

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

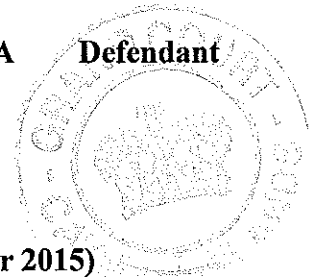
Cause No. FSD 30 of 2013 (AJJ)

Between: PRIMEO FUND (IN OFFICIAL LIQUIDATION) Plaintiff

And

**(1) BANK OF BERMUDA (CAYMAN) LIMITED
(2) HSBC SECURITIES SERVICES (LUXEMBOURG) SA**

Defendant



Ruling

(Relating to the terms of the Order made on 16 December 2015)

Introduction

1. I make this short written ruling for the purpose of clarifying the rulings given orally during the course of the hearing on 15 and 16 December 2015 and resolving the issues which have arisen between the parties as reflected in the exchange of correspondence dated 12th, 14th and 18th January 2016. For ease of reference, I shall adopt the subject matter headings used in Mourant Ozannes' letter of 18th January 2016

Cash Management Allegations

2. I confirm that it was my intention to strike out only those parts of the Plaintiff's amended pleading which dealt with the new cash management allegations. The Plaintiff is entitled to maintain those parts of paragraphs 83(1), 83(2) and 84(2) as shown in its Revised RRASOC. As for the disputed parts of paragraphs 83(1) and 84(2), I will permit these amendments to stand for the reason stated in Mourant Ozannes' letter of 18 January 2016.

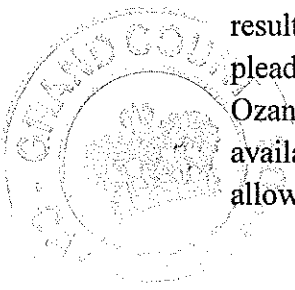
Letter of Request

3. I intend to make an order to the effect that all the former directors of Primeo, who are resident in Austria, be included as respondents to the proposed Austrian proceedings, whether or not they are still employed by Bank Austria.

4. The factual basis upon which I decided to make this order is as follows. It is common ground that the persons in question served as directors of Primeo in the ordinary course of their employment with Bank Austria. It follows, in my view, that correspondence and other documents generated or received by these employees in their capacity as directors of Primeo are inherently likely to have been placed on a file or files retained in the possession or custody of Bank Austria. It is my intention that the letter of request should seek an order compelling Bank Austria to produce all the documents in its possession or custody which were generated by (or on behalf of) or received by any of these former directors, whether or not they are current or former employees. (I am of course using the expressions “documents” and “files” to include both hard copies and electronic documents/files.)
5. It is, in my view, inherently unlikely that any former director of Primeo would have retained any documents belonging to Primeo in his own custody after he ceased to be employed by Bank Austria. This is confirmed by the fact that some, if not all, of those former Bank Austria employees who served as directors of Primeo have already told the Official Liquidators that they do not now have in their own personal possession any documents belonging to Primeo or to which Primeo is otherwise entitled. There is no reason to disbelieve them. For this reason, my initial view was that it would serve no useful purpose to join these former employees as respondents to the proposed Austrian proceedings. However, it may be said that documents in the possession or custody of Bank Austria are under the control of a former employee with the result that no order should be made against the bank itself. For this reason, I am persuaded that there is a proper basis for seeking an order against those former employees who have already said that they have no documents in their possession. It may be relevant to compel these people to instruct Bank Austria to produce documents or to give their consent to the production of documents by Bank Austria.

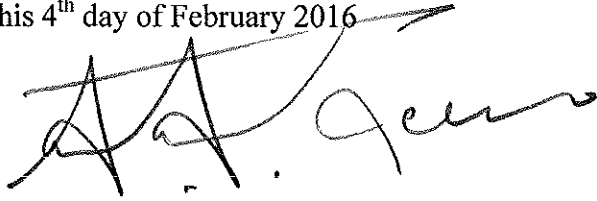
Bermudian law

6. As regards paragraph 240(b) of the Amended Defence, Cayman Islands conflict of laws rules point to the conclusion that any claims in restitution and/or constructive trust available to the official liquidators of Herald would be governed by Cayman Islands law and those available to the official liquidators of Alpha would be governed by Bermudian law. As the pleading presently stands, the Court will assume that there is no material difference between the applicable laws and that their application would produce the same result. It is not open to the Defendant to contend otherwise without first amending its pleading, but I will not permit the proposed amendment for the reason given in Mourant Ozannes’ letter of 18 January 2016. A simple amendment to the effect that the claims available to Alpha are governed by Bermudian law would serve no useful purpose. To be allowable, any proposed amendment must set out how the application of the applicable



laws would produce different results in the case of Herald (under Cayman Islands law) and Alpha (under Bermudian law).

Dated this 4th day of February 2016

A handwritten signature in black ink, appearing to read 'A. J. Jones', written over a horizontal line.

The Hon Mr Justice Andrew J. Jones QC

