NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 46

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 244 OF 2022 (DDJ)

IN THE MATTER OF SECTION 131(b) OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF TOURADJI PRIVATE EQUITY ONSHORE FUND LTD (IN OFFICIAL LIQUIDATION)

CAUSE NO: FSD 245 OF 2022 (DDJ)

IN THE MATTER OF SECTION 131(b) OF THE COMPANIES ACT (2025 REVISION)

AND IN THE MATTER OF TOURADJI PRIVATE EQUITY OFFSHORE FUND LTD (IN OFFICIAL LIQUIDATION)

CAUSE NO: FSD 246 OF 2022 (DDJ)

IN THE MATTER OF SECTION 131(b) OF THE COMPANIES ACT (2025 REVISION)
AND IN THE MATTER OF TOURADJI PRIVATE EQUITY MASTER FUND LTD (IN OFFICIAL LIQUIDATION)

Before: The Hon. Justice David Doyle

Appearances: Andrew Ayres KC instructed by Jonathan Milne, Alecia Johns and Romane Duncan of Conyers Dill & Pearman LLP for Touradji Capital Management, LP
Tom Lowe KC instructed by Harry Shaw and Ronan O'Doherty of Campbells LLP for the joint official liquidators of the 2012 Funds.

Heard: 21-23 April 2026

Draft judgment circulated: 25 May 2026

Judgment delivered: 29 May 2026

Determination of appeals in respect of the rejection of various claims in proofs of debt

JUDGMENT

Introduction

1. These cases were previously assigned to Kawaley J and were reassigned to me in August 2025 in view of Kawaley J's retirement as a first instance judge in the Cayman Islands.

2. By summons dated 21 April 2023 Touradji Capital Management LP ("TCM") sought an order that the rejection of its proof of debt dated 19 January 2023 ("POD1") in respect of Touradji Private Equity Master Fund, Ltd. (in official liquidation) (the "Master Fund"), by notice dated 10 March 2023, be set aside and the claim be admitted to proof for the expenses incurred for the US Litigation (as defined in the proof of debt), plus costs of the appeal. In its skeleton argument dated 14 April 2026 at paragraph 5(i) TCM says that this is a claim for the sum of US$677,575.20 and defines the US Litigation as *Beach v Touradji Capital Management LP*, Case Number 603611/2008 in the New York Supreme Court.

3. By summons dated 20 February 2025 TCM sought an order that the rejection of its proof of debt (No 2) dated 31 May 2023 ("POD2"), in respect of the Master Fund, by notice dated 30 January 2025, be set aside and the claim be admitted to proof in the sum of US$6,033,226.90 (plus interest, expenses and costs since 31 May 2023) and costs of the appeal. In its skeleton argument dated 14 April 2026 TCM says that this claim is for additional expenses incurred in the US Litigation and "for further litigation expenses to be incurred thereafter in the US Litigation" (paragraph 5(ii)). It says that POD2 was submitted on the same basis as POD1.

4. By summons dated 20 February 2025 TCM sought an order that the rejection of its proof of debt (No 3) dated 31 May 2023 ("POD3") in respect of the Master Fund by notice dated 30 January

2025, be set aside and the claim be admitted to proof in the sum of US$1,498,982.18 (plus interest, expenses and costs since 31 May 2023) and costs of the appeal. In its skeleton argument dated 14 April 2026 at paragraph 5 (iii) TCM says that this claim is for legal fees incurred by TCM in connection with the Cayman liquidations of Touradji Private Equity Onshore Fund Ltd (the "Onshore Fund"), Touradji Private Equity Offshore Fund Ltd (the "Offshore Fund") and the Master Fund (together the "PE Funds" or the "2012 Funds"). It adds that POD3 was "admitted in part and rejected in part".

5. By summons dated 20 February 2025 TCM sought an order that the rejection of its proof of debt (No 4) dated 31 May 2023 ("POD4") in respect of the Master Fund, by notice dated 30 January 2025, be set aside and the claim be admitted in the sum claimed (plus accruing interest, expenses and costs, since 31 May 2023) and costs of the appeal. In its skeleton argument dated 14 April 2026 TCM says that "this is a claim for US$1,142,165.84 for reimbursement of expenses incurred relating to the administration and operation of the PE Funds, plus an additional claim for time costs of Mr Touradji associated with the US Litigation, and for monitoring fees associated with one of the primary investments of the PE Funds" (paragraph 5 (iv)).

6. POD1, POD2, POD3 and POD4 are all claims against the Master Fund. TCM also lodged proofs of debt against the Offshore Fund and the Onshore Fund which were rejected by the JOLs (defined below) and the parties to save time, costs and multiplicity of proceedings ask that the court also regards these proceedings as appeals against those rejections without the necessity of filing separate summonses. The 2012 Funds were incorporated in the Cayman Islands with limited liability with effect from 8 August 2012.

7. Michael Pearson and Nicola Cowan were appointed as joint official liquidators ("JOLs") on 14 December 2022 in respect of all three of the 2012 Funds.

8. In his judgment delivered on 6 February 2023 giving reasons for the decision arrived at on 14 December 2022, Kawaley J noted at [2] that in respect of applications for supervision orders, former fund managers may only assist the court by raising what he described as "points of principle while adopting a neutral position". At [3] Kawaley J recorded that "TCM's counsel, not without a few slips, narrowly managed to traverse this forensic tightrope without tumbling to the ground." At [10] Kawaley J, on the issue of whether a supervision order should be granted, recorded that "It was ambitious in the extreme for Mr Touradji, through TCM, to seek to undermine the reliability of the JVLs' professional judgments". At [9] Kawaley J had recorded Mr Pearson's and Ms

Cowan's significant experience: "Their stock in trade as official liquidators and otherwise is exercising sound commercial judgment and working effectively with liquidation stakeholders". At [11] Kawaley J added "underpinning TCM's entire stance appeared to me to be Mr Touradji's desire to retain as much control as possible of the Funds' affairs." At [17] Kawaley J stated: "Depending on the personalities involved, and the complexities of the commercial context, many managers will be unable to cede control of what they understandably regard as "their" ship. Mr Touradji's evidence strongly suggested that he's such a person."

9. Kawaley J, in a judgment delivered on 13 August 2025, dismissed an application by TCM to postpone the prosecution of its own proof of debt appeals pending the determination of proceedings brought against it by two former employees in New York. Kawaley J at [3] recorded the fact that "The benefits of a stay were difficult to understand while it was easier to understand why the majority of stakeholders would wish the Funds' liquidations to be brought to an expeditious conclusion." At [9] Kawaley J added: "… courts do not generally look favourably on parties who commence proceedings and then seem reluctant to have them determined …". At [13] Kawaley J recorded "the lack of any significant overlap between the US Proceedings and the POD appeals. None of the Funds are party to the US Proceedings." At [17] Kawaley J noted his indication that "I would not have the conduct of the substantive determination of the POD Summonses in light of my imminent retirement." At [18(d)] Kawaley J directed that "the present causes should all be assigned to another FSD Judge."

The approach of the court in respect of POD appeals

10. Having provided some introductory background I now turn to the approach of the court in respect of proof of debt ("POD") appeals.

11. Order 16 of the Companies Winding Up Rules (2023 Consolidation) ("CWR") concerns proofs of debts in official liquidations.

12. Order 16 rule 17 of the CWR provides that if a creditor is dissatisfied with the official liquidator's decision with respect to the creditor's proof (including any decision on the question of priority), the creditor may appeal to the court for the decision to be reversed or varied.

13. Order 16 rule 18 (5) of the CWR provides that an appeal under the relevant rule "shall be treated as a *de novo* adjudication of the creditor's proof and the creditor may rely upon additional evidence in support of the creditor's claim, notwithstanding that the creditor failed to make such evidence available to the official liquidator."

14. McMillan J in *Ardon Maroon Asia Master Fund (in official liquidation)* (FSD unreported judgment delivered 17 July 2018) at [45] stated that "an appeal against a rejection of a proof of debt is to be treated as a *de novo* adjudication of the creditor's proof and the alleging creditor is entitled to rely upon additional evidence in support of its claim." McMillan J at [46] stated:

> "The task for the Court on such an Appeal is to examine the evidence before it and to come to a view whether, on balance, and taking into account the merits of the claim of the creditor whose proof is being considered, the claim has been established and, if so, in what amount: see McPherson's Law of Company Liquidation, 3rd ed., paragraph 12-064."

