



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: 264 OF 2020 (ASCJ)

IN THE MATTER OF COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF PREMIER ASSURANCE GROUP SPC LTD. (IN OFFICIAL LIQUIDATION)

Before: Hon. Chief Justice Anthony Smellie

Heard: On the papers on 7<sup>th</sup> April 2022

Rupert Bell and Daisy Boulter of Walkers for the Joint Official Liquidators

*Ruling on an application taken on the Papers for sanction of liquidators' decision to treat mistaken payments as held on constructive trusts and repaid accordingly.*

## INTRODUCTION

1. I have before me an application filed on behalf of Jeffrey Stower and Jason Robinson, in their respective capacities as the joint official liquidators ("**JOLs**") of Premier Assurance Group SPC Ltd. (in Official Liquidation) (the "**Company**"). The application is made by the JOLs' Summons dated 25 March 2022 (the "**Application**") in relation to one of the Company's segregated portfolios, Premier Assurance Segregated Portfolio ("**PASP**").
2. The JOLs previously acted as the joint controllers of the Company ("**Joint Controllers**") following their appointment by the Cayman Islands Monetary Authority ("**CIMA**") on 14 September 2020 and also previously acted as the joint provisional liquidators of the Company ("**JPLs**") following their appointment by an Order made by this Court on 27 October 2020.

3. A Winding Up Order was eventually made by this Court in respect of the Company on 21 April 2021, following a petition presented by CIMA on 26 October 2020. On 22 April 2021, the Company's Class "B" Insurer's Licence was revoked by CIMA effective on 19 April 2021. By judgment delivered on 10 September 2021, a procedure for the filing and acceptance of proofs of debts was approved by this Court.
4. By the Application, in summary, the JOLs seek sanction pursuant to Section 110(2)(a) of the Companies Act (2022 Revision) (the "**Companies Act**"), that they be authorised to return premium payments held by or on behalf of the Company referable to PASP, which were received from participants who hold or have held insurance policies referable to PASP (the "**Participants**"), after the deemed commencement date of the winding up (i.e. 26 October 2020 being the operative date when the winding up petition was presented by CIMA). These payments are referred to as the "**Mistaken Payments**".
5. Generally, such erroneous payments were made due to an automated bank transfer or pre-authorised charge on a credit card. These premium payments include:
  - (a) premium payments totalling US\$573,864.97 received directly into bank accounts in the name of the Company referable to PASP and under the control of the JOLs between 27 October 2020 and 30 November 2021; and
  - (b) premium payments received by Lyncpay LLC ("**Lyncpay**") in respect of Participants, pursuant to a service agreement between Lyncpay and the Company dated 30 July 2015 (the "**Service Agreement**"). The JOLs understand from their review of Lyncpay's own records, that premium payments totalling US\$4,790,832.18 were received during the period between 27 October 2020 and 30 April 2021.
6. It is submitted on behalf of the JOLs, in summary, that these payments held by or on behalf of the Company (referable to PASP), should be returned to the respective payers on the basis of the principle that money paid by mistake will be held on constructive trust for the payer if the circumstances render it unconscionable for the payee to retain the moneys as against the payer.



7. The evidence filed in support of the Application is set out in the Second Affidavit of Jason Robinson (one of the JOLs) sworn on 25 March 2022 ("**Robinson 2**"), together with Exhibit JR-2.

#### **Determination on the papers**

8. The JOLs submit and I accept that the Application is suitable for determination on the papers pursuant to the Financial Services Division Guide (Section B1.1). It is not controversial. Draft copies of the Summons, Robinson 2, Exhibit JR-2 and the Draft Order were provided to the liquidation committee referable to PASP (the "**PASP LC**") on 1 March 2022. As set out in further detail below, each of the members of the PASP LC has approved by email that the JOLs proceed with the Application seeking orders relating to the return of the Mistaken Payments and request that the Application be determined on the papers, recognizing that this would save costs.

