

# Geneva Trust Company (GTC) SA v Equity Trust (Jersey) Ltd

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith OBE., Jurats Blampied, Ramsden
<b>Judgment Date:</b>	29 April 2020
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## Text

[2020] JRC 72

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith OBE., **Commissioner, and** Jurats Blampied **and** Ramsden

In the Matter of the Representations of Geneva Trust Company (GTC) SA and Barclays Private Bank & Trust Limited (Now known as Zedra Trust Company (Jersey) Limited)

and

In the Matter of the ZII Trust and the ZIII Trust

And in the Matter of Articles 51 and 53 of the Trusts (Jersey) Law 1984 as Amended

Between

Geneva Trust Company (GTC) SA  
Representor  
and  
Equity Trust (Jersey) Limited  
First Respondent

and

E, in his personal capacity and in his capacity as executor of C's estate  
Second Respondent

and

Sijar Trust Company Limited, as trustee of the X Trust  
Third Respondent

and

Advocate S Chiddicks representing the minor beneficiaries of the ZII Trust  
Fourth Respondent

and

K  
Fifth Respondent

Between

Barclays Private Bank & Trust Limited (now known as Zedra Trust Company (Jersey)  
Limited)

Representor  
and

Advocate Steven Chiddicks representing the minor beneficiaries of the Z III Trust  
First Respondent

and

The Estate of C  
Second Respondent

and

Equity Trust (Jersey) Limited  
Third Respondent

and

Geneva Trust Company (GTC) SA (formerly known as Rawlinson & Hunter Trustees SA)  
Fourth Respondent

**Advocate J. M. P. Gleeson for Geneva Trust Company (GTC) SA..**

**Advocate M. P. Cushing for Zedra Trust Company (Jersey) Limited..**

**Advocate J. Harvey-Hills for Mr E in his capacity as executor of C's Estate.**

**Advocate E. Jordon for Equity Trust (Jersey) Limited**

## Authorities

*Zedra Trust Company (Jersey) Limited v Chiddicks and Ors Re ZIII* [\[2020\] JRC 044](#)

*Representation of Geneva Trust Company (GTC) SA re ZII Trust* [\[2020\] JRC 053](#).

*In the matter of the Representation of Volaw Trustee Limited as Trustee of the ZII Trust* [2015] (2) JLR 175

*Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [\[2019\] JCA 106](#).

Lewin on Trust 19th Edition.

*In re E, L, R and O Trusts* [\[2008\] JLR 360](#)

*In re B Trust* [\[2012\] \(1\) JLR Note 11](#)

*Re Z II Trust* [2015] (2) JLR 175

*Parmalat Capital Finance Limited v Food Holdings Ltd* [\[2008\] BCC 371](#)

*Re Energy Holdings [No. 3] Ltd* [\[2011\] 1 BCLC 84](#)

*Re Amy Désastre* [\[2013\] JRC 193](#)

*Re IMK Family Trusts* [\[2008\] JLR 250](#)

Trusts — re: connected creditors.

## THE COMMISSIONER:

- 1 This judgment follows on from two earlier judgments of the Court in which it resolved to consider the future of the ZII and the ZIII Trusts at one hearing, so that it could take a holistic approach to the affairs of the two trusts and ensure that they are wound up in the interests of the creditors of each trust as a body, and in a manner that is consistent and proportionate. The first judgment is dated 10<sup>th</sup> March, 2020 *Zedra Trust Company (Jersey) Limited v Chiddicks and Ors Re ZIII* [\[2020\] JRC 044](#), which concerned the ZIII Trust and the second judgment is dated 26<sup>th</sup> March, 2020 *Representation of Geneva Trust Company (GTC) SA re ZII Trust* [\[2020\] JRC 053](#) which concerned the ZII Trust. Both judgments need to be

taken as read. Further background is contained in the judgment of the Court of 20th October 2015 ( *In the matter of the Representation of Volaw Trustee Limited as Trustee Limited as Trustee of the ZII Trust* 2015 (2) JLR 175).