15. McPherson cites 3 authorities to support these propositions. Firstly, *Kenwood Construction Limited* [1960] 1 WLR 646. In that case, Buckley J stated at pages 647-648:

> "When application is made to the court to reverse a decision of a liquidator in rejecting a proof, evidence is filed which is very commonly much fuller than the evidence available to the liquidator at the time when he decides to reject the proof; and the court is bound to decide the rights of the claimant in the light of the evidence which is before the court, and not merely to express a view as to whether the liquidator was right or wrong in rejecting the proof when he rejected it. It is, perhaps, significant that the Companies (Winding-Up) Rules, 1949, provide by rule 108 that if a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the court may, on the application of the creditor or contributory, reverse or vary the decision. It is not merely the function of the court to say that a decision is right or wrong; it may vary it in any way it thinks necessary in the light of the evidence before the court. The court must approach the question de novo and determine to what extent the claimants ought to be allowed to rank as a proving creditor."

16. I applied this approach over 10 years ago now in *MPH Fiduciary Limited (in liquidation)* (judgment Isle of Man High Court delivered on 24 July 2014).

17. Secondly, McPherson cites *Trepca Mines Ltd* [1960] 1 WLR 1273. In that case Hodson LJ, sitting in the Court of Appeal of England and Wales relied upon Buckley J's judgment in *Kenwood*.

18. Thirdly, McPherson cites *Re a company (No 004539 of 1993)* [1995] 1 BCLC 459. In that case Blackburn J stated at page 466:

> "In my view, the task of the court, on an appeal under r 4.70(4) of the Insolvency Rules 1986, is simply to examine the evidence placed before it on the matter and come to a conclusion whether, on balance, the claim against the company is established and, if so, in what amount. I would only add that, in considering the matter, the court is not confined to the evidence that was before the chairman at the time that he made his decision but is entitled to consider whatever admissible evidence on the issue the parties to the appeal choose to place before the court."

19. Rule 4.70(4) relates to creditor's meeting and decisions of the chairman as to proof and sub-rule (4) refers to the court's ability to make such order as it thinks just.

20. McPherson at 12-064 also left open the door to cross-examination in certain circumstances:

> "It is possible, where it is necessary to dispose of a matter, for the court to allow the cross-examination of a claimant on his or her affidavit evidence in support of a claim against the company. Whether cross-examination is necessary will depend on the circumstances in each case."

21. McPherson cites *Re Bank of Credit and Commerce International (No6)* [1994] BCLC 450 in support of the propositions advanced in respect of cross-examination. In that case Sir Donald Nicholls V-C, in the context of an appeal against a rejection of a proof of debt, at 453 stated:

> "So far as the principle is concerned, I am unable to accept that there is a rule of universal application that, failing some contrary sworn evidence, cross-examination of a deponent will not be ordered. The court will always be concerned to see that an order for cross-examination is not made needlessly or when it would be oppressive. The purpose sought to be achieved when cross-examination is ordered is that this is necessary for fairly

disposing of the particular issue. Whether it is so necessary will necessarily depend on the circumstances of that particular case. In cases where the other party is in a position to give evidence contrary to the deponent's case and he chooses not to do so, the court no doubt will be slow to order cross-examination. The party who seeks cross-examination can be expected to put forward his own account of the facts in dispute of which he himself has knowledge. If he chooses not to do so, and declines himself to give evidence and expose himself thereby to an application for cross-examination, the court may well be disinclined to order cross-examination of the deponent who has given evidence. But even in such a case no absolute rule can be laid down. The court retains a discretion, and it would be unwise to say that in such a case cross-examination will never be ordered. There must always be the exceptional case."

22. At [47] of *Ardon* McMillan J stated:

> "A potential creditor must provide satisfactory proof that the creditor's claim is founded on a real debt …"
>
> "Putting the matter another way, a claim which is based upon tenuous and/or inadequate proof will not succeed." ([48]).

23. At [54] of *Ardon* McMillan J added:

> "… the responsibility of the Court in this regard while an important one is also a narrow one. The Court is not concerned to pass general judgment on the methodology and practices of the investment industry but instead it is concerned to come to a conclusion upon a specific Appeal and in relation to specific probative evidence relevant to that Appeal."

24. McMillan J in *China Branding Group Limited (in official liquidation)* (FSD unreported judgment delivered on 23 January 2019) reiterated the function of the court at [51] to [53].

25. There was an appeal against the order made by McMillan J in *Ardon Maroon* which was dismissed by the Cayman Islands Court of Appeal by way of a judgment delivered on 20 May 2020.

26. In *North South Pharmaceuticals Inc (in official liquidation)* (FSD unreported judgment delivered on 21 February 2024) Parker J at [59] stated:

> "The ordinary rules of evidence and the burden of proof apply, and the Applicant is required to establish his claim on the balance of probabilities. Where the JOLs make a positive allegation in regard to any aspect of the disputed claim they will bear the burden of proof on that issue."

27. Parker J cites *Bhatti v Wright* 2003 CILR 160 at [35]-[41] in support.

28. Parker J at [57] adds that the appeal process against rejection of a proof of debt "is a summary process which examines the affidavit evidence and the documents, without cross-examination and disclosure, and is not the proper forum to determine any claims that involve contested factual questions. The JOLs do not challenge much of the Appellant's affidavit evidence."

29. I am conscious that in the case before me there has been no cross-examination. I am also conscious of [34] of Newey LJ's much cited judgment in *Kireeva v Bedzhamov* [2022] EWCA Civ 35; [2023] Ch 45 and the approach taken in that case to written evidence. As a flexible general principle in many cases there are only limited circumstances in which a court can dismiss evidence given by affidavit without the witness being cross-examined. Newey LJ relied on the comments of Rimer LJ in *Coyne v DRC Distribution Ltd* [2008] BPIR 1247 at [58]:

> "it is well-established that if a court finds itself with conflicting statements on affidavit evidence, it is usually in no position to resolve them, and to make findings as to the disputed facts, without first having the benefit of the cross-examination of the witnesses. Nor will it ordinarily attempt to do so. The basic principle is that, until there has been such cross-examination, it is ordinarily not possible for the court to disbelieve the word of the witness in his affidavit and it will not do so. This is not an inflexible principle: it may in certain circumstances be open to the court to reject an untested piece of such evidence on the basis that it is manifestly incredible, either because it is inherently so or because it is shown to be so by other facts that are admitted or by reliable documents … [Counsel] said that these principles apply equally to the case in which the evidence is given by witness statement rather than by affidavit, and I agree. I said as much in my summary of the principles in *Long v Farrer & Co* [2004] BPIR 1218, at paras 57-61."

30. TCM relied upon *Bhatti v Wight* 2003 CILR 160 a judgment of Kellock, Ag, J in which "R McMillan" as an attorney appeared for the respondents. In that case the liquidators of BCCI Overseas were suspicious of the proofs of debt. The account numbers which the applicants used to prepare their proof did not appear on the branch's deposit register. The liquidators did not investigate the applicants' credibility, nor require cross-examination on their applications. They rejected the proof of debt primarily on the evidence of the deposit register, claiming that the proofs were not substantiated by sufficient evidence and that the circumstances surrounding the deposits were suspicious. It was held that the applicants' proof of debt had been improperly rejected. They needed to establish their proofs of debt on the balance of probabilities, i.e. the civil standard of proof, which they had done. The liquidators' claim that the applicants had to adduce "impeccable evidence" before their proof would be acceptable therefore failed.

31. At [39] Kellock Ag. J stated that if liquidators "suspect that a creditor's claim is fraudulent, they are entitled, if not obliged, to investigate and to require the creditor (or would-be creditor) to cooperate in that investigation and respond to all reasonable requests for information" and added:

> "40. However, liquidators are not entitled simply to sit back and refuse to be satisfied as to the *bona fides* of any claim. If the respondents' case is that the applicants' claims are fictitious, which is to say fraudulent, it is up to the respondents to allege and prove that case. It is not up to the applicants to satisfy the respondents that their claims are legitimate beyond whatever unknown and unknowable subjective or arbitrary standard the respondents demand as the price for being "satisfied."
>
> 41. To paraphrase *Phipson*: if the respondents allege fraud, the burden of proof lies upon them to prove it. The respondents have declined to accept or discharge that burden and accordingly the applicants' appeals must be allowed."