### **FACTUAL BACKGROUND TO THE APPLICATION**

#### **Life Insurance Products of PASP**

9. The background to the business of the Company is set out in more detail in the Judgment of 10 September 2021. A briefer summary will suffice here. The Company was registered as an exempted segregated portfolio company in the Cayman Islands and was previously issued with an unrestricted Class 'B' Insurer's Licence. The Application concerns the Company's segregated portfolio, PASP (which has been determined by the JOLs to be insolvent). Unit-linked life insurance products were offered through PASP globally (with the exception of the United States) and sold to markets in the Latin American, Caribbean (except the Cayman Islands), European and Asian regions. A branch in Malaysia was operated as part of the business of PASP - Premier Assurance Group SPC Ltd., Labuan Branch (the "**Labuan Branch**").

#### **The winding up of the Company**

10. On 14 September 2020, CIMA exercised its powers pursuant to Section 24(2)(h) of the Insurance Act, 2010 to appoint the Joint Controllers to assume control of the affairs of the Company.



11. As already noted, following the recommendations of the Joint Controllers, CIMA presented a winding up petition against the Company on 26 October 2020 ("**Winding Up Petition**").
12. On 27 October 2020, this Court ordered that the Joint Controllers be appointed as JPLs of the Company (the "**PL Order**") pursuant to section 104(3) of the Companies Act. The JPLs' appointment was sought on the basis that such an appointment would provide the Company with the interim relief required to enable the JPLs to properly investigate and, if necessary, negotiate the terms of a proposal put forward by the directors of the Company in relation to the transfer of Participants of PASP to a new structure in Puerto Rico and to simultaneously explore any viable options to sell the insurance business of PASP to third parties.<sup>1</sup>
13. The JPLs report that despite running a robust sales process and receiving some initial expressions of interest, ultimately, no offers were received to purchase the PASP book of business or to inject capital into the Company to address the shortfall in its asset position. Further, the proposal put forward by the directors did not adequately address various issues relating to the protection of the financial interests of all Participants and did not receive regulatory approval from CIMA to proceed. Accordingly, the JPLs recommended that CIMA seek to have the Winding Up Petition listed for hearing before this Court for the purpose of proceeding with the winding up of the Company.<sup>2</sup>
14. Following a Winding Up Order being made in respect of the Company by this Court on 19 April 2021, the Company's Insurance License was revoked by CIMA effective the same day (see paragraph 16 of Robinson 2).
15. At the commencement of the winding up, there were a total of 11,256 Participants (including those Participants with policies through the Labuan Branch) (see paragraph 17 of Robinson 2).

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<sup>1</sup> See Section 2.4 of the JOLs' First Report in respect of PASP dated 21 May 2021.

<sup>2</sup> See Section 2.4 of the JOLs' First Report in respect of PASP dated 21 May 2021.



## The Mistaken Payments

16. During the course of their investigations, the JOLs identified the following Mistaken Payments, which the JOLs consider to have been made in error after the commencement of the winding up of the Company on 26 October 2020:

### Premium Payments received by the Company

- (a) Firstly, premium payments totalling US\$573,864.97 were paid into two Valley National Bank ("VNB") bank accounts in the name of the Company referable to PASP (Account Numbers ending 1345 and 8525) (together, the "**VNB Bank Accounts**") between 27 October 2020 and 30 November 2021. Details of the Mistaken Payments up until 30 November 2021 are set out in the schedules to the Exhibits to Robinson 2.
- (b) The JOLs have managed to reconcile approximately 60% of the total quantum of these Mistaken Payments with the identity of the relevant Participant. The policy numbers in respect of those Participants who have been identified have been inserted in the last column of the schedules of Mistaken Payments. The JOLs are continuing to seek the assistance of VNB in order to identify the relevant Participants whose premiums have been directly received into the VNB Bank Accounts.
- (c) Whilst some further Mistaken Payments continue to be paid into the VNB Bank Accounts, this is occurring with decreasing frequency and it is reported that this is now reduced to approximately one receipt a month into the each of the VNB Bank Accounts (see paragraph 22 of Robinson 2).

