IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2026] SGHC 190

Originating Claim No 848 of 2025 (Summons No 932 of 2026)

Between

(1) Fereydoon Mossanen
(2) Amir Mansour Mossanen
(3) Natasha Rahban
(4) Linus Georg Ernst Jaeggi

… *Claimants*

And

Julius Baer Trust Company (Singapore) Limited

… *Defendant*

JUDGMENT

[Civil Procedure — Rules of court — Order 9 r 19(1) Rules of Court 2021 — Summary determination of questions of law or construction of documents]
[Civil Procedure — Rules of court — Order 9 r 25(3) Rules of Court 2021 — Order for issue of fact to be heard and decided separately]
[Powers — Exercise — Imputed exercise of powers doctrine]
[Powers — Exercise — When a power is validly exercised]
[Trusts — Express trusts — Implying term in trust deed]
[Trusts — Express trusts — Interpretation of terms in trust deed]
[Trusts — Protector — Whether term for protectors to resolve conflicts void and unenforceable]

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Fereydoon Mossanen and others
v
Julius Baer Trust Co (Singapore) Ltd

[2026] SGHC 190

General Division of the High Court — Originating Claim No 848 of 2025
(Summons No 932 of 2026)
Kristy Tan J
15 July, 5 August 2026

18 September 2026 Judgment reserved.

Kristy Tan J:

Introduction

1 HC/SUM 932/2026 ("SUM 932") is an application by the claimants in HC/OC 848/2025 ("OC 848") for summary determination of nine issues listed in Annex A to SUM 932, pursuant to O 9 r 19 and/or O 9 r 25(3) of the Rules of Court 2021 ("ROC 2021"). The issues (reproduced at [61] below) revolve around the terms of various deeds relating to a family trust established by the first claimant. Certain questions of law engaged by these issues do not appear, so far as I am aware, to have been addressed hitherto in Singapore case law.

Facts

The parties

2 The first claimant, Dr Fereydoon Mossanen ("Settlor"), is the settlor of a trust known as The Moss Trust (Singapore) ("Moss Trust").[1] The Settlor was married to Mrs Madlen Mossanen ("Wife"), who passed away on 10 November 2024.[2]

3 The second and third claimants, Mr Amir Mansour Mossanen ("Mr Amir Mossanen") and Ms Natasha Rahban, are the Settlor and the Wife's children (together, "Children").[3]

4 On the claimants' case, the fourth claimant, Mr Linus Georg Ernst Jaeggi ("Mr Jaeggi"), is one of two current protectors of the Moss Trust and the current Chairman of the Committee of Trust Protectors of the Moss Trust comprising himself and the other protector, Mr Maurice Benezra ("Mr Benezra").[4]

5 The defendant, Julius Baer Trust Company (Singapore) Limited ("JBTC"), is the current trustee of the Moss Trust.[5]

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1 1st affidavit of Fereydoon Mossanen filed on behalf of the claimants on 25 March 2026 ("FM") at para 3.

2 FM at para 2.

3 FM at para 2.

4 FM at para 3; Statement of Claim (Amendment No 1) dated 2 March 2026 ("SOC") at para 5, *cf*, Defence (Amendment No 1) dated 24 March 2026 ("Defence") at para 3, DEF (5).

5 1st affidavit of Loh Lay Bee filed on behalf of the defendant on 16 April 2026 ("LLB") at para 8.

The Original Trust Deed

6 The Moss Trust was established under the laws of Singapore by way of a trust deed dated 20 March 2015 ("Original Trust Deed") executed by the Settlor and the original trustee of the Moss Trust, EFG Wealth Solutions (Singapore) Limited ("EFG Wealth").[6] The Original Trust Deed was governed by Singapore law (cl 3.1).

7 The Original Trust Deed stipulated that the beneficiaries of the Moss Trust were the Settlor, the Wife, the Children and any lawful issue of the Settlor (cl 1.1 and the Second Schedule). There is no contention that the Settlor has any lawful issue apart from the Children.

8 The Original Trust Deed provided for (a) the trust fund to be applied in the manner stipulated for the benefit of the Settlor and the Wife during the Settlor's lifetime (cl 4.1(i)); (b) the trust fund to be applied in the manner stipulated for the Wife's benefit upon the Settlor's death (cl 4.3); and (c) the trust fund to be distributed in the manner stipulated to the Children and their issue after both the deaths of the Settlor and the Wife (cll 4.3 and 4.4).

9 The Original Trust Deed also provided that the Moss Trust was revocable and amendable by the Settlor within specified parameters, and that upon the Settlor's death, no one would hold any power of revocation or amendment (cl 3.2).

10 The Original Trust Deed further provided for the constitution of a Committee of Trust Protectors ("Committee") to provide advice to the trustee,

6 FM at para 8 and pp 68–100.

and for the appointment of the Settlor as the first Chairman of the Committee (cll 1.9 and 9). Aside from the Settlor, no other protector/Committee member was appointed at the time.

The 2016 Trust Deed

11 JBTC replaced EFG Wealth as the trustee of the Moss Trust with effect from 10 November 2016.[7]

12 On or around 10 November 2016, the Settlor and JBTC executed an "Amended and Restated Deed of Trust" bearing that date ("2016 Trust Deed").[8]

13 The provisions in the Original Trust Deed for distributions to the Settlor, the Wife and the Children (see [8] above) were materially retained in the 2016 Trust Deed (cll 4.1, 4.3 and 4.4). The list of beneficiaries also remained the same (cl 1.1 and the Second Schedule).