The position of the parties

32. I now turn to a brief broad brush high level summary of the position of the parties.

The position of TCM

33. I deal first with the position of TCM.

POD1

34. TCM in POD1 specifies the amount of the claim as "All litigation expenses incurred/to be incurred in connection with the US Litigation (defined below), including $677,575.20 which is presently owed and past due". There is no claim for interest.

35. The basis on which the claim in POD1 arises is stated to be pursuant to "contractual payment requirements found in sections 3 and 7 of the Investment Management Agreements …". The US Litigation referred to is "case no. 603611/2008 (NYS)" and is described by TCM as "an employment lawsuit brought by two former TCM employees (portfolio managers) related to their work while at TCM for the benefit of and in relation to assets of the Master Fund." No reliance is placed in POD1 on any provision of the Articles of Association.

36. TCM (at paragraph 5 (i) of its skeleton argument) says that:

> "The basis of TCM's claim in POD1 is the clearly worded indemnification and expenses reimbursement provisions contained in the PE Funds' Investment Management Agreements (the "IMAs") and Articles of Association (as well as other supporting documents) which entitle TCM to be indemnified in respect of any and all liabilities, actions, suits, costs and legal fees incurred in connection with the performance by it of its responsibilities to or with respect to the PE Funds."

POD2

37. TCM in POD2 specifies the amount of the claim as "All litigation expenses incurred … including USD6,033,266.90 incurred since the submission of the first proof of debt … This proof of debt is filed further to the First Proof of Debt and covers additional sums separate and apart from the USD677,575.20 claimed in the First Proof of Debt." The total amount claimed is USD6,033,266.50. There is a claim for interest "To be determined at a reasonable rate." The basis on which the claim in POD2 arises is stated to be "As outlined in the First Proof of Debt, the claim

arises pursuant to contractual payment requirements found in sections 3 and 7 of the Investment Management Agreements …". This time it is added "the claim also arises pursuant to the indemnification and liability provisions found in the Articles of Association of the Touradji Funds …".

38. TCM (at paragraph 5 (ii) of its skeleton argument) says that "POD1 was therefore submitted on the same basis as POD2 (albeit that additional supporting documents were provided to the JOLs in support of POD2)".

POD3

39. TCM in POD3 specifies the amount of claim as "All outstanding legal fees incurred and to be incurred in the future by TCM for Cayman Islands and New York legal advice and representation relating to the liquidation of the Touradji Funds …" from Conyers Dill & Pearman LLP ("Conyers") and Latham & Watkins LLP ("Latham") including US$298,025.68 for Conyers between August 2022 to May 2023 and US$1,200,956.50 for Latham between January 2023 to May 2023. The principal claimed is US$1,498,982.18.

40. There is a claim for interest "To be determined at a reasonable interest rate" and the total claimed is stated to be US$1,498,982.18. The basis on which the claim arises is stated to be "pursuant to contractual payment requirements found in sections 3 and 7 of the Investment Management Agreements …". It is added that "The claim also arises pursuant to the indemnification and liability provisions found in the Articles of Association of the Touradji Funds." The Touradji Funds are referred to as the Master Fund, the Offshore Fund and the Onshore Fund.

41. Articles 158 and 160 are referred to. It is stated that the legal fees incurred "relate to the administration and operation of the Touradji Funds and the liquidation of the Touradji Funds." It is added that "the work undertaken by Conyers and Latham related to the liquidation of the Touradji Funds (including the US Chapter 15 recognition proceedings)" and that it "was in connection with TCM's performance of its responsibilities as Investment Manager and former voluntary liquidator of the Touradji Funds, and arose in or about the conduct of the PE Funds' business and affairs or the execution or discharge of TCM's duties, powers, authorities or discretions." There is no claim for interest.

42. TCM (at paragraph 5 iii of its skeleton argument) says that the claim under POD3 is "pursuant to the indemnification and expense reimbursement provisions of the PE Funds' IMAs and Articles of Association".

POD4

43. TCM in POD4 specifies the amount of the claim as "All outstanding fees and reimbursement of expenses owed to TCM for (i) reimbursement of expenses incurred by TCM relating to the administration and operation of the fund including the sum of USD1,142,165.84 and time spent by Paul Touradji of TCM for attendance at trial and other matters associated with litigation in the United States since 2008 and (ii) the provision of investment management services and investment advisory services, including in respect of fees for monitoring and management of the Master Fund's investment in Sollus Capital Company Ltd. ("Sollus") including the sum of USD10,000,000.00".

44. The principal claimed is "USD11,142,165.84 (plus time costs associated with long running litigation)". Interest is claimed "To be determined at a reasonable interest rate". The total claimed is US$11,142,165.84.

45. TCM summarises the basis upon which the claim arises under two main headings "[1] Claim for reimbursement of expenses and time-costs" and "[2] Claim for outstanding management fees". Under [1] it is stated that "The claim for reimbursement of expenses and for time spent at the trial of the US Litigation arises pursuant to contractual payment requirements found in sections 3 and 7 of the Investment Management Agreements …". It is added that "the claim also arises pursuant to the indemnification and liability provisions found in the Articles of Association of the Touradji Funds …". Articles 158, 160 and 162 are referred to.

46. It is stated "TCM is prepared to discuss with the JOLs a reasonable sum for the time Mr Touradji has dedicated to the litigation over many years". It is added: "The sum claimed for reimbursement of expenses relates to expenses incurred by TCM for the payment of rent, employee salaries, legal fees, and IT expenses directly connected to the administration and operation of the Touradji Funds".

47. Under [2] it is stated that the sum claimed for outstanding management fees related to Sollus are on the basis of the Sollus Fee Agreement (defined below). It is added that the fees include, pursuant to paragraph 1.2 of the Sollus Fee Agreement, "the sum of USD1,000,000 per annum from 1

January 2013 to 1 January 2023. At present, USD10,000,000 is therefore due and owing to TCM from the Master Fund".

48. The total is stated to be "USD11,142,165.84 (plus time costs associated with long-running litigation)". There is a further claim for interest "To be determined at a reasonable rate."

49. Interestingly at paragraph 5 iv of its skeleton argument TCM, unlike its position in respect of POD1, POD2 and POD3, does not set out the basis of that claim.

50. In the Schedule attached to TCM's skeleton argument in the left hand column in respect of POD1 there is reference to "claimed under", in POD2 "claimed on" and POD3 "claimed under" various documents including sections 3 and 7 of the IMAs and the Articles of Association. There is no equivalent provision in the left hand column in respect of POD4. It does not specify which relevant document or documents the claim is advanced under, although there is reference to "MMFA dated 1 January 2013".

51. At paragraph 118 of its skeleton argument TCM says that POD4 "includes a claim for reimbursement of administrative and operating expenses pursuant to the indemnification provisions in the IMAs and other contractual documents relied upon in PODs 1 to 3."

52. At paragraph 124 of its skeleton argument, under the heading "Time Costs Related to US Litigation", it is stated "TCM wrote to the JOLs on 10 April 2026 to make clear that it did not intend to focus on or pursue this aspect of the proof at the hearing of the POD Appeals …TCM accepts that it cannot make good its claim to this in full in respect of Mr Touradji's time but maintains that the many years Mr Touradji has spent on the US litigation merits some formal acknowledgment."

53. In the section dealing with POD4 in its skeleton argument under the heading "Sollus Management Fees" TCM says that the claims for the outstanding fees relating to Sollus are "pursuant to the terms of a Monitoring and Management Fee Agreement dated 1 January 2013 (the "Sollus Fee Agreement") entered into between the Master Fund and TCM" (paragraph 125). TCM accepts that the Sollus Fee Agreement was "executed by Mr Touradji on both sides in his capacity as principal of TCM and also as agent of the Master Fund given TCM's then capacity as investment manager of the Master Fund" (paragraph 126). TCM adds that pursuant to clause 1.2 of the Sollus Fee

Agreement "the Master Fund is obligated to pay TCM the sum of US$1 million per annum for monitoring and management of the Master Fund's investment in Sollus" (paragraph 126).