### Premium Payments received by Lyncpay

- (d) Secondly, premium payments received by Lyncpay from Participants on behalf of the Company referable to PASP pursuant to the Service Agreement, which was governed by the laws of the British Virgin Islands. Pursuant to the Service Agreement, Lyncpay was obliged to (*inter alia*) collect premiums, process payments, and distribute to various parties or bank accounts as directed by the



underwriter (see clause I(A)(2)). The Service Agreement also provided that all insurance monies collected by Lyncpay on behalf of the Company shall be held by Lyncpay in a fiduciary capacity (see clause VI(A)).

- (e) As explained in paragraphs 27 and 28 of Robinson 2, following a subpoena being directed to Lyncpay on 27 May 2021, the JOLs received some information and documentation relating to the premiums received by Lyncpay on behalf of the Company. On the basis of the JOLs' review of these records, Lyncpay's own documents indicated that 5,588 individual Mistaken Payments had been received from Participants during the period between 27 October 2020 and 30 April 2021. The total quantum of premiums noted as having been received, per Lyncpay's records, was the aforementioned amount of US\$4,790,832.18.

#### **APPLICATION FOR COURT SANCTION**

17. Pursuant to Section 110(2)(a) of the Companies Act, liquidators may with the sanction of this Court, exercise any of the powers specified in Part I of Schedule 3, including the "*power to deal with all questions in any way relating to or affecting the assets or the winding up of the company*" (paragraph 7).
18. Pursuant to this provision, the JOLs seek an order sanctioning their proposed exercise of the power to return the Mistaken Payments to their respective payers on the basis of the principle adumbrated above; viz: that money paid by mistake will be held on constructive trust for the payer if the circumstances render it unconscionable for the payee to retain the moneys as against the payer. This will be the case if the money was paid by mistake and the payee - here the Company on behalf of PASP - was or should have been aware of the mistake when it received the money. A summary of the relevant authorities underpinning this principle is set out below.



## Constructive trust where payment made by mistake

19. The following general definition of a constructive trusts was provided by Millet LJ (as he then was) In *Paragon Finance pic v DB Thakerar & Co* [1999] 1 All ER 400 at page 409A<sup>3</sup>:

*"A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of property... to assert his own beneficial interest in the property and deny the beneficial interest of another".*

20. A constructive trust giving rise to a proprietary claim may be imposed on property obtained by theft, fraud or mistake (despite there being no prior fiduciary relationship involved).<sup>4</sup> In *Angove's Pty Ltd v Bailey* [2016] UKSC 47; [2016] 1 W.L.R. 3179, Lord Sumption, considered whether the receipt of money, at a time when the recipient knows that imminent insolvency will prevent him from performing the corresponding obligation, can give rise to liability to account as a constructive trustee. This is a question which will be of fundamental importance in the context of insolvency such as in this case, where the claim to the money will be as between the general body of creditors of the insolvent recipient and the person claiming to have a restitutionary proprietary claim in priority to claims of other creditors. Lord Sumption said on behalf of the Supreme Court at [30], that in cases where money is paid with the intention of transferring the entire beneficial interest to the payee (as must be assumed was the mistaken intention of the payers here in respect of meeting their premium obligations), the least that must be shown in order to establish a constructive trust is:

- (a) that that intention was vitiated, for example because the money was paid as a result of a fundamental mistake or pursuant to a contract which has been rescinded; or

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<sup>3</sup> As applied by this Court in *Re Caledonian Bank Limited (in Official Liquidation)* [2015] (2) CILR 8] at [32]-[33].

<sup>4</sup> See *Lewin on Trusts*, 20<sup>th</sup> ed. (2020) at [8-024] which states that constructive trusts imposed on property obtained by theft, fraud or mistake are notable examples of the "second kind" of constructive trust (i.e. where no prior fiduciary relationship exists) giving rise to proprietary interests.