14 Clause 3.2 of the 2016 Trust Deed also continued to vest in the Settlor the power to revoke the Moss Trust and to amend its terms.

15 The provisions relating to the Committee also remained broadly similar. Clauses 9.2 and 9.3 of the 2016 Trust Deed provided for the appointment of the Chairman and members of the Committee in the following terms:

> 9.2 Initial Membership. The Committee shall be comprised of no more than five and no fewer than one members. The first Chairman of the Committee shall be FEREYDOON MOSSANEN, and he shall hold office until such time as he shall respectively die, resign, or be removed hereinafter provided in Clause 9.6.

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7 FM at para 18 and pp 107–111.

8 FM at para 19 and pp 113–144.

> The other initial members of the Committee shall be appointed by the Chairman. A Trustee may not serve on the Committee.
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> 9.3 Successor Membership. The first Chairman may appoint a successor Chairman to serve in that capacity in the event that the first Chairman shall resign or for any reason cease or be unable to act as first Chairman. The first Chairman, if he so chooses, may appoint and designate subsequent, successor Chairmen. Subject to Clause 9.2, other Committee members may be appointed by the First Chairman or by the then-acting Chairman so far as such action is not precluded by the above and shall serve for a term designated by him. Subsequent Chairmen so far as not precluded by the above may designate a successor Chairman. All appointments and designations shall be made by an instrument in writing duly signed by the persons so making the appointment of designation and delivered to the Trustee. In the event that a successor Chairman has not been designated and the Chairman ceases or is unable or be unwilling to act as Chairman, then the Trustee is empowered and directed to appoint a successor Chairman hereunder. The individual appointing a successor Chairman and subsequent members shall have the power to terminate any such appointment.

The 2016 Appointment

16 On or around 10 November 2016, the Settlor executed an instrument titled "Appointment of Additional Initial Members of the Committe[e] of Trust Protectors and Appointment of Successor Members and Chairmen of the Committee of Trust Protectors of the Moss Trust (Singapore)" and bearing that date ("2016 Appointment").[9] Under the 2016 Appointment, the Settlor "appoint[ed] [the Wife] as the successor Chairman of the Committee of Trust Protectors, *but she shall serve only after the death, resignation, or incapacity of [the Settlor]*" [emphasis added].

[9] FM at para 23 and p 146.

The 2017 Amendment

17 On 4 April 2017, the Settlor and JBTC executed a "Deed of Renunciation and Amendment" ("2017 Amendment").[10] I highlight the following amendments to the 2016 Trust Deed made by the 2017 Amendment.

18 Clause 3.2 of the 2016 Trust Deed was amended to provide, *inter alia*, that (a) the Moss Trust was irrevocable; (b) the Moss Trust was amendable by the Wife (instead of the Settlor) within specified parameters; and (c) after both the deaths of the Settlor and the Wife, the Moss Trust was amendable by the trustee with the prior or simultaneous consent of the protector within specified parameters (cl 3.3).

19 The Second Schedule to the 2016 Trust Deed was amended to remove the Settlor as a beneficiary of the Moss Trust (cl 3.6). In a similar vein, cl 4.1 of the 2016 Trust Deed was amended to provide that, during the Settlor's lifetime, the trust fund would be applied in the manner stipulated for the benefit of the Wife only (cl 3.4).

The 2019 Declination

20 On 3 January 2019, the Settlor forwarded to JBTC a communication from the Wife addressed to the "Trustees and Protector" expressing her objections to receiving any powers under the Moss Trust and her view that it was "better to have [JBTC] acting".[11]

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10 FM at para 24 and pp 148–159.

11 FM at para 42 and p 192.

21 On 14 August 2019, the Wife executed an instrument titled "Declination to Accept Power to Amend or to Serve" ("2019 Declination").[12] Under the 2019 Declination, the Wife declared that (a) she declined and confirmed her prior declination to accept any and all power to amend the terms of the Moss Trust; (b) she had never exercised or purported to exercise any power to amend the Moss Trust; and (c) she declined to serve in any capacity on the Committee. It was common ground between the parties that the 2019 Declination was effective as a refusal by the Wife to accept the power of amendment of the Moss Trust.[13]

The 2019 Modification

22 After the Wife executed the 2019 Declination, the Settlor, the Wife and JBTC executed a deed titled "Modification of Deed of Renunciation and Amendment and Amended and Restated Deed of Trust" dated 14 August 2019 ("2019 Modification").[14]

23 Recital (G) in the 2019 Modification stated:

> Now, acting together, the Settlor, [JBTC], and the [Wife], hereby mutually consent to the modifications of sub-clauses 3.2(ii), (iii), and (iv) of the [Moss] Trust, as set forth in said Deed of Renunciation and Amendment dated 4 April 2017 [*ie*, the 2017 Amendment], and further modify the Amended and Restated Deed of Trust [*ie*, the 2016 Trust Deed] in the manner set forth below.

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12 FM at para 45 and pp 350–351.

13 Defendant's Written Submissions dated 11 May 2026 ("DWS 11 May 2026") at para 23.

14 FM at para 46 and pp 353–486.

24 Clause 3 of the 2019 Modification stated that the 2017 Amendment would be modified such that, *inter alia*, the amended cl 3.2(ii) of the 2016 Trust Deed would provide for the Moss Trust to be amendable by the trustee with the prior or simultaneous written consent of the protector(s):

> … *this Trust is amendable by the Trustee with the prior or simultaneous written consent of the Protector.* The Trustee's power to amend with the consent of the Protector, as now authorized in this sub-clause 3.2(ii), is immediately effective from the date of Trustee's execution, below. … [emphasis added]

In other words, the 2019 Modification sought to confer the power of amendment of the terms of the Moss Trust on JBTC (instead of the Wife) with effect from 14 August 2019 (*ie*, the date of execution of the 2019 Modification).