54. In conclusion, in its skeleton argument TCM says that its claims "are made pursuant to unambiguous contractual provisions for indemnification and/or reimbursement of fees, expenses and damages" (paragraph 132) and invites the court "to determine that the rejections of PODs 1 to 4 be set aside, and that the PODs be admitted in full."

The position of the JOLs

55. I now deal with the position of the JOLs.

POD1

56. By Notice of rejection dated 10 March 2023 the JOLs rejected the POD1 "claim in full". In the accompanying letter it is stated that "the JOLs do not have an evidential basis on which they could admit the proof of debt and accordingly have formed the view that the proof of debt should be rejected." The JOLs add that "neither section 3 or section 7 of the 2012 IMAs impose any obligation on the PE Funds to indemnify TCM in respect of any liability in connection with the US Litigation …". The JOLs say that "it is unclear how TCM's alleged failure to pay certain compensation to former employees of TCM for work performed prior to the existence of the PE Funds is covered under the IMA, either as relating to "the administration and operation" of the Master Fund (under section 3) or "in connection with the performance … of … responsibilities to "the Master Fund (under section 7)".

57. Although not relied upon by TCM, the JOLs also "separately considered whether the PE Funds acquired any such liability as a result of the terms of the 2013 Agreements" (referred to later at paragraph 18 as the Contribution & Exchange Agreements dated 1 December 2013). The JOLs say that there is "no basis on which it can be said that the 2013 Agreements transferred to the PE Funds any pre-existing obligation to indemnify TCM in connection with the US Litigation. There is no evidence that the transferor in each case had any such pre-existing obligation; nor is there any evidence of what liabilities of the transferors were in fact transferred." The JOLs add that even if any liability to indemnify TCM for the US Litigation "was assumed by the PE Funds, the PE Funds may as a direct result have acquired a claim against TCM which would operate as an insolvency

set-off, for example if TCM in breach of fiduciary duty caused the PE Funds to assume such liability."

POD2

58. By notice dated 30 January 2025 the JOLs rejected the POD2 "claim in full". In the accompanying letter it is stated that the reasons given for the rejection of POD1 apply "mutatis mutandis" to POD2. The JOLs state: "Neither section 3 nor section 7 of the IMAs …" nor Articles 158 and 160 of the Master Fund and Offshore Fund Articles of Association or Article 160 and 162 of the Onshore Fund Articles of Association "imposes an obligation on the PE Funds to indemnify TCM for liabilities arising from the US Litigation. The alleged liabilities relate to acts or omission by TCM which are not within the scope of those indemnity provisions and which, in any event, occurred prior to the incorporation of the PE Funds (and there is no evidence that these liabilities were transferred to or assumed by the PE Funds under the IMAs or subsequent agreements)." It is added that if such liabilities were approved by TCM "it would appear that they were approved in breach of TCM's fiduciary duties owed to the PE Funds and that each PE Fund would have a counterclaim against TCM and/or a cross-claim against Paul Touradji on that basis for the value of any indemnity liability, resulting in an automatic insolvency set-off".

POD3

59. By notice dated 30 January 2025 the JOLs in respect of POD3 reject the claim "in part and admit it in part as particularized in the letter from FFP Limited to TCM c/o Conyers Dill & Pearman LLP dated 29 January 2025".

60. At paragraph 4 of the accompanying letter the JOLs set out the workstreams *prima facie* within Sections 3 and 7 of the IMA:

> "a. work done by Conyers in relation to the change of voluntary liquidators and TCM's resignation as VL (which are prima facie voluntary liquidation expenses);
> b. Conyers' assistance in preparing the VL Reports to the Grand Court and delivering up TCM's books and records consequent upon the Supervision Order (expenses incurred assisting in the wind-down of the Master Fund);

c. Conyers' work in relation to the day to day affairs of Sollus (*i.e.* expenses incurred in relation to the operations of the Master Fund); and

d. Conyers' assistance in responding to requests by the JOLs for documents and information."

61. The JOLs reject in full the Latham's invoices for reasons stated at paragraph 8.

62. The JOLs at paragraph 9 state that the interest claim is unparticularised and inconsistent with CWR Order 11 rules 11-12.

63. POD3 is "rejected in part, and admitted in part. It is admitted in relation to Conyers' invoices in Appendix B in an amount to be fixed by the JOLs consequent upon TCM producing particulars of Conyers' actual legal expenses in respect of the approved categories above in paragraph 4(a)-(d) e.g. by reference to Conyers' time entries/narrations."

POD4

64. By notice dated 30 January 2025 the JOLs rejected the POD4 "claim in full".

65. In respect of the Appendix A3 Claim, relating to expenses incurred by TCM which were said to relate to rent, employee salaries, legal fees and IT expenses etc., the JOLs refer to "very scant information".

66. In respect of the Appendix B3 Claim and the time costs incurred by Mr Touradji for "assistance with litigation in the United States", the JOLs state that there is no articulation of a legal basis for any liability on the part of the Master Fund in respect of those amounts.

67. In respect of the Appendix C3 Claim relating to the Sollus Fee Agreement, the JOLs complain in respect of a lack of a substantive response to Campbells' letter to Conyers of 22 June 2023 which sought information in relation to the alleged "Monitoring Fee Agreement".

68. The JOLs conclude:

> "Accordingly, the JOLs infer that TCM is unable to provide any further evidence to substantiate the claim made in respect of the Appendix C3 documents … the JOLs

conclude that no valid or lawful liabilities arise under the alleged "Monitoring Fee Agreement" and therefore reject that part of the Fourth POD."

General points in respect of the position of the JOLs

69. In their skeleton argument the JOLs introduce their position by stating that TCM is the former investment manager of each of the 2012 Funds.

70. Mr Touradji [Pejman "Paul" Touradji] established certain investment funds in 2005/6 (the "2005/6 Funds" or the "Early Funds"). Under the relevant investment management agreements TCM was indemnified against liabilities arising out of TCM's acts or omissions in performance of its obligations to the 2005/6 Funds.

71. In December 2008 ex-employees of TCM (Messrs Beach and Vollero) brought litigation against TCM which is ongoing (the "US Litigation"). Beach and Vollero were engaged in managing some of the 2005/06 Funds.

72. There was a re-organisation in December 2008 (the "2008 Reorganisation") and another one in 2012 (the "2012 Reorganisation").

73. TCM claims to be entitled to be indemnified by the Master Fund (and all of the 2012 Funds) in respect of:

(a) *Indemnity claims*

(i) legal costs of (and any future judgment liability in) the US Litigation begun in 2008 (PODs 1 and 2);

(ii) legal costs incurred by TCM in relation to its claim as a creditor and the liquidation of the 2012 Funds generally (POD3);

(iii) approx US$1.1 million of fees and expenses said to relate to the historic administration and operation of the 2012 Funds (part POD4).

(b) *The Fee Claim*

TCM claims to have a contractual right to a fee of US$10 million under the alleged Sollus Fee Agreement which is undated but expressed on its face to have an effective date of January 2013 (part POD4). The JOLs dispute the authenticity of this document.

74. The JOLs say that POD1 and POD2 against the Master Fund is of the greatest significance.

75. The JOLs say TCM relies principally on the wording of sections 3 and 7 of investment management agreements entered into in 2012 (the "2012 IMAs").

76. The JOLs position is that as a matter of construction the indemnities in the 2012 IMAs do not cover the liabilities of previous funds or of prior conduct in relation to those funds. The 2012 Funds should not be liable in respect of matters which occurred long before they came into existence.

77. The JOLs say that TCM's secondary argument is that, when assets were transferred from the 2005/6 Funds to the Holdings SPVs (following the 2008 Reorganisation), and later to the 2012 Funds (following the 2012 Reorganisation), there was a corresponding transfer of an alleged obligation of the 2005/6 Funds to indemnify TCM in respect of the US Litigation. The JOLs contend that the 2005/6 Funds did not have any such obligation to indemnify TCM, so none could be transferred.

78. The JOLs add that Contribution Agreements (in 2008) and Contribution & Exchange Agreements (in 2012), which effected those transfers, transferred burdens associated with assets, but no contractual indemnity obligation.