(b) that irrespective of the intentions of the payer, in the eyes of equity the money has come into the wrong hands, as where it represents the fruits of a fraud, theft or breach of trust or fiduciary duty against a third party.<sup>5</sup>

21. It is of course, the former limb of Lord Sumption's formulation upon which the Application rests.
22. The issue of whether sums paid by mistake by depositors to an insolvent bank after that bank had suspended its operations arose in this jurisdiction, before **Angove's** was decided, in **Re Caledonian Bank Limited (in Official Liquidation)** [2015] (2) CILR 8]. The bank's operations had been suspended following allegations of fraudulent trading and it was subsequently wound up. However, the bank had received a number of deposit payments around the time of the suspension of its operations. The joint official liquidators sought the authorization of the Court to repay the sums which had been received after the suspension of operations, as they had not been accepted by the bank as deposits as intended by the clients and were therefore subject to constructive trusts in favour of the relevant clients.
23. At [34] of *Caledonian*, I referred to the principles where a constructive trust arises where a payment has been made by mistake as follows:

*"On the basis of the principle that where money is paid to someone by mistake and the recipient knows of the mistake but retains the money, the recipient will be a constructive trustee of the money for the payer. A payment made by mistake may be of fact or law and arises from the date that the recipient became aware of the mistake."*<sup>6</sup>

24. I went on to refer to the English case of **Westdeutsche Landesbank Girozentrale v Islington LBC** [1996] A.C. 669, HL in which it was considered that the recipient will not

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<sup>5</sup> Lord Sumption went on to say that one or other of these is a necessary condition, but that it may not be sufficient for a constructive trust to arise.

<sup>6</sup> Also see **Lewin on Trusts**, 20<sup>th</sup> ed. (2020) at [8-028] in respect of constructive trusts arising on the basis of payments under a mistake.



be a constructive trustee of the money for so long as he is ignorant of the mistake. In that case, Lord Browne-Wilkinson commented as follows:

- (a) At page 705D: "*Since the equitable jurisdiction to enforce trusts depends upon the conscience of the holder of the legal interest being affected, he cannot be a trustee of the property if and so long as he is ignorant of the facts alleged to affect his conscience, i.e. until he is aware that he is intended to hold the property for the benefit of others in the case of an express or implied trust, or, in the case of a constructive trust, of the factors which are alleged to affect his conscience.*"<sup>7</sup>
- (b) At page 715B, commenting on when a constructive trust might arise where a payment had been made by mistake:<sup>8</sup> "*Although the mere receipt of the moneys, in ignorance of the mistake, gives rise to no trust, the retention of the moneys after the recipient bank learned of the mistake may well have given rise to a constructive trust...*"<sup>9</sup>

25. On the issue of whether it is necessary that there has been some dishonesty or theft, I also referred to ***Chase Manhattan Bank N.A. v Israel-British Bank (London) Ltd.*** [1981] Ch. 105. In that case, a sum of money was mistakenly paid over twice by a New York bank to a London bank, and the recipient bank, shortly after receiving the mistaken second payment, entered into insolvent liquidation. Gouling J held that the money that had been paid over by mistake was held on trust for the payer, thereby allowing the payer to trace and recover that money even though the payee was by then insolvent.<sup>10</sup>

26. I referred at [35] to *Westdeutsche*<sup>11</sup> in which Lord Browne-Wilkinson clarified that the unconscionable act which led to the imposition of a constructive trust in *Chase Manhattan*

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<sup>7</sup> This passage was applied by Millet J in ***Bristol and West Building Society v Mothew*** [1998] Ch. 1 at page 23, CA.

<sup>8</sup> Lord Browne-Wilkinson was seeking to approve of the result in ***Chase Manhattan Bank NA v Israel-British Bank (London) Ltd*** [1981] Ch 105, but not the reasoning in that case.