- 2 The ZII and the ZIII Trusts are part of a suite of eight trusts established by C, the late mother of Mr E, and it is fair to say that he is the driving force behind them. By way of brief overview, both trusts are insolvent in the sense that the assets of the two trusts are insufficient to meet the claims against those assets and both are being administered under the supervision of the Court. Taking first the ZII Trust:-

(i) Geneva Trust Company (GTC) SA ("GTC") is the current trustee, having been appointed on 13<sup>th</sup> November, 2015.

(ii) There are claims against the assets of the ZII Trust of some £211 million on the part of creditors connected to the family of Mr E or trusts associated with them. We will refer to them as "*the connected creditors*", one of which is GTC in its capacity as trustee of the ZI Trust with a claim in the sum of £29.2 million. There is also a claim of at least £18 million by Equity Trust (Jersey) Limited ("Equity Trust"), a former trustee, which, following the decision of the Court of Appeal of 28<sup>th</sup> June 2019 *Representation of Rawlinson and Hunter Trustees SA re Z Trusts* [2019] JCA 106 takes priority over the claims of the connected creditors. That decision is under appeal to the Privy Council. The total claims against the assets of the ZII Trust are therefore *circa* £229 million, none of which have been proved.

(iii) GTC as trustee has two assets, namely cash (following a successful claim brought against a former trustee), more than sufficient to meet Equity Trust's priority claim, and a claim against the assets of the ZIII Trust in the sum of £186 million, of which only some £6 million is currently thought to be recoverable.

(iv) On 24<sup>th</sup> January, 2020, the Court agreed in principle to GTC's application that the ZII Trust should be wound up, but left over the issue of who should conduct the winding up and the precise terms of the insolvency procedure to be applied.

- 3 Turning to the ZIII Trust:-

(i) Zedra Trust Company (Jersey) Limited ("Zedra") is the current trustee and is in the course of winding up the affairs of the trust following an insolvency procedure put in place by the Court on 26<sup>th</sup> April, 2019 *Representation of Zedra Trust Company (Jersey) Limited re ZIII* [2019] JRC 069. Creditor claims have been submitted and inspection taken place, but Zedra has not announced its decision as to whether those claims should be admitted or not, pursuant to paragraph 8.1 of the insolvency procedure.

(ii) There are claims against the assets of the ZIII Trust by GTC as trustee of the ZII Trust, Mr E as executor of his mother's estate in the sum of £87.04 million and by Mr

E's company, Buckingham Securities & Investments Plc, in the sum of £1.9 million. We will again refer to these creditors as "the connected creditors". Equity Trust also has a claim in the sum of £90,920.26 being unrecovered costs of litigation it was involved in as a former trustee, together with the costs in proving that claim in the sum of £316,769.28, a total of £407,689.54. Again this claim takes priority over the claims of the connected creditors, following the decision of the Court of Appeal. None of these claims have been proved.

(iii) Zedra holds the following assets, namely cash in the sum of £469,000 and interests in certain assets in the United Kingdom held through underlying companies over which assets Mr E appears to be in *de facto* control, which he is reluctant to relinquish (see paragraph 8 of the judgment of 10th March [2020 JRC 044](#)). Zedra places a provisional net value on these assets of £4.8 million.

(iv) GTC has now raised the possibility of there being a claim against Zedra arising out of its decision as trustee in 2006 to acquire Company 1 for a total consideration of £474.3 million, a business which failed shortly after the acquisition, causing substantial losses to the ZIII Trust (see paragraphs 10–13 of the judgment of 10th March 2020 JRC 044). GTC applies to be appointed as trustee of the ZIII Trust in the place of Zedra so that it can investigate and, if appropriate, pursue that claim, and complete the winding up process.

4 The key issues are whether GTC should be appointed trustee of the ZIII Trust and whether or not an independent insolvency practitioner ("IIP") should be brought into the winding up process of both trusts, given the admitted conflicts that GTC has both as trustee of the ZII Trust, against the assets of which it has a claim as trustee of the ZI Trust, and the conflicts it would have if appointed as trustee of the ZIII Trust, against which it would have a claim as trustee of the ZII Trust. GTC, supported by the other connected creditors, says those conflicts can be managed through the Court. Equity Trust says that this is not a fair or workable solution. It is not suggested by any of the parties that a receiver of the assets of both trusts should be appointed—see paragraph 21 of the judgment of the Court of 10th March 2020 JRC 044 and paragraph 35 of the judgment of the 26<sup>th</sup> March [2020, JRC053](#).

5 The Court rehearsed some of the options open to it in relation to the ZIII Trust in its judgment of 10th March 2020, JRC044 at paragraph 23, namely:-

(i) Zedra to complete the winding up first before a new trustee is appointed to conduct the Company 1 investigation;

(ii) Zedra to retire in favour of a wholly unconnected new trustee which would undertake the Company 1 investigation and complete the winding up process;

(iii) Zedra to retire in favour of GTC and GTC to undertake the Company 1 investigation and complete the winding up process on the basis of a surrender of discretion on those claims where it has a conflict of interest; and

(iv) Zedra to retire in favour of GTC, and GTC to undertake the Company 1 investigation but for the winding up to be otherwise delegated to an IIP.

- 6 The Court discounted the first option on the basis that now a potential claim against Zedra has been identified, a claim that may be substantial, it was not appropriate for that investigation to be delayed, and Zedra should, therefore, retire in favour of a new trustee. As no prospective trustee had been put forward other than GTC, the Court therefore discounted the first two options listed above.
- 7 The Court has now received the skeleton arguments of the parties in relation to both trusts, and in the unprecedented circumstances caused by the coronavirus, the parties have asked the Court to make its decision on the papers, because of the need for the affairs of these two trusts to be progressed. It may be many months before an oral hearing could take place.
- 8 The position of the parties remains as before, but taking first the position of Equity Trust, by way of summary:-

(i) Advocate Jordan reiterated the well established principle that a trustee must not, without authority, place himself in a position where his personal interest or interest in another fiduciary capacity conflicts, or possibly may conflict, with his fiduciary duty to protect those to whom he is bound by that duty to protect. If he does so, he is obliged by his trust to prefer the interest of his beneficiaries ( Lewin, 19th Edition at paragraph 20–033 and see also *In re E, L, R and O Trusts* [2008] JLR 360 at paragraph 26). If they do put themselves in such a position, then there would have to be a surrender of discretion in relation to any decision which may be vitiated by way of conflict of interest (see *In re B Trust* [ 2012(1)] JLR Note 11). Whilst we accept these well-established principles, it is relevant to observe that in this case GTC is seeking the authority of the Court to its appointment as trustee of the ZIII Trust.

(ii) The existing conflicts GTC has as trustee of the ZII Trust and would have, if appointed trustee of the ZIII Trust, are actual conflicts which are acknowledged to exist. These conflicts are crucial to Equity Trust, because it is the priority creditor over the assets of both trusts, whose interests GTC should be considering first and foremost. It was notable, Advocate Jordan said, that GTC appeared to be in regular contact with Mr E while making no effort whatsoever to discuss anything with Equity Trust.

(iii) There was an issue over a substantial part of the claim of the estate of C against the assets of the ZIII Trust recorded as a loan made by her, but in which Mr E had been involved, which would need to be carefully investigated.

(iv) GTC lacked independence and was under the influence of Mr E, which will affect both trusts if GTC takes over the insolvency regimes. The key issue in any claim against Zedra would be the role of Mr E in the Company 1. He had not been brought

in as a party to the successful proceedings brought by GTC against the former trustee of the ZII Trust, thereby allowing *“Mr E to escape any personal liability”*.

(v) Because of these conflicts, Advocate Jordan objected to GTC being appointed as trustee of the ZIII Trust, although she did not suggest who might take on that role. In any event, she submitted that an IIP should be appointed to deal with and make determinations in relation to the claims of all of the creditors. Given the interlinked issues, the same IIP should be appointed to both Trusts. Equity Trust had put forward Mr Adam Stephens, a partner in Smith & Williamson LLP, Insolvency Practitioners, who had written to the Court on 27<sup>th</sup> March, 2020, agreeing to take on that role, at an anticipated cost of *circa* £20,000 for each trust.

9 Advocate Jordan had prepared revised insolvency procedures for both trusts reflecting the fact that the ZIII Trust was further down the road than the ZII Trust, but in essence:-

(i) As before, the trustee retains the assets of the trust, and is entitled to take all such steps as are necessary for the beneficial winding up of the trust and the collecting in of the trust assets.

(ii) The trustee would advertise for and collate creditor claims, arrange for their inspection and receive notice of any objection (already completed for ZIII Trust).

(iii) The IIP would then examine, admit or reject claims with any disaffected party being able to refer the matter to the Court for review.

(iv) After determination of all of the claims against the assets of the trust, the trustee would apply to the Court for approval of the trust accounts and authority to distribute the assets in accordance with those accounts.

10 Although not canvassed in the draft insolvency procedures, Advocate Jordan submitted that the IIP should have a further function in relation to the gathering in of assets in relation to the ZIII Trust, where, she said, Equity Trust had consistently complained that Zedra had failed to take any action against Mr E to secure the assets in order to value and protect them. She sought a direction from the Court that Mr E return all the assets that are currently within his control so that these can be valued by the IIP.

11 Turning to the position of GTC by way of summary, Advocate Gleeson set out a number of legal principles:-

(i) The starting point for the administration of an insolvent trust is that the Court supervises the process. It is always closely involved in that process, and the only question is to what extent. As the Court said in paragraph 26 of *Re Z II Trust* [2015] (2) JLR 175:

***“In our judgment, in a case of insolvency or probable insolvency of a***



***trust, the starting point for the Court is to supervise the administration of the trust in the interests of the creditors as a body by way of directions given to the incumbent trustee.*** That is supported by Lewin on Trusts op. cit. para 22–086 at 902–903.”

(ii) The Court has confirmed that it enjoys the widest possible discretion in giving directions in respect of insolvent trusts – see paragraphs 29 and 32 of *Re Z II Trust*.

(iii) It is not unusual, and can be perfectly acceptable for the same liquidator(s) to be appointed to related companies, even when the liquidator(s) would suffer from a conflict of interest. As Lord Hoffmann put it, giving the judgment of the Privy Council (on appeal from the Cayman Islands), in *Parmalat Capital Finance Limited v Food Holdings Ltd* [2008] BCC 371 at paragraph 13:-

***“It is not unusual for the same liquidators to be appointed to related companies, even though the dealings between them may throw up a conflict of interest.*** It avoids the expense of having different liquidators investigate the same transactions. The attitude of the court has been that any conflicts of interest can be dealt with by the court (on the application of the liquidators) when they arise.”

(iv) Only in the case of a truly unmanageable conflict will the Court remove, or refuse to appoint, an otherwise appropriate liquidator. This is made clear by paragraphs 30 and 31 of the Court's judgment in *Re Z II*:

***“[30] If, for example, there were lay trustees of an insolvent trust, ill-equipped to wind that trust up under the direction of the court, then the imposition of a receiver to conduct that winding up might well be justified as being in the interests of the creditors.*** The views of the creditors would, of course, carry great weight. Equally, such a step might be justified where a professional trustee has a real conflict which makes it impractical for it to conduct the winding up, even under the supervision of the court.

***[31] Where, however, as here, there are professional trustees in office with no unmanageable conflict, then it would ordinarily be much more cost effective, and therefore in the interest of the creditors for those trustees to remain in office and to conduct the winding-up process under the supervision of the court.***” (His emphasis).

In other words, a proposed liquidator should be rejected only if that liquidator and the Court (acting together) could not manage the conflict of interest.

(v) It is perfectly possible for a liquidator to surrender its discretion to the Court on specific matters. The general principle was stated by Sir John Lindsay in *Re Energy Holdings* [No. 3] Ltd [2011] 1 BCLC 84 at paragraph 48:-

***“There can be cases where circumstances have arisen in which it is proper for Liquidators or Supervisors to surrender to the court and***



***for the court to accept the surrender of a discretion otherwise conferred on such office holders, and in such cases the court does not then merely indicate that a particular course would not be inappropriate or may be adopted or give liberty for its adoption, but actually decides there and then what is to be done and so orders.”***

12 Advocate Gleeson then made the following submissions:-

- (i) There was a fifth option to those considered by the Court as set out above, not yet canvassed by the parties, namely that GTC would conduct the winding up of both trusts, but any claim in which it had a conflict of interest and any dispute would be referred directly to the Court, in which proceedings GTC would remain neutral. He produced a revised insolvency procedure for the ZII Trust to provide for that.
- (ii) GTC should conduct the winding up of the ZII Trust. The appointment of an IIP would be wasteful in terms of cost, and could achieve little useful purpose. Mr Rodney Hodges of GTC had confirmed in his affidavit of 12<sup>th</sup> February, 2020, that GTC enjoys a good, professional relationship with Mr E, and nothing more. There was no evidence before the Court to support Equity Trust's concern that it was under the control or influence of Mr E. Any conflicts of interest or dispute can be managed by the modification of the insolvency process referred to above and allowing GTC to conduct the winding up of both trusts would streamline the process and save substantial costs. An IIP would be likely to incur third party costs with financial and/or legal advisers which would place a significant burden on the assets of the trusts and not materially advance the winding up of either. There would be delay in the process, whilst the IIP read into and digested the significant amount of background material.
- (iii) GTC should be appointed as trustee of the ZIII Trust. It was willing and able to take on the trusteeship. It made sense for it to become trustee and handle the Company 1 investigation, as it and its legal advisers already had a significant amount of relevant background knowledge and understanding as a consequence of its trusteeship of the ZII Trust and they had a track record of success in the proceedings brought against the former trustee. The connected creditors, whose claims in value amounted to more than 99% of the overall claims against the assets of the ZIII Trust had been consulted and consented to GTC becoming trustee. The Court had itself indicated that the potential claim against Zedra may be substantial and its investigation should not be delayed.
- (iv) GTC should conduct the winding up of the ZIII Trust in line with the fifth option referred to above, which Advocate Gleeson acknowledged would be a novel approach to the administration of an insolvent trust, but he noted there had been an extremely small number of reported insolvent trust cases in Jersey, so a lack of direct authority should not inhibit the Court.
- (v) There were only nine creditors in total across both trusts, three of whom had chosen not to be represented, and so in practice, the procedure under the fifth option

would not be unwieldy. The history of the trusts shows that any party disaffected by a decision of an IIP would be likely to refer the matter to the Court, which will become seized of all disputes in any event.

(vi) The disputes in this case are likely to be highly technical and only realistically open to determination by the Court. They were not realistically amenable to any form of, still less summary, adjudication by a trustee or IIP.

(vii) By analogy with a *désastre*, any review of a decision of an IIP would amount to an appeal at large, where the Court has a free discretion to exercise ( *Re Amy Désastre* [2013] JRC 193 at paragraph 21). In consequence, even if an IIP were appointed and made a decision, the overwhelming likelihood is that the Court would end up remaking the decision in any case and the IIP's decision would be rendered otiose. In short, a properly advised IIP would doubtless refer all of the key disputes in respect of the trusts to the Court for directions on the footing that the factual and legal issues in dispute call for judicial decision. Further, and at any rate, experience suggests that a rejection of any claim, or opposition to any claim, by an IIP or by a trustee, would lead to the invocation of Court review by any of the substantial creditors. In either case, the appointment of an IIP would effectively be rendered meaningless as, realistically, the IIP will be unable to resolve the relevant disputes. The fifth option would therefore save time, cost and reach the same result, without prejudicing any creditor's right to impartial adjudication.

- 13 Advocate Harvey-Hills for Mr E (as executor of C's Estate) was generally supportive of the position of GTC. He referred back to the Court's judgment of 20<sup>th</sup> October, 2015 (JLR 175) in which the Court had approved the appointment of GTC as trustee of the ZII Trust, notwithstanding the conflict it had as trustee of other Z trusts, which conflicts the Court then thought manageable, the only issue thought to be in contention being the question of priority and Equity Trust's indemnity. The Court considered this at paragraph 25 and 26 of its judgment of 10th March 2020 (JRC 044), and as pointed out in paragraph 27 of that judgment, matters have moved on since then.
- 14 Advocate Harvey-Hills regarded the limited cost estimates put forward by Mr Stephens as improbable, and said the attempt to impugn the integrity of GTC was unattractive and unnecessary. At no stage had it been alleged or found that GTC had acted improperly.
- 15 With the consent of the connected creditors, Zedra had recently offered to pay the whole of Equity Trust's claim against the assets of the ZIII Trust, but on condition that the costs element would be repaid if the appeal to the Privy Council was successful. Equity Trust had refused to accept payment on that condition, which he said was unreasonable, and it should be directed that unless it accepted those terms, no further costs incurred by Equity Trust in pursuing this debt would be recoverable. Equity Trust, he said, would then have no further role to play in the administration of the ZIII Trust.
- 16 Advocate Cushing confirmed that Zedra was willing to retire in favour of a suitable

alternative trustee, but highlighted some of the practical issues that would arise on the handover, as a consequence of the restrictions imposed as a result of the coronavirus. Flexibility, he said, would have to be built into any transfer timetable.

## Decision

- 17 The Court confirms the decision taken on 10th March 2020 that Zedra should retire as trustee of the ZIII Trust. It is in the interests of the creditors (and potentially the beneficiaries) of the ZIII Trust and of the creditors of the ZII Trust (which has a substantial claim against the assets of the ZIII Trust) that this potential claim be investigated and clearly Zedra is not in a position to investigate itself. It is a task best undertaken by a new trustee which will have access to the trust records and no other candidate to take over that trusteeship had been put forward, other than GTC which has the support of the connected creditors and which is willing to take on that role. GTC's proposals for the funding of the Company 1 investigation would require the approval of the Court.
- 18 That decision having been made, it is then a question of how the actual conflicts of GTC, as trustee of both trusts, can best be managed. We have considered the fifth option put forward by GTC, namely that every issue on which it has a conflict or any disputed claims will be referred automatically to the Court, where it would surrender its discretion. However, we are firmly of the view that an IIP should be brought in to the winding up process in respect of both trusts, firstly because of the sheer extent of the conflicts that GTC will now have and secondly, because it does have a working relationship with Mr E. By analogy with the liquidation of a company and following the case of *Parmalat* appointing one IIP to both trusts avoids the expense of having different IIP's for each trust and any conflicts that might arise (and none have been suggested) can be dealt with by the Court.
- 19 In reaching this view, the Court does not in any way question the integrity or professionalism of GTC and its officers; indeed, it would not approve its appointment as trustee of the ZIII Trust if there had been any issues in that regard. It is simply that it does have a working relationship with Mr E and there is a background of hostility between the D family and Equity Trust. We note from the affidavit of Mr Hodges that whilst describing GTC's relationship with Mr E as **"for the most part professional and cordial"** he goes on to acknowledge that Mr E **"is a forceful individual with strong views"**. We have some sympathy with the concerns of Equity Trust in this respect, and in our view, it is entitled to have someone considering its claims, and the claims of the connected creditors, who is wholly independent of any of the parties involved. Whilst the focus has tended to be on Equity Trust's claim against the assets of the ZII Trust which it is on notice may be challenged, it needs to be borne in mind that the claims of the connected creditors in respect of both trusts are very substantial and potentially not without difficulty. In the view of the Court, an independent forensic assessment of the substantial inter-trust and other loans that have apparently been made in this case is important for the proper winding up of these trusts.

- 20 It needs to be borne in mind that under the current insolvency procedure in force for the ZIII Trust, the task of determining claims falls upon the trustee, and so to the extent that this task is carried out by an IIP, there would be no duplication in costs. It is arguable that an IIP would be able to conduct that exercise in a more cost effective manner than a professional trustee, whose officers are not insolvency experts. GTC says that if it conducts this aspect of the winding up, it would refer any matter in which it has a conflict, or which is in dispute, directly to the Royal Court but as Advocate Gleeson says it is a novel procedure in which every such matter is directly referred to the Court placing a potentially undue burden upon the resources of the Court and inevitably causing delays in the process. Take, by way of example, GTC's claim as trustee of the ZI Trust against itself as trustee of the ZII Trust. This would be referred directly to the Court in proceedings in which GTC, as both creditor and debtor, would play a neutral role leaving it unclear who would be making and defending the arguments before the Court. Furthermore the referral may transpire to be entirely unnecessary if an IIP has conducted a forensic examination and found the claim to be valid. In other words there is value in a process in which claims are independently assessed and filtered, so that matters are not referred up to the Court (with all the delay which such referrals give rise to) unnecessarily.
- 21 To the extent that the appointment of an IIP to both trusts does increase the costs to be incurred, we regard this as proportionate, in the light of the quantum of the claims made against the assets of both trusts and in the interest of the proper winding up of both trusts.
- 22 We acknowledge the concern of the connected creditors that the costs of the IIP have the potential to escalate, particularly if he is drawn into a quasi-judicial role of determining disputed issues of fact and law. In this respect, we have found the letter of Mr Stephens helpful in that he describes his role as being "to assess the validity of various creditors' claims..... and nothing more" and we would expect him to act proportionately and within his professional competence. Mr Stephens is a chartered accountant, and we anticipate that he will undertake a forensic examination of each claim to assess whether the claim, and any objection to it, is valid or not.
- 23 Whilst seeking the appointment of an IIP, Advocate Jordan has provided no authority for the proposition that the Court can itself appoint such a person. The Court is supervising the trustees of these insolvent trusts by way of directions given to the trustee, but that does not allow it to depart from the terms of the trusts (see paragraph 75 of *In re IMK Family Trusts* [2008] JLR 250) and in the absence of any authority on the point, the Court proposes that GTC should be directed to exercise its powers of delegation to appoint the IIP. The Court can see no difficulty in the light of GTC's conflicts for that deed of delegation to require the IIP to be accountable to the Court.
- 24 Some objection has been taken by the connected creditors to the appointment of Mr Stephens as the IIP as he has been nominated by Equity Trust, but Smith & Williamson is a firm well known to the Court and Mr Stephens seems more than adequately qualified and experienced to undertake this role. The Court intends, therefore, to direct that he be appointed unless the other parties come forward with substantial objections to his

undertaking that role. The fact that Smith & Williamson has been nominated by Equity Trust and is based in London does not, in our view, amount to a substantial objection.

- 25 Once Mr Stephens has had an opportunity to read into the background, the Court would expect him to prepare a budget and timetable for the work he anticipates carrying out in relation to both trusts, and of course GTC is in a position to refer the matter back to the Court should it be concerned about the costs that are being incurred by Mr Stephens.
- 26 We do not accept Advocate Jordan's submission that Mr Stephens should conduct the Company 1 investigation. Mr Stephens has not referred to this in his letter, and it is clear to us that this is an exercise best conducted by GTC, assisted by the lawyers who conducted the successful claim against the former trustee of the ZII Trust. It is GTC, as a new trustee, that will have access to the trust records and which will be able to issue proceedings should that be considered appropriate.
- 27 We also do not consider it appropriate for the IIP to become involved in bringing the assets of the ZIII Trust "into the hands of the independent practitioner so that an accurate valuation can be made of them." This effectively turns the IIP into a receiver of those assets, again something to which Mr Stephens makes no reference in his letter. In our view, it is for GTC, once appointed trustee of the ZIII Trust, to deal with the calling in of the assets of that trust, and to seek appropriate directions from the Court to the extent necessary.

## Conclusion

- 28 In conclusion, when this judgment is handed down, we intend to direct:-
- (i) That GTC be appointed trustee of the ZIII Trust in place of Zedra. We understand that the terms of the deed of appointment and retirement have been agreed, and we invite Advocate Cushing and Advocate Gleeson to agree practical arrangements for the handover of the trust records.
  - (ii) That GTC be directed to wind up the ZII Trust and to continue the winding up of the ZIII Trust, substantially along the lines of the draft insolvency procedures submitted by Advocate Jordan. We appreciate that the other parties have not had a chance to examine these drafts in detail and they should, therefore, draw to Advocate Jordan's attention any material points which we would hope could be agreed. Advocate Jordan is invited to produce the final drafts.
  - (iii) That GTC appoint Mr Stephens as the independent insolvency practitioner in respect of both trusts and to delegate to him the powers set out in the draft insolvency procedures. Advocate Gleeson is invited to draft, circulate and hopefully agree the terms of the deed of appointment and delegation.