79. The JOLs add that even if the 2012 Funds were transferees of such an obligation, any such liability is likely extinguished by automatic set off, since TCM likely would have acted in breach of fiduciary duty.

80. The JOLs say that the appeal in respect of POD3 and POD4 also turns on the proper interpretation of section 7 of the 2012 IMAs.

81. The JOLs add that the appeal in respect of the Fee Claim raises very serious questions, since it is based on a document the authenticity of which has been put squarely in issue. Even if authentic, the JOLs says the agreement is invalidated because there is no contemporaneous evidence of fully informed consent and no consideration.

Some of the relevant documents

82. I now turn to some of the relevant documents. I do not set them all out in this judgment but have had regard to all the documents referred to for the purposes of arriving at my determinations.

The 2012 Investment Management Agreement

83. A core document is the Investment Management Agreement dated 30 November 2012 (the "Onshore/Master IMA 2012") stated to be between the Onshore Fund, the Master Fund and TCM (defined as the "Investment Manager").

84. The recitals refer in the future tense to the Onshore Fund's investment and management "to be conducted". The final recital confirms that the Onshore Fund and TCM wish to enter into the agreement to set forth the terms and conditions upon which TCM "will perform certain services" for the Onshore Fund and the Master Fund. Section 1(a) provides that TCM "agrees to act as investment manager".

85. Section 3 concerns expenses and is worth setting out in full:

> "Section 3. Expenses. The Fund shall pay all of its own expenses including the fees paid to the Investment Manager or its affiliates and the Administrator, directors' fees, legal, accounting, auditing and other professional expenses, consultant's fees, filing fees, administration expenses, organizational expenses, research expenses (including research-related travel), investment expenses including commissions, trading services and support (including payments to third parties who provide such trading services and support), interest on margin accounts and other indebtedness, custodial fees, bank service fees, and other expenses related to the purchase, sale or transmittal of the Fund's assets as determined by the Fund in its sole discretion and the Fund's pro rata share of the Master Fund's expenses. To the extent the Fund, or the Master Fund invests with Other Investment Managers, the Fund or the Master Fund, as applicable, will bear its pro rata share of expenses and fees charged by Other Investment Managers or Sub-Advisors or Assignees including any management fee or performance allocation or fees charged by Other Investment Managers including Sub-Advisors or Assignees. The Fund will pay all reasonable costs and out-of-pocket expenses of the Fund relating to the administration and

operation of the Fund, and will promptly reimburse TCM or its affiliates, as the case may be, to the extent that any of such costs and out-of-pocket expenses are paid by such entities, including, without limitation: (a) organizational expenses, including, but not limited to, costs associated with the Auction, (b) expenses incurred in connection with the evaluation, acquisition, monitoring or disposition of investments; (c) expenses incurred in connection with the carrying or management of investments, including custodial, trustee, record keeping and other administration fees; (d) fees, incentive allocations and other expenses paid to any Sub-adviser; (e) expenses incurred in connection with the preparation, review and audit of the Fund's financial statements and tax returns; (f) attorneys' and accountants' fees and disbursements; (g) taxes and other governmental charges levied against the Fund; (h) insurance, regulatory or litigation expenses (and damages); (i) expenses incurred in connection with the winding-up or liquidation of the Fund; (j) expenses incurred in connection with any restructuring or amendments to the constituent documents of the Fund; (k) internal expenses, including the pro rata share of employee costs, borne by TCM to manage and internally administer the Fund; and (1) expenses related to data technology, research or research products. In addition, the Fund will be responsible for any extraordinary or non-recurring expenses."

86. Section 7 concerns liability and indemnification of TCM and again is worth setting out in full:

> "Section 7. Liability and Indemnification of the Investment Manager. The Fund and the Master Fund shall indemnify and hold harmless the Investment Manager and its affiliates, members, principals, officers and/or employees from and against any and all liabilities, obligations, losses, damages, penalties, actions, suits, costs, expenses or disbursements, including legal fees, and against all judgments, fines and amounts paid in settlement and reasonably incurred or suffered in connection with legal, administrative or investigative proceedings or otherwise in connection with the performance by such persons of their responsibilities to or with respect to the Fund and the Master Fund; provided, that nothing herein shall be deemed either to protect or to purport to protect such persons against any liability to which it otherwise would be subject by reason of gross negligence, willful misfeasance or bad faith."

87. Section 13 is a governing law clause and provides: "This Agreement and all performances hereunder shall be governed by the laws of the State of New York, U.S.A."

88. The Onshore/Master 2012 IMA at Section 2 refers to the close of an auction being conducted by Credit Suisse as being anticipated to be "on or around Decmeber 1, 2012] (sic)" whereas in the Offshore/Master 2012 IMA it is stated to be "onor (sic) February 1, 2013] (sic)".

The Articles

89. Under the heading "Indemnity" Articles 158 and 159 of the Master Fund's Articles of Association (24 August 2012) provide:

"Indemnity

158. Every Director (including for the purposes of this Article, any alternate Director appointed pursuant to the provisions of these Articles), managing Director, agent, Secretary, or other officer for the time being and from time to time of the Company and the personal representatives of the same shall be indemnified and secured harmless out of the assets and funds of the Company against all actions, proceedings, costs, charges, expenses, losses, damages or liabilities of whatsoever nature and howsoever arising incurred or sustained by him otherwise than by reason of his own Gross Negligence or wilful default in or about the conduct of the Company's business or affairs or in the execution or discharge of his duties, powers, authorities or discretions, including without prejudice to the generality of the foregoing, any costs, expenses, losses or liabilities incurred by him in defending (whether successfully or otherwise) any civil proceedings concerning the Company, its business or its affairs in any court whether in the Islands or elsewhere.

159. The Administrator, the Investment Manager and any other agent which the Company has appointed shall be entitled to such indemnity from the Company under such terms and subject to such conditions and exceptions and with such entitlement to have recourse to the assets of the Company with a view to meeting and discharging the cost thereof as shall be specified in the relevant contract or instrument appointing such agent."

90. The Articles of Association of the Onshore Fund unsurprisingly contain the same provisions at Articles 160 and 161. The Offshore Fund's equivalent Articles are at Articles 158 and 159.

The 2008 Contribution Agreements

91. There is a contribution agreement dated 19 December 2008 (the "Contribution Agreement") stated to be entered into between Touradji Global Resources Offshore Fund, Ltd, stated to be an exempted company incorporated under the laws of the Cayman Islands (defined in the document as the "Fund") and Touradji Global Resources Intermediate Fund, Ltd, stated to be an exempted company incorporated under the laws of the Cayman Islands (defined in the document as the "Intermediate Fund") and stated to be:

> "with regard to the transfer of such sum of cash and/or certain securities (or the economic interests in such securities) presently held by the Fund (such assets are referred to as the "Contributed Property" and are listed on Schedule A) to the Intermediate Fund in exchange for shares of the Intermediate Fund."

92. "Schedule A Contributed Property" simply reads "[Schedule annexed hereto]".

93. Section 1 headed "Assignment" provides that "The Fund will transfer, deliver and contribute to the Intermediate Fund on or around January 1, 2009 (the "Closing Date"), all of its rights to the interest in the Contributed Property …" It is added that in consideration "the Fund will receive shares in the Intermediate Fund …".

94. Section 2 under the heading "Assumption of Obligations and Liabilities" provides:

> "Subject to Section 5, the Intermediate Fund hereby irrevocably and unconditionally assumes each and every obligation and liability of the Fund, and claims against the Fund, relating to the Contributed Property."

95. Section 5 headed "Further Assurances" provides that other instruments may be executed to more effectively vest the Contributed Property.

96. Under section 4 headed "Representations, Warranties and Covenants", at 4(b)(iii) the Fund represents and warrants to and covenants with the Intermediate Fund that it "owns the Contributed Property, free and clear of any liens, charges, options and encumbrances other than any security interest or other lien granted by the Fund in connection with the borrowings."

97. Section 7(f) provides that the agreement is "governed by and to be construed in accordance with the law of the Cayman Islands."

98. It is signed by Mr Touradji for both parties.

99. There is a similar agreement dated 19 December 2008 between Touradji DeepRock Holdings, Ltd and Touradji DeepRock Offshore Fund, Ltd with regard to certain "illiquid assets" which do appear to be listed as annexures to Schedule A.