<sup>9</sup> Applied in ***Caledonian*** at [34].

<sup>10</sup> I noted here that *Chase Manhattan* was followed in ***Commerzbank Aktiengesellschaft v. IMB Morgan plc*** [2005] 2 All E.R. (Comm) 564 (see page 573A-B) and in ***Re Farepak Food & Gifts Ltd.*** [2008] BCC 22 at [39]–[40], per Mann J. However, it should be noted that the case's precedential status has been diminished by the comments made by Lord Browne-Wilkinson in *Westdeutsche Landesbank* at pages 704–706, but the result of inferring a constructive trust in circumstances where a payment has been made to a recipient after such recipient has ceased to trade remains good law.

<sup>11</sup> (in which Lord Browne-Wilkinson approved the decision in *Chase Manhattan*, but not its reasoning)

was the knowledge of the recipient of a payment that the payer had made a mistake and would therefore require repayment. After referring to those authorities, I held at [35]:

*"It follows therefore, and I accept, that conscience in a constructive trust context does not require that there has been some dishonesty or theft practised by the defendant, only that there be some treatment by the defendant of property in which the claimant has rights which treatment is considered to be unethical in a broad sense" (emphasis added).*

27. The following authorities were referred to by me at [36]-[38] as illustrative of the position:

- (a) the Australian case of **Wambo Coal Pty Ltd v Ariff & 1 Or** [2007] NSWSC 589 in which the New South Wales Court of Appeal held that moneys that had been paid by the plaintiff to the defendant company (in liquidation) in the mistaken belief that the plaintiff owed the defendant money were held on constructive trust by the defendant for the plaintiff from the time when the defendant became aware that they had been paid by mistake. White J held at [43] that:

*"once the recipient is aware that, by a mistake, he has got something for nothing, a proprietary remedy is appropriate. The fact that the company is insolvent does not affect this conclusion. It would be an unwarranted windfall for the Company's creditors to share in the payment..."*

- (b) the English case of **Re Farepak Food and Gifts Ltd** [2006] EWHC 3272 (Ch); [2008] BCC 22 involving the receipt by a company (Farepak) of payments by customers in connection with its Christmas savings scheme after the company had ceased to trade. In that case, Mann, J. at [40] said that:

*"if and in so far as it could be established that moneys were paid to Farepak by customers at a time when Farepak had decided that it had ceased trading, and indeed at a time when it had indicated that payments should not be received, then there is a strong argument for saying that those moneys would be held by the company as constructive trustee from the moment they were received. As I have*



*said it may well be possible to justify this conclusion on the basis of mistake, to bring it into line with Lord Browne-Wilkinson's views [expressed in Westdeutsche above]. So I would be minded to follow the result in Neste Oy v Barclays Bank [1983] Lloyds Rep 658"<sup>12</sup>*

28. At [39] in *Caledonian*, I concluded that in circumstances where a company receives funds after it has decided to cease trading (such as, by way of example, in the case of the bank in *Caledonian* after the implementation of the suspension), it is settled principle that such payments are held by the company as constructive trustee from the moment that the funds are received (or accepted).
29. In respect of money received by the bank after the suspension, I held at [45(c)] that such payments were held on constructive trust for the relevant originator who made the payment. This is on the basis that, following the suspension, the bank no longer had authority to receive payments on behalf of its customers so it therefore could not have unconditionally accepted the money. Alternatively, it was or must have been obvious to the bank that payments made after the suspension were made by mistake in that it is inconceivable that an originator would have made it had it been aware that the bank had imposed the suspension. In those circumstances, it would be held to be unconscionable for the bank to retain the moneys as against the originators.

