

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**

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3 **FINANCIAL SERVICES DIVISION**

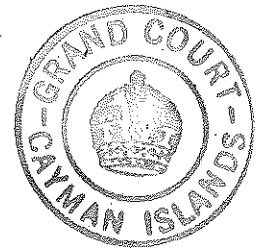
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5 **FSD NO. 71 OF 2013 (AJJ)**

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7 **The Honourable Mr Justice Andrew J. Jones QC**
8 **In Open Court as Chambers, 19th July 2013**

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11 **IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)**

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13 **AND IN THE MATTERS OF ROYAL BANK OF CANADA INTERNATIONAL**
14 **CURRENCIES FUND LTD (IN VOLUNTARY LIQUIDATION)**

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17 **Appearance:** Mr. Nicholas Fox of Mourant Ozannes on behalf of the Joint Voluntary
18 Liquidators of the Fund.



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21 **JUDGMENT**

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24 1. This is a petition presented under section 129 of the Companies Law (2012 Revision) by
25 the joint voluntary liquidators of Royal Bank of Canada International Currencies Fund
26 Ltd ("the Fund") in order to resolve the following questions: whether the Fund's share
27 register and other shareholder information constitutes "confidential information" within
28 the meaning of Confidential Relationships (Preservation) Law and, if so, whether
29 shareholder information can properly be disclosed to tracing agents intended to be
30 instructed by the liquidators.

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32 2. The Fund was incorporated pursuant to the Companies Law of the Cayman Islands in
33 1982 and carried on business in the Bailiwick of Guernsey as an open ended, multi-
34 currency retail money market fund. The Fund's administrator, secretary and registrar was
35 RBC Offshore Fund Managers Limited ("the Administrator") whose offices are in St
36 Peter Port, Guernsey. Its investment manager was Royal Bank of Canada Trust Company
37 (Cayman) Limited, but all of its functions and duties were delegated to the Administrator.
38 The result was that the whole of the Fund's management and administration was carried
39 on in Guernsey and its board of directors comprised various RBC group employees who

1 appear to have been resident either in Great Britain or the Channel Islands. It follows that
2 the Fund and its business was regulated by the Guernsey Financial Services Commission
3 in accordance with the Collective Investment Schemes (Class A) Rules made pursuant to
4 the Protection of Investors (Bailiwick of Guernsey) Law, 1987.¹ The evidence put before
5 the Court reflects that the Fund's only connection with this jurisdiction is that it was
6 incorporated under the Companies Law in 1982, which necessarily means that this Court
7 has jurisdiction in respect of matters relating to its liquidation.

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9 3. Historically, the Fund offered investors an opportunity to invest in one or more classes of
10 shares denominated in GB pounds sterling, US dollars, Canadian dollars and Euros.
11 Following the credit crunch and financial crisis which occurred in the third quarter of
12 2008, interest rates for all of these currencies fell dramatically and have since remained at
13 historic lows, with the result that it has been extremely difficult for the Fund to generate
14 returns whilst maintaining the high degree of liquidity which is essential for a money
15 market fund of this sort. For this reason, it became necessary to close the Canadian dollar
16 and Euro share classes in April 2009. The remaining GB pounds sterling and US dollar
17 share classes were closed in April 2011, whereupon the Fund's Administrator was
18 engaged in the process of winding down the Fund's business and returning the assets to
19 its investors. Having substantially completed the this task, the Administrator signed a
20 unanimous written resolution (in its capacity as the sole holder of the voting shares) to
21 put the Fund into voluntary liquidation and appoint Messrs Robin McMahon and Keiran
22 Hutchinson of the Cayman Islands firm of Ernst & Young Ltd as joint voluntary
23 liquidators.

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25 4. The Fund had a very large number of relatively small investors. Given the nature of its
26 business and fact that it was established about 30 years ago, it is not surprising that there
27 are a number of recorded shareholders with whom the Administrator has been unable to
28 make contact. In addition, a number of untraced RBC clients who had investments in
29 other higher risk RBC funds, had their investments transferred to this Fund following the

¹ In 1994 the Fund was also registered with the Cayman Island Monetary Authority as a mutual fund. That registration was terminated in July 2011.



1 closure of the funds in which they were originally invested. The final result is that there
2 are now about 150 individual unredeemed shareholders whom the Administrator has been
3 unable to trace. The remaining asset available for distribution to them, net after allowing
4 for the costs of the liquidation, is the equivalent of about US\$1.7 million in cash. The
5 Fund does not have any assets in this jurisdiction. Of the 150 untraced shareholders, 34
6 have investments worth less than US\$1,000 and 46 have investments worth between
7 US\$1,000 and US\$5,000. It following that the remaining 70 untraced shareholders have
8 an investment worth in excess of US\$1.5 million. It is now proposed that the liquidators
9 will instruct a firm of professional trace agents, called Salamanca Risk Management Ltd
10 (“Salamanca”), to carry out a tracing exercise, for which purpose they will need to be
11 provided with relevant extracts from the Fund’s share register and all other available
12 documents which reflect the identity and last known contact details of these 70 untraced
13 shareholders.