100. There is another similar agreement this time dated 30 December 2008 and stated under Section 7 (d) to be "governed by, enforced under and construed in accordance with the laws of the State of New York, without giving effect to any choice or conflict of law provision or rule thereof."

101. Nothing is annexed.

102. TCM is not a party to any of these agreements.

The 2013 Contribution and Exchange Agreements

103. I have considered a document entitled "Contribution and Exchange Agreement" stated to be entered into by Touradji Global Resources Holdings Ltd (defined in the document as "Touradji Holdings") and Touradji Private Equity Offshore Fund, Ltd (defined in the document as the "Fund") (the "Contribution and Exchange Agreement") stated to be "effective as of the close of business of December 1, 2013" (defined in the document as the "Effective Date").

104. In the recitals it is stated that as of the Effective Date, Touradji Holdings owned all of the investment assets identified on Schedule A (defined in the document as the "Assets").

105. There is an attachment after the signature page:

106.

"**SCHEDULE A and Schedule B**

ASSETS and Liabilities

As per the 6/30/2012 unaudited Net Asset Value of Touradji Holdings as provided by Touradji Capital Management, LP and recorded with IFS" (A copy of that document has not been provided to the court)."

107. Another recital states that at the Effective Date, Touradji Holdings was subject to the "Liabilities identified (sic) Schedule B hereto" (defined in the document as the "Liabilities").

108. Another recital states that in connection with the contribution of the Assets and the receipt by Touradji Holdings of the Shares (Sub-class 1 shares in the Fund) in exchange therefor, Touradji Holdings "will transfer to the Fund and the Fund will assume, pay, perform and discharge when due the Liabilities."

109. Article I is entitled "Contributions and Exchange".

110. Section 1.1 refers to Assets "together with any and all rights, privileges, benefits and obligations appertaining thereto …".

111. At section 1.2 the Fund agrees and accepts "the contribution and assignment of the Assets".

112. Section 1.3 is subject to other parts of the agreement and provides that "Touradji Holdings hereby transfers (a) to the Fund all of the Liabilities and the Fund hereby agrees to assume, pay, perform and discharge when due the Liabilities. Any and all liabilities arising in connection with or as a result of any of the Assets after the effective date shall be the liabilities of the Fund." There is no section 1.3(b).

113. Article II is entitled "Representations and warranties of the Companies". The "Companies" is not a defined term.

114. Article III is entitled "Representations and Warranties of Touradji Holdings".

115. I note also Article IV section 4.2.

116. Section 4.9 provides "This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of [the Cayman Islands]."

117. The document is signed by Mr Touradji for both parties.

The Expert Evidence

118. In view of the fact that some of the agreements were governed by New York law the parties instructed experts on New York law.

119. The JOLs instructed Shira A Scheindlin ("Judge Scheindlin") of Boies Schiller Flexner LLP ("BSF") in New York. Judge Scheindlin was a former judge in New York and is now counsel at BSF engaged in amongst other matters acting as an expert witness.

120. TCM instructed Carmen Beauchamp Ciparick ("Judge Ciparick") of Greenberg Traurig LLP in New York. Judge Ciparick was a former judge in New York and is now counsel who, amongst other matters, serves as an expert of New York law for matters in foreign jurisdictions.

121. It appears that the main principles of contractual interpretation (including indemnification provisions) under New York law (see paragraph 3 of the Joint Expert Report dated 13 February 2026) are similar to those under the laws of the Cayman Islands (see *Tyr Capital Partners SPC Ltd* FSD unreported judgment delivered 21 June 2024), although I accept as counsel observed that there are some differences, especially insofar as the use of extraneous materials is concerned).

122. The experts, however, agree that the following principles of interpretation under New York law apply:

(1) Indemnification provisions are to be interpreted in accordance with general principles of contract construction, with the primary objective of giving effect to the intent of the parties as expressed in the language of the agreement;

(2) In determining intent, the court begins by examining the plain language of the contract;

(3) Where a contract is clear, complete and unambiguous, it must be enforced according to its plain meaning, and the courts may not add, excise, or distort contractual language under the guise of interpretation;

(4) A contract must be read as a whole, with each provision interpreted in reference to the entire agreement so as to give effect to its overall purpose and to avoid interpretations that render any provision meaningless or superfluous;

(5) In determining the parties' intent, the court considers the reasonable expectations of the ordinary business person in the factual context in which terms of art and understanding are used;

(6) A contract must be read in a manner that accords the words their fair and reasonable meaning and achieves a practical interpretation of the expressions of the parties and should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties;

(7) The court generally construes indemnification provisions narrowly, and an indemnification obligation should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding facts and circumstances;

(8) Where the parties have expressed an agreement to cover counsel fees, the court will enforce such provision according to its terms.

123. The experts, although agreed on these principles, disagree as to their application to the scope and effect of the indemnification provisions in the 2005/06 IMAs and the 2012 IMAs.

124. At the end of the day it will be for this court to determine the disputed issues in this case with, where appropriate, assistance offered by the experts insofar as New York law is concerned.

125. It is obviously for this court, rather than the foreign law experts (no matter how impressive their credentials) to decide any relevant disputed issues in these proceedings.

The nature of the US Litigation

126. I have considered the nature of the US Litigation including the pleadings, the transcripts of various hearings, the expert evidence in respect of it, and the oral submissions of counsel.

127. Whilst on this subject I need to record that by email dated 22 April 2026 10:05pm Ronan O'Doherty of Campbells communicated with my PA in the following terms:

> "During Leading Counsel's submissions today, His Lordship requested that we provide a document identifying hearing bundle references for extracts from the Amended Counterclaim and the US Litigation transcripts which support our submission that the Compensation Litigation was an employment dispute.
>
> We now attach a copy of the document and would be most grateful if you could share this with His Lordship at your earliest convenience."

128. I did not request such a document. Mr Lowe offered it. At the outset of the third day of the hearing on 22 April 2026 I referred to my comments in *Fang Holdings Limited* [2026] CIGC (FSD) 24 at paragraph [133] which reads:

> "I do not like it when attorneys attempt to mislead me or push their use of language beyond honest boundaries. I will call it out even when I see just possible hints of it. Attorneys need to be very careful with their use of language especially in their communications with the court. They need to ensure that they are open and scrupulously accurate and honest in their communications with the court. As officers of the court their primary duty is to assist the court in the administration of justice."

129. That case also involved an attorney at Campbells. The relevant attorneys at Campbells need to take more care in the language they use in their communications with the court.

130. I considered all the references in the document attached to Mr O'Doherty's email. I also considered all the references in a document entitled "References to Ciparick Evidence and US Trial Transcripts on nature of the US Litigation" attached to an email dated 23 April 2026 9.03am from Romane Duncan at Conyers.

131. I am grateful to the attorneys for their detailed submissions in respect of the nature of the US Litigation. I do not set them out in this judgment but have full regard to them.

Determination

132. I now turn to the determination of the various appeals and my reasons for such determinations. I take each POD separately as follows:

POD1

133. TCM's claims against the 2012 Funds in respect of the US Litigation (whether in respect of legal costs or any further judgment liability) are not covered by the relevant provisions in the 2012 IMAs or the Articles of Association.

134. In my judgment the US Litigation does not relate "to the administration and operation of the Fund" (Section 3). It is not "in connection with the performance by such persons or their responsibilities to or with respect to the Fund" (Section 7). It does not fall within the phrase "in or about the conduct of the Company's business or affairs" (Article 158).

135. The US Litigation is in substance a dispute between TCM and two former employees of TCM. The addition of the counterclaim and DeepRock Venture Partners, LP ("Deeprock") does not change that. DeepRock is a Delaware limited partnership whose limited partnership interests are owned beneficially by the Onshore Fund and Offshore Fund.

136. The claims for legal expenses incurred, to be incurred or in respect of any judgment liability are properly rejected. They do not fall within Section 3, Section 7 or the Articles of Association. Put simply and succinctly this is for the same reasons put forward above as to my conclusion in respect of the US Litigation and the fact that it does not relate, and is not with respect to, the 2012 Funds and nor do the claims fall within the phrase "in or about the conduct of the Company's business or affairs."