### **Application to the Mistaken Payments**

30. Applying these principles to the Mistaken Payments, the JOLs submit and I accept that premium payments received after the presentation of the Winding Up Petition are held by the Company (referable to PASP) as constructive trustee from the moment that the funds had been received. As outlined above, the Mistaken Payments were made **after** the commencement of the winding up of the Company on 26 October 2020. Such payments generally represent direct debts due from the Company which had not been cancelled by Participants following the presentation of the Winding Up Petition.

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<sup>12</sup> This conclusion was noted but not decided upon in *Angove's* because (per Lord Sumption at [32]) whether it was correct was "*not a question which arises on this appeal.*" It must also be noted that *Neste Oy* (above) was overruled in *Angove's*.

31. Between 26 October 2020 (when CIMA's winding up petition was presented) and 19 April 2021 (the date that the Winding Up Order was made), the JPLs were appointed following an application by the Company pursuant to Section 104(3) of the Companies Act given that: (i) the Company was or was likely to become unable to pay its debts within the meaning of Section 93 and (ii) the Company intended to present a compromise or arrangement to its creditors. As outlined above, the purpose of the PL Order was to provide the Company with interim relief from creditor action while the JPLs had the opportunity to properly investigate selling or transferring the business of PASP, as an alternative to a winding up of the Company in the best interests of the Company's creditors (paragraph 4 of the PL Order).
32. Whilst there is a general power in paragraph 5(1) of the PL Order authorising the JPLs "*to carry on the business of the company so far as may be necessary and beneficial*", no benefits (such as death benefits, surrender values or payments due on maturity) were paid to Participants during the period of the provisional liquidation. As explained in paragraph 14 of Robinson 2, only certain limited expenses were paid by the JPLs (such as limited payroll costs, rent, IT expenses and actuarial expenses) during the provisional liquidation to preserve the status quo pending the JPLs' investigations (rather than to permit the Company to actively continue trading).
33. By analogy with *Caledonian* (concerning mistaken payments by depositors to an insolvent bank after that bank had suspended its operations), I found that the Mistaken Payments were paid by Participants following the presentation of the Winding Up Petition and after the Company's operations had effectively been suspended given that no benefits were being paid to Participants who held policies with the Company referable to PASP. In the circumstances, I accepted that no benefit could have accrued to a payer in respect of a Mistaken Payment and that the Company would have been fixed with this knowledge at the time of receipt. On this basis a constructive trust<sup>13</sup> had been imposed in respect of premium payments received by the Company (or on its behalf by Lyncpay in a fiduciary capacity) on or after the presentation of the Winding Up Petition on 26 October 2020 in favour of the respective payer.

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<sup>13</sup> Described in *Westduesche* as an institutional rather than a remedial constructive trust.

34. Further or alternatively, as in *Caledonian*, it was or must have been obvious to the Company that premium payments made after the presentation of the Winding Up Petition were by fundamental mistake, in that it is inconceivable that a Participant would have made it had he or she been aware that a Winding Up Petition had been presented against the Company. In those circumstances, it would be unconscionable for the Company to retain the monies (whether held by the Company or recovered by the JOLs from Lyncpay- as to which see further below) as against the payers.

### APPROVAL BY THE PASP LC

35. Robinson 2 explains that in advance of this Application being filed, each member of the PASP LC approved the following resolutions by email (copies of which are exhibited to Robinson 2):

- (a) *"The Liquidation Committee hereby approves the filing of the Draft Summons, Draft Second Affidavit of Jason Robinson, Draft Exhibit JR-2 and the Draft Order (as appended hereto) in the Grand Court in which the JOLs seek orders relating to the return of premium payments received by or on behalf of the Company referable to PASP after the commencement of the Company's winding up (the "**Sanction Application**)"; and*
- (b) *"The Liquidation Committee hereby consents to the Sanction Application being determined by the Grand Court administratively on the papers and without a hearing (if the Court thinks fit)."*

36. The JOLs have since served the Summons and Robinson 2 (inclusive of Exhibit JR-2) on each of the members of the PASP LC in accordance with O.11, r.2(1)(a) of the Companies Winding Up Rules, 2018 (the "**CWR**"). The JOLs have undertaken immediately to inform the Court if they receive any feedback from the PASP LC contrary to approvals contained in the resolutions outlined above. No such feedback has been received.

### DRAFT ORDER

37. Firstly, the JOLs seek an order that they be authorised to take, subject to compliance with relevant Anti-Money-Laundering ("**AML**") and Know-Your-Client ("**KYC**") protocols, such



steps as the JOLs consider necessary or desirable to return (or procure the return of) the Mistaken Payments to the respective payers of such premiums (as and when such payers have been identified to the reasonable satisfaction of the JOLs), including:

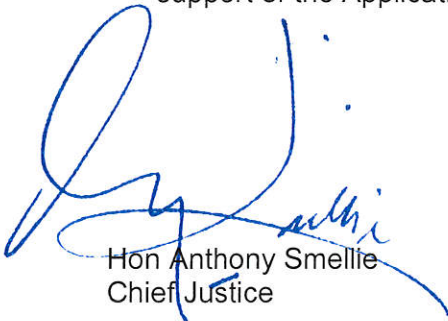
- (a) premium payments paid into the VNB Bank Accounts of the Company referable to PASP between 27 October 2020 to 30 November 2021 as set out in the Schedules of Mistaken Payments; and
- (b) any further premium payments (if any) paid into the VNB Bank Accounts after 1 December 2021; and
- (c) premium payments received by Lyncpay LLC (which were held in a fiduciary capacity for the Company referable to PASP) from Participants after the commencement of the winding up of the Company pursuant to the Service Agreement.

38. Given that the Mistaken Payments held by Lyncpay are not in the possession of the Company, the draft order refers to the ability of the JOLs to return "*or procure the return of*" the Mistaken Payments to the respective payers. This is intended to ensure that the JOLs are authorised to procure that Lyncpay return the Mistaken Payments to the relevant payers or otherwise return such Mistaken Payments to the JOLs for such funds to be refunded to the relevant payers. For the avoidance of doubt, I am told that the JOLs do not seek any orders against Lyncpay at this stage, but seek permission to take any such steps as may be appropriate to procure the return of such Mistaken Payments held by Lyncpay. The JOLs have reserved their rights to commence proceedings directly against Lyncpay in the event that Lyncpay refuses to comply with any instructions by the JOLs to return the Mistaken Payments to the relevant payers (whether directly or via the JOLs acting on behalf of the Company).

39. Secondly, the JOLs seek an order that they be authorised to deduct any expenses incurred in relation to processing and returning each Mistaken Payment to the relevant payer from the respective Mistaken Payment. Such order is intended to enable the JOLs to deduct any direct expenses which may be incurred refunding such payments to the relevant payers, such as any applicable bank transfer fees or reasonable expenses to

comply with relevant AML and KYC protocols. As outlined in paragraph 29 of Robinson 2, Participants with claims that have already been adjudicated and admitted have already been asked to complete the relevant AML/KYC procedures to enable them to receive an interim dividend in the insolvent estate of the Company referable to PASP. Accordingly, it is anticipated that in most instances the KYC/AML procedures would have already been carried out in respect of Participants who have also made Mistaken Payments.

40. On the basis of the foregoing analysis (especially at [33] above) and having accepted that the Mistaken Payments are indeed held by the JOLs upon constructive trust in favour of the respective payers, I granted the orders sought by the JOLs in terms of their Summons and the draft propounded with their Summons, sanctioning the return of the Mistaken Payment.
41. It was for those reasons, in my view, self-evident that the decision of the JOLs to return the Mistaken Payment is entirely proper and one which should receive the approval of the Court pursuant to section 110(2) of the Companies Act.
42. Finally, I record my thanks to Counsel for the JOLs for their very helpful submissions in support of the Application, submissions which have largely been adopted in this Ruling.



Hon Anthony Smellie  
Chief Justice

26 April 2022.