IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 54 OF 2016 (ASCJ)

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF ARDENT HARMONY FUND INC (IN OFFICIAL LIQUIDATION) ("the Fund")

IN CHAMBERS
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
THE 26TH DAY OF MAY 2016, REASONS DELIVERED ON 31ST MAY 2016

APPEARANCES: Ms. Rachael Reynolds and Mr. William Jones of Ogier (with them Mr. Michael Pearson, one of the Joint Official Liquidators of the Fund).

Cayman Islands Fund in liquidation under supervision of the Grand Court – petition filed by creditor in Barbados Court for appointment of trustee-in-bankruptcy there in respect of the Fund – application by joint official liquidators to the Grand court for anti-suit injunction to restrain continuation of the Barbados Proceedings – principles applicable to the grant of such an anti-suit injunction.

REASONS FOR RULING

1 These are the reasons for the ruling following on the hearing of the *ex parte* Summons dated 24 May 2016 filed by Michael Pearson and Andrew Childe, the Joint Official Liquidators of Ardent Harmony Fund Inc., a Cayman Islands entity ("**the JOLs**" and "**the Fund**" respectively). The Summons is supported by the Second Affidavit of Michael Pearson filed in these proceedings and statements of fact

contained in these reasons for decision are taken from that affidavit, unless otherwise stated.

2 The Summons seeks an order that International Tropical Timber Organisation ("**ITTO**"), a Japanese entity and a member and creditor of the Fund, be restrained from continuing proceedings commenced by Petition in the Supreme Court of Barbados[1] seeking a receivership order and the appointment of a trustee in bankruptcy over the Fund (the "**Barbados Proceedings**").

3 Copies of the Summons, Mr Pearson's Second Affidavit and Exhibit thereto, were sent to ITTO by email on 24 May 2016. ITTO's Barbados attorneys, Messrs Chancery Chambers, Attorneys at Law, acknowledged receipt of the same on 25 May 2016 and indicated that they were taking instructions, but ITTO have not given any indication whether they have instructed Cayman attorneys or would be attending this hearing and ITTO has not appeared at this hearing.

The Fund in Liquidation

4 The Fund is a Cayman Islands exempted company incorporated on 7 October 2010. It operated as an open-ended investment fund within the definition of a mutual fund contained in the Mutual Funds Law (2015 Revision).

5 The JOLs were appointed as voluntary liquidators of the Fund by special resolution of the sole holder of its voting (as distinct from its equity) shares, on 26 April 2016.

6 Due to an inability of the directors to provide a declaration of solvency in keeping with section 124 of the Companies Law (2013 Revision) ("the Law"), an application was made to bring the voluntary liquidation under the supervision of this Court by

[1] Entitled Claim No. BRI 0001/2016

Petition dated 28 April 2016. On 10 May 2016 the Honourable Mr Justice McMillan considered the Petition on the papers, in accordance with Company Winding Up Rules Order 15, rule 5(1), and ordered that the liquidation shall continue under the supervision of the Court, pursuant to s.124 of the Law.

7 From the moment of the commencement of its liquidation, section 97(1) of the Law operated so as to prohibit the commencement of any suit action or other proceedings against the Fund, except with leave of this Court. This is a provision which, although not expressed as operating extra-territorially, must, for reasons which will be examined below, be deemed to carry that effect implicitly.

8 Since their appointment, the JOLs have been working with the Fund's service providers and other third parties to gather in the assets and documentation belonging to the Fund.

9 The majority of the Fund's assets were invested with Bruin Funding LLC ("**Bruin**"), a limited liability company organised and existing under the laws of the State of New York, which acted as factoring agent for the Fund. It is believed by the JOLs that Bruin overstated the value of the loans it entered into on behalf of the Fund and the value of the Fund's investments are thereby almost entirely impaired. The JOLs have caused the Fund to issue proceedings against Bruin (and an associated Illinois corporation called RMP Capital Corp Inc.) ("RMP"), in the Supreme Court of the State of New York, in the County of Nassau. There has been one hearing in the US proceedings and a further hearing is scheduled for next month.

10 However, as regards ITTO's actions in Barbados, it is the firm view of the JOLs that nothing has arisen in their investigations to date to suggest any need for proceedings

to be commenced in that jurisdiction. Specifically, no assets or debtors have been identified in Barbados, other than the Fund's bank accounts with CIBC First Caribbean International Bank. And the JOLs have moreover taken control of those bank accounts and have transferred the full balances to accounts which they have opened with Fidelity Bank (Cayman) Ltd., here in the Cayman Islands.