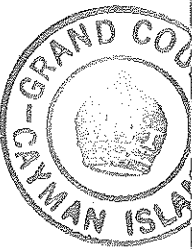
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15 5. Section 129(1) of the Companies Law provides that “The voluntary liquidator or any
16 contributory may apply to the Court to determine any question arising in the voluntary
17 winding up of a company or to exercise, as respects the enforcing of calls or any other
18 matter, all or any of the powers which the Court might exercise if the company were
19 being wound up under the supervision of the Court.” The question raised in the
20 Liquidators’ petition is whether the shareholder information contained in the Fund’s
21 books and records, including its share register, is “confidential information” within the
22 meaning of the Confidential Relationships (Preservation) Law (2009 Revision) and, if so,
23 whether its disclosure to Salamanca is something which the Administrator and/or
24 Liquidators are entitled to do “in the ordinary course of business”. I am satisfied that this
25 Court does have jurisdiction to answer this question and make whatever consequential
26 directions it thinks fit, as if a supervision order had been made in respect the Fund’s
27 liquidation.

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29 6. For the purposes of answering this question, it is relevant to distinguish between the share
30 register itself and all the other documentary information in the possession of the Fund’s
31 Administration which may be said to contain “shareholder information”, by which I mean



1 information relating to the identity, whereabouts, contact details and beneficial ownership
2 of the registered shareholders. In order to determine whether the Fund's share register can
3 be treated as confidential document which is not open to public inspection or inspection
4 by shareholders generally, one must have regard to the terms of the Fund's articles of
5 association, its offering documents, the subscription agreements and the applicable law,
6 which in this case must include Guernsey law. None of this material has been put in
7 evidence except for the Fund's Scheme Particulars dated as at 1st May 2009 which states
8 (on page 4) that the Registrar of Holders may be inspected during normal business hours
9 at the Administrator's office in St Peter Port, Guernsey. Assuming, as I do, that there is
10 no inconsistency between these Scheme Particulars and the Fund's articles of association,
11 it must follow that the share register is not confidential information. However, in the
12 absence of any evidence pointing to a contrary conclusion, I shall assume that the Fund
13 has an express or implied contractual duty to keep confidential all other "shareholder
14 information" in its possession, but it can only be "confidential information" within the
15 meaning of the Confidential Relationships (Preservation) Law if it arose in the Cayman
16 Islands or was subsequently brought here. On the evidence before the Court, it is clear
17 that all the "shareholder information" exists only in Guernsey. The relevant documents
18 were either received or generated by the Administrator at its offices in Guernsey. There
19 was never any reason for this information to be brought into this jurisdiction. It follows
20 that none of this "shareholder information" is caught by the Cayman Islands statute. Even
21 if it had been caught by the statute, its disclosure by the Liquidators to a professional
22 search agent would be a disclosure which they are entitled to make "in the ordinary
23 course of business". It is the duty of liquidators to take reasonable steps to locate those to
24 whom the assets should be distributed. A disclosure of information properly done as part
25 of performing their statutory duty in a routine way constitutes a disclosure made in the
26 ordinary course of the business of liquidating the company.

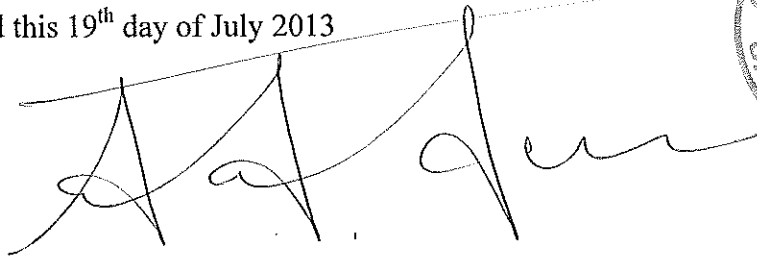
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- 28 7. This answers the question raised on the Liquidators' petition, but I think that it is
29 nevertheless appropriate that I should give consequential directions about the way in
30 which unclaimed the Liquidators should deal with the unclaimed funds remaining under
31 their contract when the Fund is dissolved. The matter is governed by CWR Order 23. I

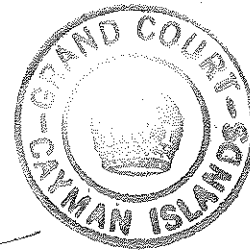


1 shall direct that any undistributed assets of the Fund shall be transferred to a bank
2 account established with a Class A bank in the Cayman Islands in the name of Robin
3 McMahon and/or Keiran Hutchinson, Trustee of the Unredeemed Shareholders of Royal
4 Bank of Canada International Currencies Fund Ltd, Dissolved” (or some conveniently
5 abbreviated name). The shall administer the fund credited to the liquidators’ trust
6 account for the benefit of the untraced unredeemed shareholders for a period of one year,
7 at the end of which any remaining funds shall be transferred to the Cayman Islands
8 Government, to be dealt with in accordance with Part VIII of the Public Management and
9 Finance Law. The Liquidators shall be entitled, in their capacity as trustees of the
10 undistributed assets, to be paid a fixed fee of US\$10,000 or 1% of the funds under
11 administration, whichever is the greater, plus all the out of pocket expenses reasonably
12 and properly incurred by them.

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14 8. Order accordingly.

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17 Dated this 19th day of July 2013

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24 **The Hon. Mr. Justice Andrew J. Jones QC**
25 **JUDGE OF THE GRAND COURT**