137. That disposes of TCM's primary argument in respect of POD1.

138. With regard to TCM's secondary argument, which sensibly was not pursued with the same vigour as its primary argument, in respect of a transfer of obligations from the 2005/6 Funds to the 2012 Funds, I reject such argument essentially for the reasons so eloquently put before the court by Mr Lowe on behalf of the JOLs.

139. Contractual language purporting to transfer or assign burdens must be clear. The contractual documentation put before the court was far from clear on this transfer or assignment point. Schedule B of the Contribution and Exchange Agreement (which was intended to define liabilities) purported to do so by reference to a document that was apparently not available to TCM and was not placed before the court. Express representations were given that assets were unencumbered by any liens or claims.

140. TCM's secondary argument on transfer or assignment was hopeless. That is probably why it did not run it when it first submitted its POD.

141. Furthermore, the 2012 Funds could not properly be described as successor funds to the previous funds which continued to operate in parallel. This was not a "mere continuation" of previous entities. The previous entities had not been extinguished. Moreover, the previous funds did not have indemnification liabilities capable of transfer or assignment in any event.

142. The appeal in respect of POD1 is accordingly dismissed.

POD2

143. TCM's claims in POD2 are on the same basis as the claim in POD1 and the appeal in respect of POD2 is likewise rejected.

POD3

144. In respect of POD3, I agree with the approach of the JOLs in respect of the claims. The JOLs partially admitted in principle POD3 subject to satisfactory proof of expenses falling within certain heads of cost. The JOLs were right to reject any entitlement to claim for legal fees incurred by TCM in seeking to prove its claims *qua* creditor in the liquidation. I accept the submission that under Section 3 TCM is to be reimbursed for costs and out-of-pocket expenses of the relevant 2012 Fund (i.e. paid on behalf of that fund) insofar as these expenses relate to the administration and

operation of the relevant fund. TCM is not entitled to be reimbursed for costs paid by it on its own account and not on behalf of a relevant fund; or costs that do not relate to the administration or operation of the relevant fund. Legal fees incurred by TCM on its own behalf (rather than on behalf of the relevant fund) are not reimbursable.

145. It follows that legal fees and expenses incurred by TCM trying to prove a claim as a creditor in the liquidation, costs incurred by TCM on its own behalf when seeking to resist the application by shareholders and the then joint voluntary liquidations for supervision orders over the 2012 Funds, the resistance to the JOLs' application for Chapter 15 recognition or orders sought therein are all irrecoverable under Section 3. That is principally for two main reasons. Firstly, they are all incurred by TCM on its own behalf rather than on behalf of the relevant fund. Secondly, none of them relate to the administration and operation of the relevant fund.

146. Neither are they within Section 7. I agree with Mr Lowe that such provision "responds" to liabilities incurred by TCM (1) in proceedings involving TCM which concern the performance by TCM of its responsibilities to the relevant fund or (2) otherwise in connection with the performance by TCM of its responsibilities to the relevant fund.

147. Furthermore, Article 158 requires a similar causal connection between the liability and the performance by the "agent" of its responsibilities to the relevant fund. To be covered by Article 158 the liabilities have to be sustained "in or about the conduct of the Company's business or affairs or the execution or discharge of his duties authorities or discretions" with respect to the relevant fund.

POD4

148. There are in effect four parts of the POD4 claim. Firstly, a claim for all outstanding fees and reimbursement of expenses owed to TCM relating to the administration and operation of the Master Fund in the sum of US$1,142,165.84. Secondly, a claim for time spent by Mr Touradji of TCM for attendance at trial and other matters associated with the US Litigation since 2018. Thirdly, the provision of investment management services and investment advisory services including in respect of fees for monitoring and management of the Master Fund's investment in Sollus including the sum of US$10,000,000.00 (i.e. the Sollus Fee Agreement). Fourthly, a claim for interest "To be determined at a reasonable rate of interest." The total claimed in POD4 is US$11,142,165.84.

The basis upon which the claim is said to arise is stated to be pursuant to sections 3 and 7 of the IMAs and the "Articles and the Sollus Fee Arrangement."

149. TCM is not entitled to reimbursement of expenses or "for time spent at the trial of the US Litigation" pursuant to Sections 3 and 7, the Articles or otherwise. Mr Touradji is not entitled to his time costs. TCM and Mr Touradji are two separate legal entities.

150. The JOLs accept in principle that properly incurred expenses incurred and/or paid by TCM on behalf of the 2012 Funds, in connection with the administration and operation of the 2012 Funds would give rise to a creditor claim against the relevant fund (paragraph 151 of the JOLs' skeleton argument dated 14 April 2026).

151. The JOLs add that despite reasonable requests, TCM failed to provide sufficient details and particularity about the alleged expenses. The JOLs therefore rejected that part of POD4.

152. Mr Touradji in his third affidavit sworn on 20 February 2025, at paragraph 54, provided further details as follows:

> "54. In any event, in support of TCM's appeal of POD #4, I have provided answers to the below questions raised by the JOLs in Campbells letter of 11 October 2024 as it relates to this aspect of POD #4. For the avoidance of doubt, I do not accept that these additional details were required in order for POD #4 to be admitted:
>
> a. The AMEX card referred to in Appendix A3 is a corporate card in the name of TCM;
> b. Capitol Services is a company registrar service provider;
> c. Schlam Stone is a law firm engaged in connection with the US Litigation;
> d. Intertrust provided administrative services to TCM;
> e. FPL expenses are in respect of Florida Power & Light for electricity bills for TCM's office;
> f. John Hancock was a 401k provider and was used alongside ADP for TCM's employee payroll;
> g. Rental payments were for the office space used by TCM at 950 Peninsula Corporate Circle, Boca Raton Florida 33487. The rental payments were made to Danburg Properties of Boca Raton (a commercial real estate

agency operating in Florida) and thereafter to BREF 950 LLC, given that the owner of the property changed during the relevant period;

h. The Conyers expense on 20 December 2021 relates to Conyers' fees for legal services related to the voluntary liquidation of the PE Funds; and

i. The legal fees paid to O'Brien LLP were in respect of their engagement in relation to the US Litigation."

153. TCM submit that this aspect of POD4 ought to be admitted in full.

154. Campbells, on behalf of the JOLs, responded on 3 April 2025 stating:

"**Outstanding information requests for POD 3 and 4**

We refer to (i) the JOLs' letter dated 11 October 2024, (ii) the partial admission of POD3, (iii) the basis for the rejection of POD 4 as it relates to the Appendix A3 expense claims, and (iv) the Third Affidavit of Paul Touradji ("Touradji 3") at paragraph 37 and 54.

To allow the JOLs to consider which parts of POD 3 are capable of being admitted, and with a view to narrowing the contested issues in relation to POD 4 which may (subject to the receipt of appropriate documentation/evidence) be capable of being admitted now, we invite TCM to please provide the following supporting documents and clarification in respect of the points which remain unanswered by TCM:

1. Provision of Conyers' time entries and narratives in respect of Conyers' costs claimed under POD 3. We note that the supporting documents provided by TCM to date in respect of Conyers' invoices do not distinguish between workstreams which appear to be recoverable and indemnifiable and those which are not, such that it is not currently possible for the JOLs to determine which amounts are in scope.

2. In relation to Appendix A3 of POD 4:

   a. Particulars of the apportionment of employee costs as between the different Touradji-related entities in respect of which such

employees were retained during the relevant period (if any). The liability under clause 3 of the 2012 IMAs is confined to the pro-rata share of employee costs borne by TCM to manage and administer the PE Funds; and

b. Particulars of the AMEX expenses which TCM has failed to provide any particulars for other than confirming that the AMEX card referred to in Appendix A3 was a "*corporate card in the name of TCM*" in respect of POD 4. Absent evidence that such expenses are indemnifiable/reimbursable and were reasonably incurred, the JOLs are unable to admit such amounts.

In relation to POD 4, Appendix A3, and in light of the further particulars provided in Touradji 3 and/or because such amounts are de minimis, the JOLs intend to admit POD 4 in relation to the expenses paid to Capitol Services, Paul Braica, Hotwire internet, CSC, CT Corp, USPS, Hartford Insurance, Intertrust, FPL Services, Danburg Properties/BREF 950 LLC (in relation to rental payments)."