11 It is the firm view of the JOLs that there is no benefit to the estate (or to ITTO for that matter) of participating in any proceedings in Barbados.

ITTO

12 Subject to the final resolution of its Proof of Debt by the JOLs, ITTO appears to be the Fund's single largest creditor – with a claim representing approximately half of the Fund's debts.

13 In light of ITTO's action in Barbados, it is worthy of note that ITTO and the other creditors were put on notice of the application to place the liquidation under the supervision of this Court on 27 April 2016 and none raised any objection.

14 The JOLs have made regular attempts to contact ITTO since their appointment on 26 April 2016 and have notified them of the steps being taken to realise the assets, including the action against Bruin.

15 On 19 May 2016, ITTO submitted its Proof of Debt in the total sum of US$12,569,647.50, and so must be deemed to have submitted to the jurisdiction of the Court in the liquidation of the Fund.

Barbados Petition

16 According to Mr. Pearson's evidence, without notice to the JOLs, despite having full knowledge of their appointments, ITTO commenced the Barbados Proceedings by Petition dated 13 May 2016. A copy of the Petition, together with a notice of a hearing which took place in Barbados on 20 May 2016, was served at the offices of the parent company of the investment manager of the Fund, in Barbados, on 19 May 2016. No service has been effected on the Fund itself (at either its current or former registered office here in the Cayman Islands).

17 George Walton Payne & Co., a firm of Barbados attorneys ("**GWP**") have been instructed in Barbados to act on behalf of the Fund and attended the hearing there on 20 May 2016.

An adjournment of ITTO's application was granted until Friday, 27 May 2016 at which time the Barbados Court will determine whether it has jurisdiction to hear ITTO's Petition. The JOLs say that there is a risk that at that hearing, a receiver will be appointed over the assets of the Fund, an appointment which would conflict with the role of the JOLs. They exhibit in support of this concern, a letter from Barbados counsel opining as to the possibility of a conflicting appointment.

Communications with ITTO

18 Despite being notified of the steps being taken by the JOLs to secure the Fund's assets and records, and that proceedings have been issued on behalf of the Fund against Bruin and RMP in New York, ITTO gave no indication that they had any

concerns regarding the liquidation, the JOLs' appointment, the strategy being employed in the US, or the steps being taken to secure the Fund's assets and records.

19 It is therefore not surprising that following the commencement of the Barbados Proceedings, the JOLs sent a number of requests to ITTO to discuss the reasons for their action in Barbados.

20 Prior to a telephone call this morning about which more below, the only substantive response was an email received by the JOLs two days ago on 24 May 2016 from Mr Gerhard Breulmann, the Acting Director of the Divisions of Operations of ITTO. In his email, Mr Breulmann claims that the intention behind ITTO's decision to issue the Barbados Proceedings was to "*ensur[e] and assur[e] the orderly distribution of assets to all creditors*", that the Barbados Proceedings would be complimentary to the liquidation of the Fund in Cayman, and that if the JOLs had commenced proceedings in Barbados it "*would have accorded them certain additional statutory powers under the relevant statute to be able to ensure the vesting of property and the ability to possibly swell the assets for the benefit of all creditors*".

21 As Ms. Reynolds explains, the JOLs are concerned and properly so it seems to me, that there is no mention in ITTO's Petition, in Mr Breulmann's affidavit in support of the Barbados Proceedings, or in the email of 24 May 2016:

(a) how exactly such actions would benefit the estate;

(b) against whom such statutory powers as would be available to a Barbados trustee would be exercised, and if such actions are necessary why a recognition by the Barbados Court of the JOLs appointed by this Court would not suffice;

(c) of evidence of any debtors based in Barbados;

(d) of evidence of any of the Fund's assets being sited in Barbados;

(e) why no contact was made with the JOLs prior to commencing the Barbados Proceedings to explain why the Barbados Proceedings were thought desirable or necessary;

(f) whether and if so why ITTO considers that the steps taken in the Cayman liquidation to date have been somehow unsatisfactory, and if so why no such issues were raised with the JOLs;

(g) whether and if so why ITTO challenges the appointment of the JOLs or their suitability to act as liquidators of the Fund.

22 The Petition in the Barbados Proceedings claims that there has been a "fraudulent preference" by the sale of the investment manager entity of the Fund. It is not clear, and it is not explained, how a sale of the investment manager, which is separate and distinct from the Fund and holds no assets of the Fund, could constitute a fraudulent preference, or how this relates to the Fund's portfolio or the liquidation. The allegation is simply asserted without basis or evidence. This suggests that ITTO have misunderstood the role of the investment manager, the separate legal identity of the parent of the investment manager (which is a Barbados company) and the fact that the investment manager does not own the assets of the Fund.

23 Had ITTO raised the question of the JOLs seeking recognition in Barbados, they would have been informed then that there is, at this stage, no purpose or benefit in incurring the costs of making such an application, says Mr. Pearson.

24 Another serious cause for concern on the part of the JOLs is that ITTO are seeking in the Barbados Proceedings, to appoint an affiliate BDO entity of the auditor of the Fund as trustee. Given the impairment and overstatement of the value of the assets, and possible claims being investigated, I recognise that it is wholly inappropriate that the auditor be appointed, and indeed as a matter of Cayman law, the auditor would not be eligible to act as liquidator due to a lack of independence.

Need for Injunction

25 In light of the fact that the adjourned hearing in the Barbados Proceedings is now due to take place tomorrow, on the 27th May 2016, the JOLs urgently seek an anti-suit injunction, restraining ITTO from continuing the Barbados Proceedings. In summary, the main concerns regarding the Barbados Proceedings as explained by Ms. Reynolds are as follows:

(a) The Fund is already in liquidation under the supervision of this Court and under the control of independent Officers of this Court;

(b) Even if the Fund was not already in liquidation there would be no benefit in putting it into liquidation in Barbados – as there are no assets in Barbados, no debtors in Barbados and the Fund has no other relevant connection with Barbados;

(c) In the event that the Barbados Court grants ITTO's application and appoints a Trustee in Bankruptcy over the Fund, there would be two separate office holders in two different jurisdictions, which would result in:

(i) confusion for creditors and debtors;

(ii) conflicting actions being taken by different representatives;

(iii) increased costs to the Fund's estate;

(iv) the potential undermining of the proceedings against Bruin and RMP in the United States;

(v) no benefit at all to the estate due to the fact that no assets or debtors are within the jurisdiction of Barbados;

(vi) a conflict of interest as ITTO are seeking to appoint BDO who acted as auditor of the Fund, and against whom, given the circumstances of the impairment of value, claims may lie.

26 Ms. Reynolds also submits that in the event that any claims which must be brought in Barbados subsequently come to light, the JOLs will be able to apply for recognition of their appointment in Barbados, but unless and until such claims become apparent, there is no benefit to the Fund or its creditors in seeking recognition in Barbados. These, to my mind, are all patently valid concerns.

The Law on Anti Suit Injunctions in the context of Insolvency Proceedings

27 It is of course, trite principle that upon being placed into liquidation the Fund became vested trustee of its assets for its creditors and this includes assets wherever situate (see the Privy Council decision, on appeal from the Court of Appeal of the Cayman Islands, in *Wight, Pilling and MacKey v Eckhardt Marine G.m.b.H* [2003] CILR 211 at para 21[2]; *Dicey, Morris & Collins, the Conflict of Laws* (15th ed) ("Dicey") para 31-027), speaking to the well-established principle of the universality of a winding up order.

[2] The Court of Appeal decision is reported at 200 CILR 325, at page 333 lines 21-41 on this point.

28 It follows that the Court has jurisdiction to restrain a creditor over whom it has personal jurisdiction from the institution or continuance of proceedings in a foreign court, where the effect of those proceedings would be to subvert the universal collective process of the liquidation (see further on this point para. 14.33 of *Sheldon on Cross Border Insolvency* (4th ed[3]) Bloomsbury publishers).

29 And *Dicey*, at 31-039 states under the heading: "*Restraining creditors from suing abroad*":

> "*The courts will in certain circumstances restrain a creditor from taking proceedings abroad to recover a debt due from the bankrupt, in order to maintain an equal distribution of the assets among the creditors generally. They will grant an injunction to restrain a creditor in England from suing abroad; but they will not restrain a creditor resident abroad from suing abroad unless he had claimed to prove in the English bankruptcy*". (Emphasis added.)

30 It is upon the conditionality emphasised in this passage that Ms. Reynolds primarily relies in support of her argument here; referring to the fact that ITTO has submitted its proof of debt in the liquidation proceedings before this Court.

31 In the Privy Council case of *Stichting hell Pensioenfonds v Krys and another* [2014] UKPC 41 (on appeal from the British Virgin Islands (BVI) in respect of the *Freshfield Sentry* liquidation then before the BVI Court); the liquidators of Fairfield Sentry sought an anti-suit injunction. The issue before the Privy Council was:

[3] Citing *Dicey*, op. cit. Rule 38(5) at 12R-001.

"*...whether, when a company is being wound up in the jurisdiction where it is incorporated, an anti-suit injunction should issue to prevent a creditor or member from pursuing proceedings in another jurisdiction which are calculated to give him an unjustifiable priority....*" (paragraph 1).

The Stichting Shell pension fund was a creditor which had taken an action in Holland in an attempt to secure priority over assets held by a Dutch custodian on behalf of Fairfield Sentry.

32 The Privy Council held:

"*In the British Virgin Islands as in England, the making of an order to wind up a company divests it of the beneficial ownership of its assets, and subjects them to a statutory trust for their distribution in accordance with the rules of distribution provided for by statute: Ayerst (Inspector of Taxes v CK Construction Ltd. [1976] AC 167. In the case of a winding up of a BVI company in the BVI, this applies not just to assets located within the jurisdiction of the winding up court but all assets world-wide....It reflects the ordinary principle of international law that only the jurisdiction of a person's domicile can effect a universal succession to its assets. They will fall to be distributed in the BVI liquidation pari passu among unsecured creditors and, to the extent of any surplus, among its members.*

This necessarily excludes a purely territorial approach in which each country is regarded as determining according to its own law the

distribution of assets of an insolvent company located within its territorial jurisdiction. … short of a transfer of a proprietary interest in the asset prior to the winding-up order, it is generally for the law of that jurisdiction [of the winding up court] *to determine the distribution of the company's assets among its creditors and members, at any rate where the company is being wound up in the jurisdiction of its incorporation.*" (paragraphs 14 and 15)

33 Thus, the Privy Council granted the anti-suit injunction in favour of the winding up proceedings in the BVI.

34 The principles generally applicable to anti-suit injunctions were summarised and Lords Sumption and Toulson on behalf of the Board continued (citing, among others, the seminal decision in Bushby v Munday (1821) 5 Madd 297, 307):

"The Court does not purport to interfere with any foreign court, but may act personally upon a defendant by restraining him from commencing or continuing proceedings in a foreign court where the ends of justice require.

The "ends of justice" is a deliberately imprecise expression. It encompasses a number of distinct legal policies whose application will vary with the subject-matter and the circumstances. In Carron Iron Company Proprietors v Maclaren (1855) 5 HLC 415, Lord Cranworth LC (at pp 437-439) identified three categories of case which, without necessarily being comprehensive or mutually exclusive, have served generations of judges as tools of analysis. The first comprised cases of simultaneous proceedings in England and abroad on the same subject-matter. If a party to litigation in England, where complete

justice could be done, began proceedings abroad on the same subject-matter, the court might restrain him on the ground that his conduct was a "vexatious harassing of the opposite party". The second category comprised cases in which foreign proceedings were being brought in an inappropriate forum to resolve questions which could more naturally and conveniently be resolved in England. Proceedings of this kind were vexatious in a larger sense. The court restrained them "on principles of convenience to prevent litigation which it has considered to be either unnecessary, and therefore vexatious, or else ill-adapted to secure complete justice". Third, there are cases which do not turn on the vexatious character of the foreign litigant's conduct, nor on the relative convenience of litigation in two alternative jurisdictions, in which foreign proceedings are restrained because they are "contrary to equity and good conscience". (Paragraphs 17 and 18.)

35 Their Lordships having thus examined the earlier case law, summarised the applicable principles as follows:

> *"The conduct of a creditor or member in invoking the jurisdiction of a foreign court so as to obtain prior access to the insolvent estate may well be vexatious or oppressive, in which case an injunction may be justified on that ground. An example is provided by the decision of the English Court of Appeal in Bloom v Harms Offshore AHT Taurus GmbH & Co KG [2009] EWCA Civ 632, [2010] Ch 187, [2010] 2 WLR 349, where a creditor used a foreign attachment order in a manner which the court regarded as amounting to sharp practice.*

However, vexation and oppression are not a necessary part of the test for the exercise of the court's jurisdiction to grant an anti-suit injunction in a case where foreign proceedings are calculated to give the litigant prior access to assets subject to the statutory trust. In the Board's opinion there are powerful reasons of principle why this should be so. The whole concept of vexation or oppression as a ground for intervention is directed to the protection of a litigant who is being vexed or oppressed by his opponent. Where a company is being wound up in the jurisdiction of its incorporation, other interests are engaged. The court acts not in the interest of any particular creditor or member, but in that of the general body of creditors and members. Moreover, as the Board has recently observed in Singularis Holdings Ltd v PriceWaterhouseCoopers [2014] UKPC 36, 23, there is a broader public interest in the ability of a court exercising insolvency jurisdiction in the place of the company's incorporation to conduct an orderly winding up of its affairs on a world-wide basis, notwithstanding the territorial limits of its jurisdiction. In protecting its insolvency jurisdiction, to adopt Lord Goff's phrase, the court is not standing on its dignity. It intervenes because the proper distribution of the company's assets depends upon its ability to get in those assets so that comparable claims to them may be dealt with fairly in accordance with a common set of rules applying equally to all of them. There is no jurisdiction other than that of the insolvent's domicile in which that

result can be achieved. The alternative is a free-for-all in which the distribution of assets depends on the adventitious location of assets and the race to grab them is to the swiftest, and the best informed, best resourced or best lawyered. "(Paragraph 24, emphasis added).

36 It is thus in the restraint of such a "free-for-all" race to grab the assets, that the Court would be concerned to act.

37 And as their Lordships also observed at paragraph 26, the Court must also satisfy itself that it has personal jurisdiction over the party to be restrained. This Court must therefore also satisfy itself it has personal jurisdiction over ITTO.

38 ITTO is a shareholder of the Fund and so the Court has jurisdiction under Order 11 rule 1(1)(ff) of the Grand Court Rules by reason of the fact that this application is brought "*against a person who is... a member of a company registered within the jurisdiction... and the subject matter of the claim relates in any way to such company...*".

39 Moreover, ITTO submitted a Proof of Debt in the Cayman liquidation – and so as already indicated above, this alone constitutes a submission to the jurisdiction of the Cayman courts – see paragraph 31 of the *Stichting* case. There, reflecting upon *Stichting's* position, their Lordships said:

"The question here is not what remedy is (Stichting) entitled to have, but whether it has submitted to the jurisdiction of the court. A submission may consist in any procedural step consistent only with acceptance of the rules under which the court operates... In the

present case (Stichting) lodged a proof. It cannot make any difference to the character of that act whether the proof is subsequently admitted or a dividend paid, any more than it makes a difference to the submission implicit in beginning an ordinary action whether it ultimately succeeds. This result is neither unjust nor contrary to principle, for by submitting a proof the creditor obtains an immediate benefit consisting in the right to have his claim considered by the liquidator and ultimately by the court according to its merits and satisfied according to the rules of distribution if it is admitted. The Board would accept that the submission of a proof for claim does not in itself preclude the creditor from taking proceedings outside the liquidation on claim B. But what he may not do is take any step outside the liquidation which will get him direct access to the insolvent's assets in priority to other creditors. This is because by proving for claim A, he has submitted to a statutory scheme for the distribution of those assets pari passu in satisfaction of his claim and those of other claimants."

40 It is also clear and consonant with the foregoing principles that an anti-suit injunction can be granted against a foreign litigant even where it purports to sue before the courts of its own country (see paragraphs 33 and 34 of *Stichting*). And their Lordships there explain:

"Where an English company is being wound up in England or a BVI company in the BVI, all of its assets are subject to the statutory trusts

including those which are located within the jurisdiction of foreign courts. The rights and liabilities of claimants against the assets are the same regardless of their nationality or place of residence. A distinction between foreign and English claimants would respond to no principle known to the law."

41 And moreover, simply because there may be difficulty in enforcing it against the foreign litigant does not mean that the anti-suit order should not be granted (paragraph 37 of *Stichting*).

42 That, I am content to add, would however, not be a concern here. As regards ITTO, this Court's order of restraint would be no mere *brutum fulmen*. The consequences of ITTO's disobedience and its consequential breach also of the stay imposed by section 97(1), would certainly redound in the context of the distribution of dividends.[4]

43 In summary, as stated in *Stichting* "*The Board concludes that where a creditor or member who is amenable to the personal jurisdiction of the Court begins or continues foreign proceedings which will interfere with the statutory trusts over the assets of the company in insolvent liquidation, in principle an injunction will be available to restrain their prosecution irrespective of the nationality or residence of the creditor in question*".

Service outwith

44 ITTO is a shareholder of the Fund, and so I have concluded that I have jurisdiction to grant leave to serve this application on it outwith the jurisdiction, pursuant to Order

[4] The importance of there being personal jurisdiction of the court over the party to be restrained to ensure the practical efficacy of an anti-suit injunction and so as a basis for the exercise of discretion in the grant of that remedy, was also specifically recognized by the Privy Council in *Stichting* at paragraph 34 of the judgment.

11, rule 1(1)(ff) of the Grand Court Rules. I also acknowledge that ITTO has submitted to the jurisdiction of this Court, by filing a Proof of Debt in the liquidation. (See dictum of the Privy Council for *Stichting* at para. 36 above).

45 I accept that effecting service on ITTO in Japan may be a time consuming and costly exercise, and so an order is justified that service may be effected on ITTO via its Barbados attorneys, Messrs M. Tariq Khan of Khan Chambers, who issued the Barbados Proceedings on ITTO's behalf, and is the counsel working in conjunction with Messrs Chancery Chambers, Attorneys at Law for ITTO in Barbados. There is no anticipated prejudice to ITTO in being served by way of substituted service in that way.

Conclusion

46 The JOLs seek an order restraining ITTO from continuing the Barbados Proceedings, or commencing further or other proceedings in Barbados or elsewhere against the Fund, which is directed at obtaining any form of liquidation, receivership or bankruptcy order as regards the Fund. This relief is sought on an urgent basis in light of the risk that the Barbados Court may make an order appointing an interim receiver over the Fund's property at the hearing tomorrow, Friday, 27 May 2016. This risk is most pointedly explained in a letter from GWP provided in the Exhibit to Mr. Pearson's affidavit in which GWP advise the JOLs that: *"Notwithstanding your appointment by the Cayman Court as the Joint Official Liquidator of Ardent Harmony Fund Inc., [the Fund], the Petitioner (ITTO) is seeking orders in Barbados for a trustee in bankruptcy to be appointed over (the Fund) which will have the effect of passing and vesting the assets of (the Fund) in the trustee in bankruptcy. This*

would mean that conflicting bankruptcy regimes and orders would be in place in two different jurisdictions."

47 It is obvious that such an order would directly interfere with the conduct of the liquidation here before this Court, in the Fund's place of incorporation. It would be anathema to the "*ordinary principle of international law that only the jurisdiction of a person's domicile can effect a universal succession to its assets*", per the Privy Council in *Stichting* (see para 32 above).

48 The order restraining ITTO is justified and is accordingly granted.

49 As already mentioned, the JOLs also seek an order that the *Ex Parte* Summons dated 24 May 2016 and the Order now made thereon can be served on ITTO at its address in Japan or at the address of its Barbados attorneys. The JOLs' preference is to effect service in Barbados, as GWP will be able to effect or arrange such service on their behalf, thereby reducing the costs to the estate. I regard such an order for substituted services as justified in all the circumstances of the case. In this regard, I make note here of a telephone conversation between counsel before me (Ms. Reynolds and Mr. William Jones) on the part of the JOLs and Mr. Tariq Khan and Chancery Chambers on the part of ITTO, which took place this morning. I have read Mr. Jones' affidavit which describes in detail what was said between the participants and those exchanges inform, in particular, the further following order which I now make in respect of costs.

50 In light of ITTO's unilateral decision to issue the Barbados Proceedings without serving notice upon the JOLs, the lack of any apparent proper basis for doing so, and its refusal to dismiss or withdraw the Barbados Petition once the lack of utility of the

Barbados Proceedings was brought to its attention and as was further explained in the referenced telephone conversations, the JOLs seek an order that ITTO shall pay the JOLs' costs of this application, and the JOLs' costs of having to respond to the Barbados Proceedings, on the indemnity basis forthwith. It is submitted that an indemnity costs order is justified because ITTO's conduct is "improper" and "unreasonable", within the meaning of Grand Court Rules Order 62, rule 4(11)[5] and because in the absence of an indemnity costs order, the other creditors of the Fund will bear the costs of ITTO's actions.

51 I accepted this submission and granted the JOLs costs as against ITTO on the indemnity basis to be paid forthwith.

52 In providing these reasons for decision, I acknowledge that they might be brought to the attention of the Barbados Court in the spirit of comity and judicial co-operation, if the JOLs are advised that it is necessary to do so.

Hon. Anthony Smellie
Chief Justice

May 31, 2016

[5] Which provides: *"The Court may make an inter partes order for costs to be taxed on the indemnity basis only if it is satisfied that the paying party has conducted the proceedings, or that part of the proceedings to which the order relates, improperly, unreasonably or negligently."*