IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

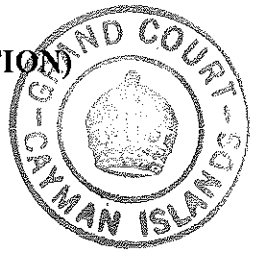
CAUSE NO: FSD 94 OF 2013 (AJJ)

The Hon Mr. Justice Andrew Jones QC
In Open Court, 9th and 13th August 2013

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION) (AS AMENDED)

AND

IN THE MATTER OF HADAR FUND LTD. (IN VOLUNTARY LIQUIDATION)



Appearances:

Mr. Matthew Goucke of Walkers for the joint voluntary liquidators of Hadar Fund Ltd. as petitioners;

Mr. Stephen Moverley-Smith QC instructed by Mr. Jayson Wood of Harneys Westwood & Riegels for Ametista Patrimonial (Mauritius) Ltd, PNT Capital Advisors and Blue Pearl Advisors Limited;

Mr. Rocco Cecere of Mourant Ozannes for Mr. Simon Graham, the former director of Hadar Fund Ltd.;

Mr. Mark Goodman of Campbells for Hadar Investment Advisers Ltd, the former investment manager of Hadar Fund Ltd.

REASONS

Introduction

1. This is a supervision petition presented by Messrs Walker and Stokoe of PwC Corporate Finance & Recovery (Cayman) Limited ("PwC Cayman") in their capacity as joint voluntary liquidators of Hadar Fund Ltd. ("the Fund") which was put into liquidation on 31 May 2013. Its sole director decided not to sign a declaration of solvency with the result that the Fund is

deemed to be insolvent and Messrs Walker and Stokoe are required by section 124(1) of the Companies Law (2012 Revision) as amended to present a petition for an order that the liquidation be brought under the supervision of the Court. One of the fundamental principles underlying the corporate insolvency regime introduced by the Companies (Amendment) Law 2007 is that the liquidation of all insolvent companies must be conducted by qualified insolvency practitioners acting under the supervision of the Court. It follows that I am bound to make a supervision order in respect of the Fund. The only issues arising for decision are (1) who should be appointed as official liquidators and (2) what, if any, directions should be given to the official liquidators.

2. Messrs Walker and Stokoe have nominated themselves for appointment as official liquidators, which they are perfectly entitled to do, provided that they can be properly regarded as independent as regards the Fund, in accordance with regulation 6 of the Insolvency Practitioners' Regulations 2008 (as amended). Having read the Court file shortly after the matter was assigned to me, I formed the view that this was not an appropriate case in which to make a supervision order and appoint official liquidators "on the papers" and I therefore fixed a hearing date and directed that copies of the supervision petition, supporting affidavits and my order for directions be served on the redeemed shareholders and/or the ultimate investors and/or the investment manager and/or its beneficial owners (as defined in Mr Stokoe's first affidavit) and any other person who appears to the voluntary liquidators to be a creditor or contingent creditor of the Fund. I directed that any person wishing to appear at the hearing and oppose the appointment of Messrs Walker and Stokoe as official liquidators must nominate alternative candidates and file and serve their affidavits (complying with the requirement of CWR Order 3, rule 4) no later than 2 August 2013.

3. In the event three related companies served notice of their intention to oppose the appointment of Messrs Walker and Stokoe on the ground that they do not meet the independence requirement of regulation 6. Two of the objectors are Ametista Patrimonial (Mauritius) Ltd and PNT Capital Advisors, which indirectly own 50% of the issued share capital of Hadar Investment Advisers Ltd ("HIA"), the Fund's investment manager. The other objector is Blue Pearl Advisors Ltd ("BPA") which is a party to the distribution agreement made with the Fund (the significance of which is described in paragraph 8 below). These objectors claim to be creditors of the Fund. It is sufficient to say that for present purposes their *locus standi* has not been challenged. The ultimate beneficial owners of these companies are Mr Sanjit Talukdar and Mr Marc Giebels von Bekestein. Mr Talukdar has sworn an affidavit which sets out in detail the reasons why they consider that PwC Cayman (and therefore Messrs Walker and Stokoe) do not meet the independence requirement. They have nominated Ms Tammy Fu and Mr Gordon MacRae of Zolfo Cooper (Cayman) Limited for appointment as official liquidators. Ms Tammy Fu swore an affidavit in compliance with the rules and it is not disputed that she and Mr MacRae are qualified insolvency practitioners

who do meet the general residence and insurance requirements and can be properly regarded as independent as regards the Fund.

4. No other candidates have been nominated. It appears that the only other stakeholders who have an actual, potential or contingent claim or economic interest in the Fund's remaining assets are (a) the four redeemed shareholders (referred to as the "Former Shareholders") and their three ultimate beneficial owners (referred to as "the Investors"), (b) HIA itself and (c) Mr. Pavel Sukhoruchkin and Mr Pavel Novoselov ("the Pavels") who are the ultimate beneficial owners of 50% of the shares of HIA. Mr Talukdar's evidence is that the Pavels set up a private office for the Investors and act as their investment managers, presumably through one or more corporate vehicles.

5. The Former Shareholders have not instructed counsel to appear on the hearing of this petition. Initially, on 24 July 2013, they wrote four identical letters to Messrs Walker and Stokoe stating that they were satisfied with the "approach and work carried out to date" and expressed concern about the cost implications of appointing anyone else as official liquidators. Then, on 8 August, they wrote four further identical letters in response to the assertion that PwC Cayman are not independent. Whilst these letters do positively support the appointment of Messrs Walker and Stokoe, they do not address the client relationships which are said to impair their independence. The Former Shareholders appear to expect Messrs Walker and Stoke to make the case for them, which is not an appropriate approach. The stakeholders should make and plead their own case. In the circumstances of this petition, the voluntary liquidators are expected to adopt a neutral position, having sworn an affidavit which sets out all the relevant factual circumstances in an even-handed way for the benefit of the Court and all the stakeholders. It would be improper for voluntary liquidators to adopt the role of advocates on behalf of those stakeholders who support their appointment as official liquidators and against those stakeholders who support other candidates.

6. HIA, acting by its independent directors, instructed counsel to appear and adopt a neutral position. Mr Michael Pearson, one of HIA's newly appointed independent directors, swore an affidavit in which he helpfully explained the circumstances in which he and his colleague made the decision to put the Fund into liquidation. The only other party to appear by counsel was Mr Simon Graham, who was the sole director of the Fund at the time it was put into liquidation. It was his decision not to sign a declaration of solvency which necessitated the presentation of the supervision petition. Mr Graham did not swear any affidavit, although I was referred to certain paragraphs of a witness statement which he signed on 17 June 2013 in connection with the related English proceedings. I think it fair to say that his counsel had a watching brief – he adopted a neutral position. No one else appeared at the hearing. It follows that there was no stakeholder present in person or by counsel who supported the appointment of Messrs Walker and Stokoe as official liquidators. However, I have taken into account the letters received by the Court from the Former Shareholders.

Factual background

7. The Fund was incorporated on 8 May 2008 as an open ended investment fund for which purpose it is registered under the Mutual Funds Law, but the evidence tends to suggest that it has never actually carried on business as a mutual fund, at least in a conventional way. It is part of a highly complex structure of companies used to hold investments for three Russian businessmen, namely Messrs Vigit Alekperov, Leonid Fedun and Alexander Djaparidze, who are said to be close business associates. I shall refer to them collectively as the "Investors". Mr Talukdar's affidavit says that Mr Alekperov and Mr Fedun are respectively the president and vice president of Lukoil, one of Russia's largest oil companies. Mr Djaparidze is the chief executive officer of Eurasia Drilling Company Limited which used to be part of the Lukoil group and is now one of its largest customers. In the light of this evidence, I think that it is fair to describe the Investors as business associates who must be well known to each other. They are acting in concert in relation to the liquidation and the related litigation. In paragraph 27 of his affidavit Mr Talukdar describes the Fund as "a vehicle for [the Investors] which they could (and did) use to carry out unusual or bespoke transactions". The Fund was apparently managed by HIA pursuant to the terms of an investment management agreement made on 20 June 2008 (the "Investment Management Agreement"). Deutsche Bank (Cayman) Limited was appointed as administrator and custodian and appears to have played no role in the events surrounding the Fund's liquidation. The Fund's share capital comprises a nominal number of management shares (which carry all the votes) and redeemable participating shares (which represent all the economic interest). The management shares are held by HIA and the participating shares were initially issued to three companies, each ultimately owned by one of the three Investors.

8. HIA, the Fund's investment manager, is beneficially owned by (a) Mr Talukdar and Mr Bekestein and (b) the Pavels. Through various companies, they each have a 25% interest in HIA, whose sole source of income is (or was) fees payable by the Fund which would be borne ultimately by the Investors. The Pavels are former employees of Lukoil. They left that employment in 2004 to set up a private office to provide investment advisory and management services for the Investors. The Investment Management Agreement provided for HIA to be paid an annual management fee equivalent to 5% of NAV payable monthly and a performance fee of 20% of net profits (including unrealised gains) payable semi-annually. As beneficial owners of HIA, Messrs Talukdar and Bekestein and the Pavels benefitted from this fee income equally. Mr Talukdar's evidence is that prior to May 2011 the Fund's total AUM was about US$100 million. He says that in May 2011 a company called Cloudburst Orange Limited ("Cloudburst") (which is ultimately owned by Mr Djaparidze) subscribed for shares in the Fund in consideration for the transfer of global depository receipts (having a market value of US$1.1 billion) in Eurasia Drilling Company Limited which is listed on the London Stock Exchange. The commercial rationale for this transaction is not something which I need to consider. Its relevance is that it increased HIA's management fee income

from around US$5 million *per annum* to US$5 million *per month.* On 21 December 2010, apparently in anticipation of the Cloudburst investment, the Fund and HIA entered into a Distribution Agreement with BPA, a company wholly owned by Messrs Talukdar and Bekestein (the Distribution Agreement"). According to Mr Talukdar's evidence, the purpose of the Distribution Agreement was to vary the economic effect of the Investment Management Agreement by providing for 66% of the fee income attributable to the Cloudburst investment to flow through to the benefit of Messrs Talukdar and Bekestein only. The Pavels have commenced an action in the English High Court in which they claim that the Distribution Agreement was a mechanism for fraudulently depriving HIA (and indirectly themselves) of part of its management fee income.

9. One might have expected that Messrs Talukdar and Bekestein and the Pavels would be the directors of the Fund and HIA, whereas in fact the directors of both companies are employees of professional corporate services providers. The Fund's directors were Mr Simon Graham and Mr Scott Dakers, although Mr Dakers had resigned by the time the Fund was put into liquidation. HIA's directors were Mr Simon Graham, Ms. Irina Gizikova and Mr Ben Frith. Mr Graham is an employee (and minority shareholder) of Lancaster Trustees Limited and Ms Gizikova is an employee of Lancaster Trustees (Cyprus) Limited and a former employee of Lukoil. These companies are part of a group which is majority owned and controlled by the Pavels and I infer that Messrs Graham and Gizikova represent the Pavels' interests. Mr Dakers is an employee of Ogier Fiduciary Services (Cayman) Limited and the associated law firm, Ogier, was retained as attorneys to both the Fund and HIA. Mr Frith represented the interests of Messrs Talukdar and Bekestein on the board of HIA until his removal on 13 February 2013. I infer from these business relationships that the Pavels were in a position to exercise control over the boards of directors of both HIA and the Fund.

10. The Cloudburst investment led to an irreparable breakdown in the business relationship between Messrs Talukdar and Bekestein and the Pavels. It is not necessary for the purposes of resolving the narrow issue before this Court to make any observation about the reasons why this happened. Suffice it to say that it has lead to complex litigation (both pending and threatened) in which serious allegations of fraud and wrongdoing are being made by and against both sides. When one looks through the complex corporate structure, it is perfectly clear that the underlying protagonists in this litigation are the Pavels and the Investors on one side and Messrs Talukdar and Bekestein on the other side. The principal subject-matter of this litigation is Messrs Talukdar and Bekestein's claim for damages representing their share of the fee income which they say was generated or should have been generated from the Fund through HIA.

11. The events leading up to the liquidation of the Fund appear to have commenced in November 2012 when Mr Graham and Ms Gizikova (then being a majority of HIA's board of directors) resolved to waive payment of fees of about US$5.2 million then owed by the Fund to HIA; to reduce HIA's management fee from 5% of NAV (equating to about US$60 million per

annum) to a flat fee of US$100,000 per annum; and to waive payment of performance fees. This is said to have been done without notifying Mr Frith, the third member of the board who represented the interests of Messrs Talukdar and Bekestein. He was removed from the board on 13 February 2013. In March 2013 the directors of the Fund (Mr Graham and Mr Dakers) resolved to allow all the participating shares to be redeemed immediately, notwithstanding that its offering document stipulated a three year rolling lock-up period and a 95 day notice requirement. Finally, on 10 April 2013 the Fund notified BPA that the Distribution Agreement was terminated immediately by reason of the redemption of the participating shares. For all practical purposes, these steps terminated the "business" of HIA and the Fund and terminated Messrs Talukdar and Bekestein's participation (both retrospectively and prospectively) in whatever fee income might otherwise have been generated from managing the Investor's assets. They responded by consulting English lawyers who served a detailed letter of claim dated 19 April 2013 in which it is alleged that these actions were done in furtherance of an unlawful conspiracy amongst, inter alia, the Pavels, Mr Graham, Ms Gizikova and Mr Dakers to deprive them of their economic interest in the fees payable by the Fund to HIA and BPA. The Fund itself is alleged to be party to this conspiracy. The Pavels pre-empted this threatened action by commencing their own action in the English High Court in which it is alleged that the Distribution Agreement is a mechanism for defrauding the Pavels of part of their economic interest in the fees which would otherwise have been paid by the Fund to HIA. In the course of ruling upon an application to discharge an injunction, the judge obs erved that the Fund appears to have a cause of action in respect of a secret commission of US$4.4 million paid to BPA in connection with what is described as the Telnic investment. Whilst various causes of action may exist by and against both the Fund and HIA, I am inclined to regard these companies and the fee income generated through them as the subject-matter of the litigation, both pending and threatened.

The decision to put the Fund into voluntary liquidation

12. It is against this background that I turn to consider the circumstances in which the Fund was put into voluntary liquidation and Messrs Walker and Stokoe of PwC Cayman were appointed as liquidators. Power to put the Fund into liquidation rested with HIA as holder of the voting shares. Rather than have Mr Graham and Ms Gizikova sign the special resolution, it was decided (without reference to Messrs Talukdar and Bekestein) that an independent board of directors would be put in place for this purpose. The first step was to instruct Campbells as attorneys for HIA in place of Ogier. This was done on or about 22 March 2013, again without reference to Messrs Talukdar and Bekestein. Campbells were instructed to identify a local Cayman Islands professional service provider who could act as directors of HIA in place of Mr Graham and Ms Gizikova. They recommended Fund Fiduciary Partners and on 18 April 2013 the principals of that firm, Mr Michael Pearson and Mr Christopher Rowland, were appointed as directors of HIA. They are both qualified insolvency practitioners and former employees/directors of Deloitte, who are eminently well qualified to

perform the task allotted to them. Mr Pearson has sworn an affidavit in which he describes the circumstances in which they were appointed. He says that his firm is independent in the sense that it has never previously had any involvement with any of the relevant players, although he does not describe what pre-engagement due diligence was conducted.

13. On 26 April 2013, within a week of their appointment, Messrs Pearson and Rowland received a letter from Ogier, who continued to act as attorneys for the Fund, asking them to put it into voluntary liquidation and appoint Messrs Stokoe and Walker of PwC Cayman as liquidators. This letter concluded by stating -

> "For the above reasons, the Directors hereby request HIA consider whether it would be willing to exercise its rights as holder of 100 per cent of the Management Shares in the Fund to place the Fund into voluntary liquidation and to appoint Ian Stokoe and David Walker of PricewaterhouseCoopers as voluntary liquidator of the Fund. We enclose a draft Management Shareholder resolution for your consideration."

Mr Pearson says in his affidavit that they "approached the proposed voluntary liquidation of the Fund with great circumspection". They considered the matter over the next month, during which time Mr Pearson discussed the issues directly with Messrs Talukdar and Bekestein who argued that the Fund should not be put into liquidation. On 24 May 2013 Campbells wrote to the solicitors acting for Messrs Talukdar and Bekestein to inform them that Messrs Pearson and Rowland had decided to put the Fund into liquidation. They gave their reasons for having reached this decision. Having waited and received no response to this letter, they proceeded to sign the written resolution on 31 May 2013.

14. According to Mr Pearson's affidavit, the focus of the debate during May was whether or not the Fund should be put into liquidation. He says (at paragraph 22) –

> "Given the value of the sums involved and the complex disputes between the ultimate beneficial owners and various other entities owned and controlled by them, we considered that this was an appropriate appointment for a 'big-four' accounting practice with experience of complex and high-value liquidations. Accordingly, we considered the nomination of PWC entirely appropriate, believing they would, as a matter of course, conduct a conflict check and satisfy themselves that they were sufficiently independent before accepting the appointment as voluntary liquidators. We were obviously not aware at the time the resolution was passed of the matters complained of by Mr Talukdar in the final sentence of paragraph 42(b) of his affidavit."

The final part of paragraph 42(b) says that –

> "We were not consulted at all about the identity of the proposed liquidators. HIA's New Directors appointed [the Voluntary Liquidators], who work for PwC's Cayman branch. Mr Graham [the Fund's sole director] subsequently admitted, in the course of the English Proceedings, that PwC are advisers to the Pavels."

Since Messrs Talukdar and Bekestein knew that the proposed liquidators were PwC Cayman, I infer that they agreed that it would be appropriate to appoint one of the "big-four" firms and had no reason to object to PwC Cayman at the time of their telephone conversation with Mr Pearson on 17 May 2013, otherwise they would have raised the point. Mr Pearson makes no reference in his affidavit to having discussed the matter with PwC Cayman at all and Mr Stokoe confirmed that they only had a brief conversation in which the subject was mentioned.

15. I draw the following conclusions from this evidence. PwC Cayman were asked to act as liquidators by Ogier, who must have taken instructions from Mr Graham. He was acting as a director of the Fund in his capacity as an employee of one or more of the Lancaster group companies, which are majority owned by the Pavels and are presumably the vehicle through which they act for the Investors and/or companies owned by them. Mr Graham represented the interests of the Pavels and the Investors and it is reasonable to infer that he selected PwC Cayman with their concurrence. There is no evidence from which to infer that Ogier selected PwC Cayman on their own initiative without reference to their client. Mr Pearson did not apply his mind to the choice of liquidators. In reaching this conclusion, I do not imply any criticism of him. He focused on whether or not the Fund should be put into liquidation. He had no reason to focus on the identity of the liquidators. He had no reason to suppose that PwC Cayman might not be regarded as independent. I conclude that the decision to appoint Messrs Walker and Stokoe of PwC Cayman must have been made by Mr Graham with the concurrence of the Pavels and the Investors.

16. Mr Stokoe carried out his firm's client pre-engagement procedures in the usual way, based upon the information and list of names provided to him by Ogier. He was provided with the names that appear in the structure chart although this document itself was created later. As I understand it, he and Mr Walker accepted the appointment on the basis that no PwC firm had any professional relationship with any of the individuals and companies identified to them as having any involvement in the matter. It transpired only later, after they had been appointed as voluntary liquidators, that both the Pavels and two of the Investors are PwC clients, in the sense that member firms within the PwC network are currently doing advisory work for companies which are ultimately owned by them. For reasons of client confidentiality, Mr Stokoe has not disclosed any details about these client relationships. Suffice it to say that his evidence, which I accept, can be summarised as follows. PwC Cayman does not and never has had any client relationship with the Investors or the Pavels or any company owned by any of them. The names of PwC corporate clients in question do not appear on the structure chart prepared for the purposes of this liquidation. Having made enquiry and on the basis of the information now available to him, it appears to Mr Stokoe that these PwC clients have nothing to do with this liquidation or the related litigation (except that they are owned or controlled by the Pavels and/or two of the Investors). The PwC firms do not have access to each other's client files. However, in the absence of any evidence from Ogier or Mr Graham

or the Pavels or the Investors, a fair minded stakeholder might reasonably infer that PwC Cayman was selected *because* of the existing client relationship with other firms in the PwC network. I do have the letters dated 8 August 2013 from the Former Shareholders, which are ultimately owned by the Investors. They ignore the point. Nothing is said about the pre-existing client relationships or the reasons why Ogier was instructed to nominate PwC Cayman. I draw an adverse inference from the fact that none of those involved in making the decision have given evidence to explain why PwC Cayman was selected; why the existing client relationships which I have described were not drawn to the attention of Mr Stokoe for the purposes of his conflict check; and why Messrs Pearson and Rowland were not left to make their own choice of liquidator.

The applicable legal principles

17. Regulation 6(1) provides that "A qualified insolvency practitioner shall not be appointed by the Court as official liquidator of a company unless he can properly be regarded as independent as regards that company." Whether or not a firm of insolvency practitioners can be regarded as independent as regards any particular company in liquidation depends upon the existence or non-existence of professional or economic relationships which are regarded by the Court as creating a situation in which the appearance of complete impartiality is compromised. Appearances matter. The fact that Messrs Walker and Stokoe are honest, capable professionals who have been appointed as official liquidators on many occasions and whose actions and judgment calls have been sanctioned by this Court on a regular basis is beside the point. It is not good enough to say that these particular individuals can be relied upon to perform their duties properly.

18. Whether or not any particular kind of professional or economic relationships will lead to the conclusion that an insolvency practitioner can or cannot be properly regard as independent must depend upon the factual circumstances of each case which will vary in an infinite variety of ways. The Court must first identify the relationship and determine whether it is capable of impairing the appearance of independence. If the answer is yes, the Court must then consider whether its existence is sufficiently material in the factual circumstances of the liquidation in question that a fair minded stakeholder would reasonably object to the appointment of the nominee in question. In practice the Court is usually called upon to resolve these issues in cases where the nominated insolvency practitioners are members of firms which have multi-disciplinary practices including audit work and consultancy work. They are most difficult to resolve in cases, such as the present one, where the nominated practitioners are members of a Cayman Islands firm which is part of one of the large international networks of which the "big four" – Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers – are not the only ones represented in this country.

Conclusions

19. In this case it is accepted that PwC Cayman does not itself have any pre-existing professional relationship with any of the stakeholders. However, it is well established in this Court that the existence of a professional relationship between a stakeholder and some other PwC firm is capable of leading to the conclusion that the Cayman firm cannot be regarded as independent. The fact that one or more PwC firms are currently doing advisory work for companies owned by or associated with the Pavels and two of the Investors is such a relationship. The question is whether or not these client relationships are material in the circumstances of this liquidation and I must answer this question on the basis of the evidence before the Court. The mere fact that Messrs Walker and Stokoe have considered the matter and come to their own conclusion that it is not material is relevant evidence which I have taken into account, but it cannot be conclusive. The two Investors (and their companies) and the Pavels have had the opportunity to file written evidence which explains the nature and extent of the professional relationships in question, but have chosen not to do so.

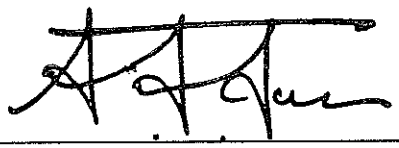
20. I have come to the conclusion that these client relationships are material, in that a fair minded stakeholder would reasonably object to the appointment of PwC Cayman. I have come to this conclusion for the following reasons. First, the Fund is an important part of the subject-matter of litigation between two groups of protagonists who are making allegations of fraud each other. I have directed that the official liquidators be authorised to participate in this litigation. There are no stakeholders other than the members of these two opposing groups. The fact that members of one opposing group are PwC clients is a reasonable basis upon which a fair minded stakeholder could reasonably object to PwC Cayman's involvement as liquidators. The conclusion would be different if this was a fund with a hundred shareholders and a handful of them turn out to be PwC clients. Second, Messrs Walker and Stokoe's nomination as official liquidators results from the fact that they were appointed as voluntary liquidators. The evidence leads me to conclude that this appointment was in fact made with the concurrence of the Investors/Pavels, who did not disclose the client relationships with the other PwC firm(s) either to Messrs Pearson and Rowland or to Messrs Walker and Stokoe. The evidence reflects that Messrs Pearson and Rowland did make an independent, reasoned decision to put the Fund into liquidation. However, they did not make any independent decision about the selection of official liquidators. They appointed PwC Cayman because they were asked to do so by Ogier. Third, the outcome of the liquidation of the Fund appears to depend entirely upon the outcome of the litigation between the two protagonist groups. For these reasons it seems to me that the client relationship between the Investors/Pavels and the PwC network must be regarded as material. In the absence of any evidence from the stakeholders (who could have explained their relationships with the foreign PwC firms and the reasons why PwC Cayman was chosen as liquidators of the Fund), Mr Stokoe's evidence that the names of the actual client companies are not mentioned on the structure chart and

therefore appear to have no relevance to the liquidation or the litigation is not sufficient to displace my conclusion that the relationship is material.

21. Having concluded that Messrs Walker and Stokoe (and PwC Cayman) cannot be regarded as independent as regards the Fund, regulation 6 mandates that the Court *shall* not appoint them as official liquidators. The fact that they have done an enormous amount of work over a two month period in their capacity as voluntary liquidators is irrelevant. Since there is no objection to the only other candidates, I therefore appoint Messrs Tammy Fu and Gordon MacRae of Zolfo Cooper (Cayman) Limited as joint official liquidators of the Fund.

22. The supervision petition includes a prayer for directions authorising the official liquidators to participate (in such manner as they consider necessary) in the existing proceeding pending before the English High Court and in connection with the proceedings threatened in the letter of claim served on behalf of the various companies ultimately owned by Messrs Talukdar and Bekestein. Counsel agreed that I should give such directions in any event, irrespective of the identity of the official liquidators. It seemed to me plainly obvious that the official liquidators should have power to participate in both the pending and threatened proceedings. Exactly how they exercise the power is not a matter for consideration today. I anticipate that it will be the subject of a sanction application in due course.

Dated this 13th day of August 2013



The Hon. Mr. Justice Andrew J, Jones QC
JUDGE OF THE GRAND COURT