155. The JOLs' position is outlined at paragraph 153(a) and (b) of their skeleton argument dated 14 April 2026:

"153. TCM has since provided further detail in Touradji 3. The JOLs' position is as follows:

(a) In relation to expenses claimed in Appendix A3 to POD 4, the JOLs admit in full the expenses incurred by TCM therein, save for the items identified (and for the reasons identified) at Pearson 3, [192].

(b) In relation to "*time-costs incurred by Paul Touradji for assistance with [Compensation Litigation]*", as set out under Appendix B3 to POD 4, the JOLs reject that TCM has any entitlement to claim such costs. They relate to the Compensation Litigation, and so fall to be rejected on the same bases as PODs 1 and 2. Further, there has been no legal basis advanced on which

those are costs that give *TCM* any claim as creditor. Still further, the claim should be rejected for reasons set out in Pearson 3, [193]."

156. Mr Pearson at paragraph 193 of his third affidavit sworn on 11 April 2025 states (footnote omitted):

> "193. Secondly, the JOLs have various concerns with the claim for Mr Touradji's time costs associated with the Employment Action. Many queries were raised by Campbells letter of 11 October 2024 in this regard but such matters have not been addressed at all. The JOLs position, based on the limitation (sic) information available to date, is that the claim is to be rejected for the following reasons:
>
> (a) The time costs were documented after the fact and are admittedly not based on any contractual entitlement which Mr Touradji has against either TCM or the 2012 Funds to charge an hourly rate or a *per diem* for his time spent in relation to the Employment Action.
>
> (b) These time costs are stated to be a liability of Mr Touradji personally, rather than TCM. Mr Touradji has not submitted a proof of debt in his personal capacity, or stated on what basis the 2012 Funds are liable to indemnify him personally (if that is what he is claiming).
>
> (c) TCM has not claimed to have paid these amounts to Mr Touradji or to have incurred a liability to pay Mr Touradji these amounts. TCM has therefore not suffered any loss or liability in this regard for which indemnification or expense reimbursement could be sought.
>
> (d) The quantification itself is not reliable. POD 4 records that "*Mr Touradji has sought to provide a general indicative guide and conservative estimate of the time he has spent dealing and assisting with various US litigation over the past 15 years on behalf of TCM*", and the rate use is based on "*rates of other senior professionals involved in such litigation.*" Mr Touradji has necessarily had to estimate retrospectively the number of hours spent in relation to the Employment Action, spanning many years, as the JOLs understand he did not keep contemporaneous time records.

(e) The indemnification of Mr Touradji's time costs in relation to the Employment Action gives rise to the same concerns outlined above with the indemnification of legal expenses under POD 1 and POD 2 (although there is further complication of the claim being Mr Touradji's personally, rather than TCM's)."

157. I am not persuaded that TCM's appeal in respect of these aspects of POD4 should be allowed. The position adopted by the JOLs in this respect is justified. Mr Ayres in oral submissions asked that TCM be allowed some further time to satisfy the JOLs in this respect. TCM has had long enough to satisfy the JOLs in this respect but have failed to do so.

The Sollus Fee Agreement

158. I now turn to the aspect of POD4 which relates to the Sollus Fee Agreement.

159. The JOLs, in their skeleton argument dated 14 April 2026, state that as investment manager of the Master Fund, TCM was obliged to manage its assets, including Sollus, and it earned its investment management fee in part for such work. Under the Sollus Fee Agreement between TCM and the Master Fund, TCM was stated to earn a further US$1 million per annum for what appears to be the same work. The JOLs say that they have put the authenticity of the Sollus Fee Agreement "squarely in issue" (paragraph 156 of their skeleton argument) and submit that its authenticity has not been proved on a balance of probabilities. The JOLs say that no substantive response has been received from TCM in respect of the letter dated 22 June 2023 from Campbells to Conyers raising issues going both to authenticity and validity.

160. The JOLs say that, in all the circumstances, the court is entitled and is invited to draw adverse inferences. The JOLs invite the court to draw the following adverse inferences:

(1) TCM does not have material to substantiate the authenticity of the Sollus Fee Agreement.

(2) No contemporaneous emails concerning, referring to, or attaching the Sollus Fee Agreement have been provided because they would not assist TCM in establishing the fee claim.

(3) The original Word document(s), with metadata, have not been provided because they would be unfavourable to TCM on the issue of when, and the circumstances in which, the Sollus Fee Agreement was created.

161. Furthermore, the JOLs say that even if authentic there is no evidence that the Master Fund gave its fully informed consent in circumstances where TCM was entitled to be paid both under the 2012 IMAs and under the alleged Sollus Fee Agreement for the same work. They add that TCM, as a fiduciary, was subject to core "no profit" and "no conflict" obligations and that there is no evidence that it was brought to the attention of (i) external investors or (ii) other members of the Board of Directors of the Master Fund. They also add that there is no board resolution of the Master Fund, which would have needed Mr Touradji to declare his conflict of interest given his personal interest in TCM. The JOLs invite the court to draw an adverse inference that TCM and/or Mr Touradji are unable to adduce material going to the issue of fully informed consent, which burden is on the fiduciary (*Dunne v English* (1874) 3 WLR 423 at [211]-[226]) based on his failure to give evidence on the point in Touradji 3 or 5 for the purposes of the POD appeals, as well as TCM's failure to respond to relevant queries on the point in correspondence. The JOLs say that on that basis the Master Fund cannot be bound by the Sollus Fee Agreement.

162. For present purpose I proceed on the assumption, without deciding the issue, that the Sollus Fee Agreement is authentic. Even if it is, there are serious issues in respect of its validity. It is, however, unnecessary to draw any adverse inferences as requested by the JOLs.

163. Mr Lowe put in 4 additional authorities on Day 2, including *FamilyMart* 2020 (2) CILR 201 (CICA), and referred to [20] and [21] and the duties of directors and "the strict rule against self-dealing and the importance of full and frank disclosure before it can be shown that fully informed consent had been given to such dealing."

164. In *Dunne v English* Sir George Jessel MR at 533 stated "… nothing is better settled than that an agent, purchasing for himself, must tell his principal he is the purchaser, or one of the purchasers … It is not enough for an agent to tell the principal that he is going to have an interest in the purchase, or to have a part in the purchase. He must tell him all the material facts. He must make a full disclosure." On page 534 the learned Master of the Rolls suggests that in a case where full disclosure has not been proved the underlying transaction "has no validity in a Court of Equity … it has no validity in this Court." The judge quoted from a previous authority "It must be proved

that full information has been imported, and that the agreement has been entered into with perfect faith." Sir George Jessel added "That is the agent must prove those things – good faith and full information".

165. I note and accept Judge Scheindlin's opinion that the Sollus Fee Agreement may constitute self-dealing given that the investment manager is on both sides of the transaction and is stated to be receiving additional compensation (paragraph 46 of the Joint Expert Report).

166. I note Judge Ciparick's opinion is that although Mr Touradji was capable of acting as an agent for TCM and the Master Fund, his ability of entering into an "enforceable agreement" was subject to the proviso that he "fulfilled the duties owed to each principal". Mr Touradji has not provided sufficient evidence to prove that such was the case.

167. In my judgment, TCM has failed to produce evidence that fully informed consent has been given to such obvious self-dealing. In such circumstances TCM cannot, on the assumption it is authentic, rely on the Sollus Fee Agreement. It has no validity in this court. The JOLs were right to reject the claims in respect of the Sollus Fee Agreement and I dismiss the appeal against the rejection.

168. In such circumstances I do not need to deal with Mr Lowe's other points that the Sollus Fee Agreement is unenforceable for want of consideration or that there is in any event an insolvency set-off.

Costs

169. TCM has been unsuccessful. If costs orders cannot be agreed the attorneys should file, within 14 days of the delivery of this judgment, concise (no more than 5 pages) written submissions on costs and I can decide any issues in respect of costs on the papers.

Order

170. The attorneys should file before 3pm on 4 June 2026 a draft order (agreed as to form and content) reflecting the determinations contained in this judgment.

171. I am grateful to the attorneys for their continued assistance to the court.

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT