisfied without it being alleged or proved that in the exercise of the power, the person who holds the power, or any advisor to such person, acted in breach of trust or in breach of duty.

(5) An application to the Court under this section may be made by —

(a) the person who holds the power;

(b) where the power is conferred in respect of a trust or trust property, by any trustee of that trust, or by any person beneficially interested under that trust, or (in the case of a purpose trust) the enforcer;

(c) where the power is conferred in respect of a charitable trust or otherwise for a charitable purpose, the Attorney General; or

(d) with the leave of the Court, any other person.

(6) No order may be made under subsection (1) which would prejudice a bona fide purchaser for value of any trust property without notice of the matters which allow the Court to set aside the exercise of a power over or in relation thereto."

20. The Trustee noted that in *Maples Trustee Services v AB and others* (***In Re Settlements***) FSD 228 of 2023 (unreported, 28 September 2023) Mr Justice Kawaley had summarised the section 64A jurisdiction. In my view Justice Kawaley provided a clear and authoritative summary of the applicable law (save in one respect which I mention below) which is worth setting out in full (my underlining):

"16. Although the starting point for construing section 64A is indeed the relevant provisions themselves it is still possible in addition to draw upon the resources of the pre-Pitt v Holt cases as well. This is no more than one would logically expect if the purpose of the new statutory Hastings Bass jurisdiction was to restore the traditional equitable jurisdiction this Court possessed to set aside the exercise of fiduciary powers on the grounds of inadequate deliberation. The legislative purposes can be identified not just by reference to the legislative history of section 64A but also be reference to the statutory language and persuasive authority.

17. In Re Ta-Ming Wang Trust [2010 (1) CILR 541], Smellie CJ opined as follows:

> *"16 The recent formulation of the Hastings-Bass principles which has found favour with this court as being a clear exposition of them (see A v. Rothschild (1)) is that given by Lloyd, L.J. in Sieff v. Fox (6) as follows ([2005] 1 W.L.R. 3811, at para. 119):*
>
> *'Where trustees act under a discretion given to them by the terms of the trust, in circumstances in which they are free to decide whether or not to exercise that discretion, but the effect of the exercise is different from that which they intended, the court will interfere with their action if it is clear that they would not have acted as they did had they not failed to take into account considerations which they ought to have taken into account, or taken into account considerations which they ought not to have taken into account.' [Emphasis added]"*

...

18. The corresponding statutory language has the following key strands. Firstly, the statutory jurisdiction applies to a "fiduciary power." The Hastings-Bass principle necessarily applies to fiduciary discretionary powers. In my judgment the jurisdiction is closely connected to (if not derived from) the wider equitable principle that fiduciary duties can only validly be exercised for their proper or intended purpose. Buckley LJ in Re Hastings-Bass [1975] Ch 25 at 37D, 41G made the following remarks in relation to submissions made by Nicholas Browne-Wilkinson QC (as he then was) which were clearly ultimately accepted:

> *"The power of advancement is, he says, a fiduciary power, and as to this we think there is really no dispute. He says that the trustees can only properly exercise such a power after giving due consideration and weight to all relevant circumstances…. To sum up the preceding observations, in our judgment, where by the terms of a trust…a trustee is given a discretion as to some matter under which he acts in good faith, the court should not interfere with his action notwithstanding that it does not have the full effect which he intended, unless (1) what he has achieved is unauthorised by the power conferred upon him…."*

19. *Secondly, the statute requires that but for the mistake the power would not have been exercised either in the same way, at the same time or at all. This corresponds to the requirement articulated in Hastings-Bass by Buckley LJ (at page 41G) and applied by Smellie CJ in Re Ta-Ming Wang Trust that it be "clear that they would not have acted as they did".*

20. *And thirdly the statute requires there to have been a "failure to take into account one or more such relevant considerations or that person having taken into account one or more such irrelevant considerations". This mirrors very closely the requirement articulated in Re Tai-Ming Wang Trust that it be demonstrated that the trustee has "failed to take into account considerations which they ought to have taken into account, or taken into account considerations which they ought not to have taken into account".*

21. *Persuasive authority also supports the view that the post-Pitt-v-Holt statutory jurisdiction is broadly analogous to the original equitable Hastings-Bass jurisdiction. In the Bermudian case of Re GC Settlement [2021] SC (Bda) 6 Civ (25 January 2021), Narinder Hargun CJ observed:*

> *9…It is in these circumstances that the Trustee invokes the jurisdiction of the Court to set aside the flawed exercise of a fiduciary power conferred by section 47A of the Trustee Act 1975. As the judgment of Kawaley CJ holds in In the Matter of the F Trust [2015] SC (Bda) 77 Civ (13 November 2015), at paragraphs 12-13, section 47A was enacted in Bermuda to introduce the rule in Re Hastings-Bass as it was understood and applied in England (and other common law jurisdictions) in and prior to 2011…"*

22. *Accordingly, Hastings-Bass case law pre-dating the introduction through Pitt-v-Holt of the requirement of a breach of fiduciary duty is likely to be of potential assistance in applying the new statutory jurisdiction to set aside the flawed exercise of a fiduciary power under section 64A of the Trusts Act. This conclusion is primarily justified by a straightforward reading of the main strands of the statutory language itself, which corresponds closely to the language developed in the previous case law.*

23. *I would tentatively suggest an additional implied requirement of section 64A, a matter which will obviously benefit from further analysis if the need arises in future cases. Section 64A confers a judicial discretion and sets out certain mandatory express requirements for the exercise of this jurisdiction. In Re Hastings-Bass [1975] Ch 25 at 41G, Buckley LJ described the discretionary power exercised by a trustee which could potentially be set aside as being "a discretion as to some matter under which he acts in good faith." Was this simply distinguishing the jurisdiction from that which would be engaged to set aside a transaction on the grounds of fraud? Or was "good faith" an additional discretionary requirement for granting equitable relief? I provisionally prefer the latter view. Bearing in mind that Hastings-Bass relief has more often than not been sought to avoid unintended adverse tax consequences flowing from the exercise of a fiduciary power, it seems logical that an implicit requirement for obtaining equitable relief is that the applicant acted in good faith or comes to the Court with 'clean hands.' In my judgment the starting assumption ought to be that, by necessary implication, section*

64A relief can only be obtained when the applicant has acted in good faith in relation to the impugned transaction and has not deliberately pursued a course of conduct designed to gain some undisclosed and impermissible onshore tax advantage, nor indeed designed to procure any other improper benefit.

24. In summary:

(a) the statutory regime makes it possible for the Court to grant relief on a basis which cuts through the conceptual thickets which many consider were erected around the traditionally flexible Hastings-Bass principle by the Supreme Court decision in Pitt v Holt [2013] UKSC 26. Under section 64A, there is no need to establish a breach of fiduciary duty;

(b). it seems to me that the Court is still required to find facts which would (section 64A apart) have amounted to the improper exercise of a fiduciary power (in the sense that either relevant matters were ignored or irrelevant matters were taken into account). This is to my mind likely in many (if not most) cases to be indistinguishable (legal labelling apart) from having to establish a breach of the fiduciary duty of due deliberation in conceptual terms;

(c). in practical terms, however, the statutory jurisdiction will be a more liberally available one. Because the purpose of the enactment was clearly to sidestep a perceived narrowing of a previously more flexible jurisdiction, section 64A can confidently be construed as intending to facilitate a flexible approach to setting aside the flawed exercise of fiduciary powers. The courts will generally be obliged, subject to appropriate limitations informed by the facts of each case, to give effect to this important legislative purpose;

(d). according to the (strictly obiter) findings of the UK Supreme Court in Pitt-v-Holt, if the impugned transaction is set aside, it is merely voidable. Under section 64A, the flawed exercise of the fiduciary power is explicitly void. In this respect, the statutory regime more explicitly introduces a material difference to the non-statutory legal position."

21. I would certainly adopt, at least for present purposes and subject to hearing full argument on the point, Justice Kawaley's tentative view set out at [23] of his judgment in *In Re Settlements*. It seems to me that such a qualification to the jurisdiction is necessary to keep it within proper bounds (and to avoid what Lord Neuberger extrajudicially had referred to as giving trustees a "*get out of jail free card*"" such that "*Doctor Equity can administer a magical morning after pill to trustees suffering from post-transaction remorse but not to anyone else*": see (2009) 15(4) Trusts and Trustees 189). The one point on which I would, as a matter of emphasis, disagree with Justice Kawaley is in his comment that the circumstances which must be established in order to entitle the Court

to grant relief under Section 64A are "*likely in many (if not most) cases to be indistinguishable (legal labelling apart) from having to establish a breach of the fiduciary duty of due deliberation in conceptual terms.*" It seems to me that because the statute makes clear in Section 64(4) that there is no need to allege or prove a breach of trust it is unwise and potentially misleading to suggest that most cases in which Section 64A relief will be available will involve facts which are analogous to a breach of trust.

22. I would note that in a case where trustees have in good faith and without fault or negligence relied on erroneous tax advice (which they took into account – so it can be said that they took tax advice and issues into account), the analysis in the authorities as to why the trustees could still say that they had acted failed to take into account relevant considerations (a requirement of the Section 64A, and the *Hasting Bass* non-statutory, jurisdiction) was that the trustees were treated as having failed to take into account the *true and actual consequences* of their action (because they had been wrongly advised). As Lord Justice Lloyd said in *Sieff v.* Fox [2005] 1 W.L.R. 3811 at [114], tax liabilities were matters which the trustees were under a duty to consider, which they did in fact consider, and to which they failed to give proper consideration because they were provided by their advisers with wrong advice on the point. If they had had the correct tax advice they would not have acted as they did.

The Application - decision

Standing

23. The Trustee submitted that it was eligible and had standing to seek relief under Section 64A. Section 64A(5) states that an application may be made *"where the power is conferred in respect of a trust or trust property, by any trustee of that trust ...*" It noted that, as I have already explained, the Deed of Exclusion which the Trustees seeks to declare to be void was executed by the previous trustees and not by itself. But the Trustees submits that it still has standing to seek Section 64A relief because that section allows "*any trustee*" to apply and that must include the current trustee even where the current trustee did not exercise the relevant fiduciary power which gives rise to the application. That seems to be right both as a matter of statutory construction and of principle. The

trustee in office at the time of the application is the successor to the earlier and previous trustees and must have the right to seek relief in respect of action taken and the exercise of fiduciary powers by those previous trustees. I can see that in some circumstances it might be necessary to join those earlier trustees to an application under Section 64A but I am satisfied that it is not necessary to join the previous trustees to the Application. I also note that Section 64A also allows any other person with leave of the Court to make an application for relief under the Section and were it necessary to do so I would grant the Trustee leave to make the Application.

The exercise of a fiduciary power

24. The Trustee also noted that the application under Section 64A must relate *"to the exercise of a fiduciary power"* and that fiduciary power is defined in Section 64A(7) as "*any power that, when exercised, must be exercised for the benefit of or taking into account the interests of at least one person other than the person holding the power*" and that "power" is defined as including *"a discretion as to how an obligation is performed.*" The Trustee also noted that the power conferred on and exercised by previous trustees to exclude the Settlor was the power to declare that a person is an Excluded Person, as defined in the Trust Deed and submitted that this was clearly a fiduciary power (citing *inter alia Lewin on Trusts*, 20th ed., at [33-065]). I agree.

The Section 64A(2) conditions

25. The Trustees submitted, and I agree, that the conditions set out in Section 64A(2) (a) and (b) had been met.

26. As regards Section 64A(a), the Trustees submitted that [44]-[45] of the Trustee Affidavit had confirmed that the power of exclusion had been exercised without the necessary consideration of all relevant UK tax and trust law issues and that insufficient advice was provided to the previous on the consequences of excluding the Settlor from being able to benefit under the terms of the D Trust generally, and specifically what the exclusion of the Settlor would mean for possible future planning in relation to the loans between the D Trust and the H Trust, and the UK Property. The Trustee submitted that it was clear therefore that as a result, the previous trustees had failed to take into account one or more

considerations that were (highly) relevant to the exercise of the power. The Trustee also referred to [52] of the Trustee Affidavit which stated as follows:

> *"In other words, in considering whether or not to execute the Deed of Exclusion, it is my view that the [previous trustees] (and indeed any other trustee acting reasonably) would have considered that having the benefit of their loan to the trustee of the H Trust secured over the UK Property would have been beneficial to the beneficiaries of the D Trust. However, we can now see that the reverse was likely to be the real outcome. Because of the omission in the [London Law Firm] Advice, the Original Trustees failed to take into account all relevant circumstances in reaching their conclusion that implementing Option 3 of the [London Law Firm] Advice was the best way to proceed, and was in the best interests of the beneficiaries of the D Trust, including excluding the Settlor of the D Trust from being able to benefit under the terms of the D Trust."*

27. As regards Section 64A(b), the Trustee relied on [48]-[50] of the Trustee Affidavit which confirmed that without the full advice the rationale for the Deed of Exclusion fell away. The Trustee Affidavit had explicitly stated that had the previous trustee (or any other reasonable trustee acting in the same situation and fully appraised of all relevant circumstances) had all of the information available to them, they would not have exercised the power of exclusion at all. At [53] it was said that:

> *"Taking into account what I now know from the [W Firm] Memorandum, and based on my knowledge and experience as a professional trustee, it is certainly my view that the [previous trustees], and indeed the Trustee if then if office, would not have entered into the Deed of Exclusion if they had been in possession of complete and comprehensive UK tax advice, together with an analysis of the consequences of executing the Deed of Exclusion."*

28. I accept that this is a case coming within the statutory (and the non-statutory Hastings Bass) jurisdiction. The previous trustees failed to take into account relevant considerations because, although tax liabilities were matters which they were under a duty to and did in fact consider, they failed to take in to account the correct tax position and had they done so (by receiving the correct tax advice) they would not have acted as they did.

29. Accordingly, the Trustee has established that (a) it has standing to seek relief, (b) that it was seeking to set aside the exercise of a fiduciary power and (c) that the party who had exercised the fiduciary power would not have exercised it had they not failed to "*take into account one or more considerations (whether of fact, law or a combination of fact*

and law) that were relevant to the exercise of the power, or took into account one or more considerations that were irrelevant to the exercise of the power."

The Court's residual discretion

30. As regards the discretion to grant relief, I am satisfied that the Trustee has established that the previous trustees acted in good faith and that it has done so in pursuing the Application and has acted for a proper purpose.

31. I note that the Trustee has not given notice to the relevant UK tax authorities because it has confirmed that the relief sought does not give rise to any live tax issues which would require such joinder (which I have taken to mean that the UK tax authorities will not be deprived of an accrued entitlement to be paid or levy tax which in this case would only arise on the Settlor's death). I am prepared to grant the Trustee the relief sought in this case, but I wish to leave open the question of whether in the future notice to the relevant tax authorities should be given as a matter of course to allow them to make submissions if they consider it appropriate to do so.

32. I also note and take into account the active support of the First to Sixth Respondents.

33. Accordingly, I shall grant the Application and make the orders sought by the Trustee.

34. I have noted above that I have had some concerns about dealing with the Application on the papers. I note and appreciate that other applications under Section 64A have been dealt with on the papers (importantly Justice Kawaley dealt with *In Re Settlements* on the papers) and that it is convenient and saving of the expense of a hearing for trustees. But while the underlying facts in these cases may not be complex the presiding judge will benefit from an explanation, and I suspect be able to deal more expeditiously with such applications where the facts and background are explained, by counsel/the attorneys at a hearing. It is also important that there is no suggestion that these types of application will be granted without careful scrutiny and as a rubber-stamping exercise. Of course, in each case it will be a matter for the assigned judge to decide and in this case the attorneys did offer to attend a hearing, which I appreciated, but I would just invite counsel/attorneys

for the future to pause for thought on this and at least to factor in the possibility that the Court will be assisted by an oral hearing.

The Hon Justice Segal
Judge of the Grand Court, Cayman Islands
31 March 2026