25 The 2019 Modification (cl 3) also stated that the 2016 Trust Deed would be modified, *inter alia*, as follows.

26 In respect of distributions from the trust fund:

(a) A new cl 4.3(iii) of the 2016 Trust Deed was added to address the treatment of "trophy residence[s]" that were part of the trust fund.

(b) A new cl 4.3(v) of the 2016 Trust Deed was added, which provided for a stipulated distribution in two equal shares to the trustee of the Moss Trust Amir ("Amir Trust") and the trustee of the Moss Trust Nat ("Nat Trust") (these being trusts set up for the benefit of the respective Children[15]) after the Wife's death and whether or not the Settlor was then living.

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15 FM at para 48.

These clauses appeared in similar terms in the 2024 Trust Deed (defined at [36] below) (see [37] below).

27 In respect of the appointment of Committee members, cl 9.2 of the 2016 Trust Deed was amended to read:

> 9.2 Committee Membership. The Committee shall be comprised of no more than five and no fewer than one members. The Committee acting by majority shall have the power, by instrument in writing delivered to the Trustee, to appoint a replacement or additional Protector. Each person appointed under this Clause shall become a committee member Protector only after delivering to the Trustee a declaration in writing signifying his or her willingness to act as a Protector. A Protector can retire from the office of Protector by delivery of written notice to the Trustee. The resignation shall become effective on the date specified in the notice but no sooner than 30 days from the date the notice is delivered, unless the person entitled to receive the notice consents to any earlier effective date.

28 Clause 4 of the 2019 Modification stated: "[JBTC] hereby acknowledges the modifications set forth herein".

The 2019 Appointment

29 On 13 November 2019, the Settlor, JBTC, Mr Jaeggi and Mr Benezra executed a "Deed of Appointment and Retirement of Protectors" ("2019 Appointment").[16]

30 Recital (A) in the 2019 Appointment stated that the 2019 Appointment was supplemental to the Original Trust Deed, the "Deed of Acceptance of Resignation or Removal, and Appointment of New Trustee" dated 10 November 2016 by which JBTC was appointed as the trustee of the Moss

[16] FM at para 56 and pp 496–519.

Trust, the 2016 Trust Deed, the 2016 Appointment, the 2017 Amendment, the 2019 Declination and the 2019 Modification, all of which were collectively referred to as the "Trust".

31 Recital (C) in the 2019 Appointment referred to "Clause 9.2 of the Trust" and described that provision in the terms of the amended cl 9.2 of the 2016 Trust Deed as set out in the 2019 Modification (see [27] above).

32 Recital (F) in the 2019 Appointment stated that "[p]ursuant to Clause 9.2", the Settlor wished to appoint Mr Jaeggi and Mr Benezra as Committee members and that they wished to accept the appointment.

33 Clause 3 of the 2019 Appointment stated the Settlor's appointment of Mr Jaeggi and Mr Benezra in the following terms:

> In exercise of the power vested in the Settlor by Clause 9.2 of the Trust (and of every (if any) other power enabling the Settlor), the Settlor hereby appoints Linus [*ie*, Mr Jaeggi] and Maurice [*ie*, Mr Benezra] to be members of the Committee and Linus and Maurice hereby accept such appointment.

The 2019 Amendment

34 On 13 November 2019, the Settlor, JBTC, Mr Jaeggi and Mr Benezra executed a "Second Deed of Amendment to The Moss Trust (Singapore)" ("2019 Amendment").[17]

[17] FM at para 60 and pp 521–548.

The 2020 Trust Deed

35 On 22 January 2020, JBTC, Mr Jaeggi and Mr Benezra executed a "Deed of Amendment and Restatement" ("2020 Trust Deed"),[18] which consolidated all the amendments effected by the 2017 Amendment, 2019 Modification and 2019 Amendment.[19]

The 2024 Trust Deed

36 On 5 March 2024, JBTC, Mr Jaeggi and Mr Benezra executed a "Second Deed of Amendment and Restatement",[20] which amended the Moss Trust by restating it in its entirety as set out in the Appendix thereto ("2024 Appendix"). On 15 August 2024, JBTC, Mr Jaeggi and Mr Benezra executed a "Deed of Amendment to Second Deed of Amendment and Restatement" ("2024 Amendment"),[21] which amended a term of the Moss Trust relating to tax provisions. I will refer to the terms in the 2024 Appendix as amended by the 2024 Amendment as comprising the "2024 Trust Deed".[22]

37 Clause 4.3 of the 2024 Trust Deed provided for distributions to the Wife after the Settlor's death (cll 4.3(i) to 4.3(iv)) and for distributions upon the Wife's death (cll 4.3(iii) and 4.3(v)):

> 4.3 Distributions to Settlor's Wife After the Death of the Settlor.
>
> (i) After the Settlor's death, the Wife shall remain the sole beneficiary during her lifetime, and the

18 FM at para 66 and pp 550–617.

19 FM at para 66.

20 FM at para 70 and pp 628–693.

21 FM at para 74 and pp 695–712.

22 In line with the definition used in the SOC at para 8.

Trustee shall continue to set aside the entire Trust Fund for the Wife's benefit during her lifetime and shall manage, invest, and reinvest the same, collect the income therefrom, and until the death of the Wife continue to pay or apply so much of the net income of or the capital thereof:

(A) for the comfort, support, and maintenance of the Wife in her accustomed way of living; and

(B) for the Wife's legal, health, medical, dental, nursing, hospital, and vacation expenses

with no duty to take into account the other resources of the Wife. The Trustee shall distribute to Wife so as to care for Wife in the most competent manner, as the Trustee shall determine in the Trustee's sole and absolute discretion.

(ii) In addition to the above, each calendar year the Trustee shall, on receipt of a written direction from the Wife, pay or apply for her benefit up to the maximum of either:

(A) US$5,000; or

(B) 5% of the value of the Trust Fund valued at the end of the preceding calendar year,

whichever is greater.

(iii) To the extent allowable under applicable United States tax laws, when any trophy residence shall form, directly or indirectly, a part of the Trust Fund, and where under any real estate market conditions, it may become imprudent to sell such property (for instance, in a real estate market cycle downturn), or it is uneconomically efficient to rent said property (for instance, the net rental income would be below the cost of the upkeep, maintenance, or refurbishment of such property), then the Trustee shall allow the Wife to reside in such a property, provided that Wife shall pay a rent per day of occupancy equivalent to the average cost of a first class hotel room located in the same jurisdiction as such trophy residence. If Wife does not wish to pay rent, then

Wife shall agree to vacate under terms directed by the Trustee. The Trustee is directed to pay all the expenses to operate and maintain such long-term investment. *At the Wife's death,* ***whether or not Settlor is then living****, any such residence shall be administered or distributed in accordance with Clause 4.3(v) below*, or in accordance with Clause 4.4 below, if there are no beneficiaries then living.

(iv) The Trustee is authorised to distribute any Trust principal or corpus as well as undistributed income of the Trust to Wife during her lifetime and such distribution (in whole or in part, including the entirety of the Trust estate) can be paid directly to Wife or in further trusts which shall be a Qualifying Trust as defined herein and of which Wife is the sole beneficiary during her lifetime, or may be divided into two equal shares with one such share distributed to the Trustee of The Moss Trust Amir, a Delaware Irrevocable Dynasty Trust to be added to that trust estate, and the other such share distributed to the Trustee of The Moss Trust Nat, a Delaware Irrevocable Dynasty Trust to be added to that trust estate, and shall be governed thereafter by the terms of those trusts.

(v) *Upon the death of the Settlor's Wife,* ***whether or not the Settlor is then living***, but a Child or any issue of a Child of the Settlor shall survive the Wife, *then any and all of the balance of the Trust Fund remaining and directed under this Clause 4.3, if any, shall be divided into two equal shares, and one such share shall be distributed to the Trustee of The Moss Trust Amir, a Delaware Irrevocable Dynasty Trust to be added to that trust, and the other such share shall be distributed to the Trustee of The Moss Trust Nat, a Delaware Irrevocable Dynasty Trust to be added to that trust*, and shall be governed thereafter by the terms of those trusts, or if there be no beneficiaries then living, then any and all of the balance of the trust assets remaining shall be distributed as directed in accordance with Clause 4.4.

[emphasis added in italics and bold italics]

38 The "Trust Fund" comprised (a) the property listed in the First Schedule (*viz*, US$1,000) and Fifth Schedule (*viz*, the shares set out at [40] below) to the 2024 Trust Deed; (b) all further or additional property added by way of further trust, testamentary bequest, accumulation of income, capital accretion or otherwise; and (c) all property from time to time representing the same respectively (cl 1.16).

39 Clause 3.2(ii) of the 2024 Trust Deed contained a provision authorising the protectors to "resolve" in their "sole and absolute discretion" "any and all conflicts and ambiguities that might arise in the administration and interpretation" of the terms of the Moss Trust ("Protector Resolution Clause"):

> … Further, in the event of any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions within the Trust and any and all amendments and modifications thereto, and in order to carry out the Settlor's purpose herein, the Protector shall have the absolute authorisation to resolve such conflicts and ambiguities in his or her sole and absolute discretion.

Assets of the Moss Trust

40 At the time of the Wife's death, the assets of the Moss Trust comprised US$1,000 in cash and shares in the following companies incorporated in the British Virgin Islands or the Cayman Islands ("Investment Companies"):[23]

(a) eight shares of Isomer Investment Corporation Limited ("Isomer");

(b) 10,000 shares of Albert Property Holdings Limited ("Albert Property");

[23] FM at para 11; SOC at para 56.

(c) 592,246 shares of Chameleon Limited ("Chameleon");

(d) 50,000 shares of Novacore Limited ("Novacore");

(e) one share of Belsadon Developments Limited ("Belsadon"); and

(f) one share of Mosmanso Investment Ltd ("Mosmanso").

41 In turn, the Investment Companies held the following assets:[24]

(a) Isomer held, *inter alia*, cash and other financial assets.

(b) Albert Property, Chameleon and Novacore ("UK Property Investment Companies") held, *inter alia*, real estate properties in the UK.[25]

(c) Belsadon and Mosmanso ("US Property Investment Companies") held, *inter alia*, shares in US-incorporated companies holding real estate properties in the US.

Background to the dispute

42 I briefly sketch the origins of the parties' dispute. The claimants and JBTC have levied numerous allegations against each other which, at this stage of the proceedings, are unnecessary to elaborate on and unsuitable to delve into.

43 After the Wife's death on 10 November 2024, the parties engaged in discussions to transfer all the trust assets held by the Moss Trust to Fiduciary

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[24] FM at para 12.

[25] *Cf*, Defence at para 3, DEF (57).

Trust International of Delaware ("FTID"), which is the trustee of the Amir Trust and the Nat Trust (together, "Delaware Trusts").[26]

44 In a letter dated 22 November 2024 from JBTC addressed to Mr Jaeggi and Mr Benezra "as the Protector Committee of the Moss Trust (Singapore)" and copied to the Settlor and the Children, JBTC informed the claimants of its view that, because of certain transactions which JBTC undertook and/or caused to be undertaken in 2020 ("2020 transactions"), the transfer of the shares of the UK Property Investment Companies to FTID would incur UK tax liability of £4,483,138.44 for the Moss Trust.[27] JBTC added that it would take advice on "whether there may be alternative ways to distribute the trust's assets to the Delaware Trusts other than a transfer of the shares in Albert Property, Chameleon and Novacore, for example a transfer of the UK properties".[28]

45 According to the Settlor, JBTC's letter of 22 November 2024 gave him the impression that JBTC knew that it had made a serious mistake in effecting the 2020 transactions and was trying to find ways to avoid the tax consequences of that mistake.[29] On its part, JBTC averred that the 2020 transactions had been entered into on the directions of the Settlor, Mr Jaeggi and Mr Benezra.[30]

46 In the event, by an e-mail sent to, *inter alia*, the Settlor, Mr Amir Mossanen, Mr Jaeggi and Mr Benezra on 17 December 2024, JBTC's external legal counsel, one Ms Beatrice Puoti ("Ms Puoti") of Stephenson

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26 SOC at para 59; Defence at para 3, DEF (59).

27 FM at para 81 and pp 714–719.

28 FM at p 719: Letter from JBTC dated 22 November 2024 at para 31.4.3.

29 FM at para 83.

30 Defence at para 3, DEF (60A)(5).

Harwood LLP, suggested that the real estate properties held by the UK Property Investment Companies be transferred *in specie* to the Delaware Trusts.[31]

47 On 6 January 2025, one Mr Martyn Carré ("Mr Carré"), holding the post of "Director" at JBTC, sent an e-mail to Mr Jaeggi and Mr Benezra (with, *inter alia*, the Settlor, Mr Amir Mossanen and Ms Puoti in copy), stating, *inter alia*:[32]

> As a summary the position is as follows:
>
> 1. As Mrs Moss has sadly passed away, *under the terms of the trust the only action that can happen now is the transfer of the assets to the Trustees of the Delaware Trust – the Moss Trust will therefore terminate.*
>
> …
>
> 3. The Trustee are ready to transfer the assets to the Delaware trustees. We are ready to proceed, and we can do so in a totally tax efficient manner, immediately;
> 4. The trustee can transfer the properties, with no tax consequences. *If the family prefers, the Trustee could consider transferring the shares*, entailing a large [tax] liability in the UK. The trustee could alternatively apply to the court to seek to set aside the [2020] transactions as we have explained. Therefore, the Trustee is ready to do this in whatever manner is possible within the constraints of the legal position;
>
> [emphasis added]

48 On 9 January 2025, Mr Carré followed up with another e-mail to Mr Jaeggi and Mr Benezra (with, *inter alia*, the Settlor, Mr Amir Mossanen and Ms Puoti in copy), stating, *inter alia*:[33]

> The terms of the Trust, at *clause 4.3 (v) state that the Trustee of the Moss Trust, upon the death of Mrs Moss, need to transfer*

31 FM at para 86 and pp 734–746.

32 1st affidavit of Linus Georg Ernst Jaeggi filed on behalf of the claimants on 25 March 2026 ("LGEJ") at pp 178–179.

33 LGEJ at pp 176–177.

> *equally to the two Delaware Trusts all of the Trust assets*. The Moss Trust Trustee is ready to do so, immediately, with no UK tax issues, in the manner we set out in the proposal shared. As explained, there is a real question as to whether anything else could be done under the terms of the trust in any event or would be within any powers of any power holder to be done, and as explained this would be clarified by the court, if necessary.
>
> You have already expressed, together with Mrs Moss, in writing in October your wish that the Moss Trustee should transfer the assets to the Delaware Trustees in accordance with the terms of the trust-I attach the documents for easy reference. *This is what we wish to do, albeit under clause 4.3 (V) as Mrs Moss passed away, so we fulfil the terms of the Trust.*
>
> [emphasis added]

49 By a letter dated 28 January 2025 from JBTC to FTID, JBTC then asserted that only “trophy residences” referred to in cl 4.3(iii) of the 2024 Trust Deed were to be transferred (*ie*, *in specie*) to FTID under cl 4.3(v) of the 2024 Trust Deed after the Wife’s death but during the Settlor’s lifetime.[34]

50 On 28 January 2025, having seen JBTC’s letter to FTID of the same date, Mr Jaeggi sent an e-mail to JBTC objecting to JBTC’s proposal to transfer the real estate properties *in specie* to FTID. Mr Jaeggi stated that his understanding was that cl 4.3(v) of the 2024 Trust Deed provided for “all funds of the trust, which include[d] all companies” to be “transferred in total”, and that there was no provision for “the properties … to be separated from the companies”.[35]

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34 FM at para 89 and pp 763–764.

35 FM at pp 748–749.

51 JBTC then obtained a legal opinion from an English barrister dated 8 May 2025 ("Opinion").[36] The Opinion was rendered according to English law.[37] Among other things, the Opinion conveyed, in gist, that:[38]

(a) It was uncertain whether anyone had the power to amend the terms of the Moss Trust after the 2017 Amendment, with the result that it was uncertain whether the present terms of the Moss Trust were those set out in the 2024 Trust Deed or in the 2016 Trust Deed as amended by the 2017 Amendment.

(b) It was uncertain whether cl 4.3(v) of the 2024 Trust Deed required JBTC to transfer the real estate properties held by the UK Property Investment Companies and the US Property Investment Companies (together, "Property Investment Companies") *in specie* to the trustee of the Delaware Trusts (as opposed to transferring the *shares* in the Property Investment Companies to the trustee of the Delaware Trusts).

(c) It was uncertain whether the Protector Resolution Clause in cl 3.2(ii) of the 2024 Trust Deed was valid and/or enforceable.

52 According to the Settlor, he was surprised that the Opinion focused on the validity of the trust deeds of the Moss Trust as "[a]t that point in time, there was simply nothing to suggest that there was anything impinging on the validity of the Trust Deeds, the terms of which had been acted on and abided by all

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36 FM at para 93 and pp 780–800.

37 FM at p 782; see also SOC at para 69 and Defence at para 3, DEF (69)(3).

38 FM at para 96.

parties concerned”.[39] He believed that JBTC had procured the Opinion to “cast doubt on the operative terms of the trust in order to avoid having to transfer the shares of the [Property] Investment Companies to the [Delaware Trusts]”, and that JBTC’s “motivation” for doing so was “probably to mitigate the mistake [JBTC] had earlier made” in respect of the 2020 transactions, which would result in the Moss Trust having to pay significant tax liabilities if the shares of the UK Property Investment Companies were transferred to the Delaware Trusts (see [44] above).[40]

53 On 28 August 2025, Mr Jaeggi sent a letter to JBTC (“28 Aug 2025 Letter”),[41] in which he “formally state[d]” on behalf of Mr Benezra and himself that:[42]

> [Mr Benezra] and I stick strictly to the opinion, that there is no doubt about the validity of the current trust terms. There has always been an unquestioned consent between all involved parties about the very simple purpose of the Trust and the intention of the Settlor was always known to all involved parties. And this intention can be confirmed by the Settlor even today anytime! The only purpose of the Trust is and always was very simple: To ensure that in case that [the Settlor] would pass away, [the Wife] could continue her life in the same way as before and after her death to distribute all assets in equal shares to the two US trusts of the two children. <u>Consequently, the intention of all involved parties was always to bring exactly this to paper in the Trust Deed and all amendments. Nothing else!</u> It may be true that the wording of the Trust Deed could have been chosen better (Something that the Trustee as a professional Trust company should have had an eye on). But this does not change anything. All interpretations of the wording of the Trust Deed must always be made on the

39 FM at para 94.

40 FM at para 95.

41 LGEJ at para 43(b) and pp 249–254.

42 LGEJ at pp 252–253.

> background of this simple purpose of the whole trust. [emphasis in original]

Mr Jaeggi further explained his disagreement with the arguments in the Opinion that cl 4.3(v) of the 2024 Trust Deed referred only to the distribution of "trophy properties" and not all funds. He concluded with an "appeal" to JBTC to "solve this issue in an amicable, cooperative and constructive way".[43]

54 On or around 11 September 2025, JBTC provided a document titled "Moss Trust – Note of advice on Moss Trust position", dated 11 September 2025 and authored by Ms Puoti ("Note") to the claimants.[44] It was opined in the Note that:[45]

(a) It was "highly likely" that the 2019 Modification and all subsequent amendments to the terms of the Moss Trust were invalid.

(b) The "most likely position" was that the prevailing terms of the Moss Trust were those set out in the 2016 Trust Deed as amended by the 2017 Amendment.

(c) It was "not clear whether Mr Jaeggi and Mr Benezra were validly appointed as [Committee] members".

(d) The Settlor was to complete his tax returns on the basis that the 2024 Trust Deed was invalid, which would result in him facing a tax liability of US$13m that had to be paid by 15 October 2025.

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43 LGEJ at pp 253–254.

44 FM at para 109 and pp 837–860.

45 FM at para 110 and pp 839 and 842.

55 The claimants disagreed with the contents of the Note.[46]

Commencement of OC 848: pleaded claims and defences

56 On 15 October 2025, the claimants commenced OC 848 against JBTC.

57 The claimants claimed that JBTC had committed breaches of trust and breaches of duties "amount[ing] to dishonesty, bad faith, wilful and individual misconduct / wrongdoing, and/or gross negligence" by allegedly: (a) attempting to invalidate the 2024 Trust Deed; (b) refusing to account to the Committee; (c) refusing to abide by the Committee's directions set out in the 28 Aug 2025 Letter; (d) continuing to disavow the 2024 Trust Deed; (e) unlawfully interfering with the Settlor's tax returns; (f) refusing to meet the claimants' demands to, *inter alia*, comply with the terms of the 2024 Trust Deed; (g) commencing, without authorisation, legal proceedings against, *inter alia*, the Singapore law firm which had advised JBTC on the 2019 Modification before JBTC's execution of the same; (h) continuing to retain and seek advice from Ms Puoti; and (i) mismanaging the Moss Trust in connection with a potential sale of a UK real estate property held by Albert Property.[47]

58 In advancing these claims, the claimants pleaded, *inter alia*, that:

(a) The 2017 Amendment contained an implied term that if the Wife declined to accept the power of amendment conferred by the 2017 Amendment, then the Settlor, the Wife and JBTC may, by mutual consent, assign the power of amendment to another party who was not

46 FM at para 112.

47 SOC at paras 63–96V.

the Settlor or the Wife (including JBTC itself) ("Claimants' Implied Term").[48] The Settlor, the Wife and JBTC were entitled to enter into and effect the 2019 Modification pursuant to the Claimants' Implied Term.[49] The 2024 Trust Deed represented the latest version of the terms of the Moss Trust.[50]

(b) Further and/or alternatively, the 2017 Amendment should be rectified to include the Claimants' Implied Term, with the result that the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed) were valid.[51]

(c) Further and/or alternatively, JBTC was estopped by convention from denying the validity of the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed).[52]

(d) Further and/or alternatively, the court should exercise its inherent jurisdiction to sanction the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed).[53]

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48 SOC at para 22.

49 SOC at para 77.

50 SOC at para 52.

51 SOC at para 79.

52 SOC at para 78.

53 SOC at para 80.

(e) Clause 4.3(v) of the 2024 Trust Deed required JBTC to transfer the shares of the UK Property Investment Companies (and not the underlying real estate properties *in specie*) to the Delaware Trusts.[54]

(f) The Committee's directions set out in the 28 Aug 2025 Letter were made "in the exercise of their power and/or discretion under [the Protector Resolution Clause]",[55] and JBTC's refusal to comply with those directions was a breach of trust and a breach of its duties.[56]

59 The reliefs sought by the claimants included:

(a) a declaration that the 2024 Trust Deed was valid, effective and enforceable;[57]

(b) a declaration that Mr Jaeggi and Mr Benezra were validly appointed as the protectors of the Moss Trust;[58]

(c) if it was found that the Claimants' Implied Term did not exist and that JBTC was not estopped from denying the validity of the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed), an order rectifying the 2017 Amendment to include the Claimants' Implied Term;[59]

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54 SOC at para 64A.

55 SOC at para 71.

56 SOC at para 73.

57 SOC at p 48, prayer (1).

58 SOC at p 49, prayer (1A).

59 SOC at p 49, prayer (2).

(d) if it was found that the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed) were invalid, an order sanctioning the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed);[60]

(e) a declaration that JBTC had and continued to have the power of amendment as provided for in the 2019 Modification, the 2019 Amendment, the 2020 Trust Deed and the 2024 Trust Deed;[61]

(f) a declaration that cl 3.2(ii) of the 2024 Trust Deed (containing the Protector Resolution Clause) was valid and enforceable;[62]

(g) an order that JBTC specifically perform its obligation under cl 3.2(ii) of the 2024 Trust Deed to comply with the protectors' decision(s) in relation to any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions of the Moss Trust and any and all amendments and modifications thereto;[63] and

(h) an order that JBTC specifically perform its obligation to distribute the assets of the Moss Trust pursuant to cl 4.3(v) of the 2024 Trust Deed, *viz*, to divide the balance of the Trust Fund into two equal shares, with one share distributed to the Amir Trust and one share distributed to the Nat Trust.[64]

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60 SOC at p 49, prayer (3).

61 SOC at p 49, prayer (5).

62 SOC at p 49, prayer (6).

63 SOC at p 49, prayer (7).

64 SOC at p 50, prayer (8).

60 In its Defence, JBTC denied any breach of trust or duty.[65] JBTC pleaded, *inter alia*, that:

(a) The claimants' averments set out at [58(a)]–[58(d)] above were "not admitted".[66]

(b) That said, JBTC had not denied the validity of the 2019 Modification and all subsequent amendments to the terms of the Moss Trust[67] and had not taken a position on the validity of the 2024 Trust Deed.[68]

(c) JBTC had not refused to administer the Moss Trust pursuant to the terms of the 2024 Trust Deed *per se*, but instead "require[d] clarification" as to the terms of the Moss Trust.[69]

(d) JBTC had been advised to apply to court to determine "the proper meaning and effect of clause 4.3(v) of the 2024 Trust Deed".[70] JBTC was "ready, able and willing" to distribute the assets of the Moss Trust if required to do so by its terms.[71]

(e) JBTC "ma[de] no admission" as to the claimants' entitlement to the reliefs set out at [59] above, and was "ready, able and willing" to

65 Defence at para 3, DEF (63)–(96V).

66 Defence at para 3, DEF (22), (52), (77)(2), (78), (79) and (80).

67 Defence at para 3, DEF (78).

68 Defence at para 3, DEF (63)(2).

69 Defence at para 3, DEF (63)(1) and (72)(3).

70 Defence at para 3, DEF (64A)(4).

71 Defence at para 3, DEF (63)(1).

comply with the court's determination on the claimants' prayers for those reliefs.[72]

The application in SUM 932

61 On 25 March 2026, the claimants filed SUM 932 (amended on 7 September 2026) for summary determination of the following nine issues pursuant to O 9 r 19 and/or O 9 r 25(3) of the ROC 2021:[73]

(a) Issue 1: Did the 2017 Amendment contain the Claimants' Implied Term?

(b) Issue 2: If the 2017 Amendment did not contain the Claimants' Implied Term, should the 2017 Amendment be rectified to include a term with the content of the Claimants' Implied Term?

(c) Issue 3: Did the Settlor, the Wife and JBTC validly agree by way of the 2019 Modification to assign the power of amendment to JBTC acting with the prior or simultaneous consent of the protector(s) of the Moss Trust?

(d) Issue 4: Is JBTC estopped by convention from denying the validity of the 2019 Modification and all subsequent amendments to the terms of the Moss Trust, including the 2024 Trust Deed?

(e) Issue 5: Should the court exercise its alleged inherent jurisdiction to sanction the 2019 Modification and all subsequent

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72 Defence at para 3, DEFENCE (PRAYERS) (2).

73 HC/SUM 932/2026 (Amendment No 1) filed on 7 September 2026, prayer 1 and Annex A.

amendments to the terms of the Moss Trust, including the 2024 Trust Deed?

(f) Issue 6: Are the current terms of the Moss Trust set out in the 2024 Trust Deed?

(g) Issue 7: Was JBTC obliged, following the death of the Wife, to distribute the assets of the Moss Trust, being shares in the Investment Companies, in equal shares to the trustee of the Amir Trust and the trustee of the Nat Trust pursuant to cl 4.3(v) of the 2024 Trust Deed?

(h) Issue 8: Were Mr Jaeggi and Mr Benezra validly appointed as members of the Committee pursuant to the 2019 Appointment?

(i) Issue 9: Is the Protector Resolution Clause valid and enforceable for the purpose of Mr Jaeggi and Mr Benezra resolving any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions within the Moss Trust concerning the distribution of trust assets?

62 By way of overview, the parties were in agreement that Issues 1 to 8 should be summarily determined by the court.[74] JBTC's position on whether Issue 9 should be summarily determined appeared somewhat more equivocal (as I explain at [172]–[173] below). Notwithstanding that, and in any event, JBTC repeatedly emphasised that it maintained a neutral stance on the merits of

74 Claimants' Written Submissions dated 11 May 2026 ("CWS 11 May 2026") at paras 50 and 60; LLB at para 3; DWS 11 May 2026 at paras 3 and 41.

the issues,[75] and was "ready, willing and able" to abide by the court's determination of all the issues.[76]

The law in respect of O 9 r 19(1) and O 9 r 25(3) of the ROC 2021

Order 9 r 19(1)

63 Order 9 r 19(1) of the ROC 2021 provides that:

> Upon a party's application or on the Court's own accord, the Court may decide any question of law or the construction of any document arising in any action without a trial or hearing on the facts, whether or not such decision will fully determine the action.

64 Order 9 r 19 of the ROC 2021 replaced O 14 r 12 of the Rules of Court (2014 Rev Ed) ("ROC 2014"), and case law on O 14 r 12 of the ROC 2014 continues to guide the application of O 9 r 19 of the ROC 2021 (*Singapore Court Practice* (Jeffrey Pinsler SC, gen ed) (LexisNexis (online version), 2026) at paras 9.19.1 and 9.19.2). Order 14 r 12(1) of the ROC 2014 provided that:

> The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter where it appears to the Court that —
>
> (*a*) such question is suitable for determination without a full trial of the action; and
>
> (*b*) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.

65 Four key principles apply to O 9 r 19(1) of the ROC 2021.

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75 *Eg*, DWS 11 May 2026 at para 7.

76 LLB at para 3; DWS 11 May 2026 at para 129; Defendant's Written Submissions dated 5 August 2026 ("DWS 5 August 2026") at para 37.

66 First, the question for determination must involve a question of law or construction of any document. This is expressly stated in the provision.

67 Second, the question must be suitable for determination without a trial. This requirement (which was expressly stated in O 14 r 12(1) of the ROC 2014) is implicit in O 9 r 19(1) of the ROC 2021: by providing that the court may decide the question "without a trial or hearing on the facts", the anterior requirement is that the question must be suitable for determination in such manner.

68 It follows that a question that raises disputed factual issues is unsuitable for summary determination (*TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch)* [2015] 2 SLR 540 ("*TMT*") at [34]). That said, in an application where (a) one party simply makes no admission of the facts pleaded by the other party (such that there is effectively no contest over those facts) and (b) the court is satisfied that the evidence adduced establishes those facts without the need for a trial, I see no reason the court cannot summarily determine the question of law or construction on the basis of those facts.

69 A complex question of law is not itself unsuitable for summary determination, unless it is a novel question of considerable public importance (*TMT* at [33] and [35]).

70 Third, the court retains a residual discretion (as is evident from the phrase "the Court *may* decide" [emphasis added]) to decide whether it is appropriate to proceed with summary determination of the question, even where the terms of O 9 r 19(1) of the ROC 2021 are satisfied. In deciding whether to exercise its discretion to proceed with summary determination, the court's

overriding consideration is whether such summary determination would save time and costs for the parties (*TMT* at [32], citing *ANB v ANF* [2011] 2 SLR 1 at [54] and [61]).

71 Fourth, in contrast to the requirement under O 14 r 12(1)(*b*) of the ROC 2014 that "such determination will fully determine … the entire cause or matter or any claim or issue therein", O 9 r 19(1) of the ROC 2021 expressly provides that the question may be summarily determined "whether or not such decision will fully determine the action". I interpret the latter provision to mean that there is also no requirement for such summary determination to fully determine "any claim or issue" in the action, since that language in O 14 r 12(1)(*b*) of the ROC 2014 was not retained. That said, if an applicant can show that summary determination of the question will fully determine a claim or an issue (even if not the action), that will very likely go a long way towards establishing savings of time and costs. Even where summary determination of the question will not fully determine a claim or an issue, however, an applicant may still be able to show that taking this course will save time and costs, such as, for example, where it has the effect of narrowing the scope of the parties' dispute or assisting the parties in focusing on the true issues in play (see *Aquilo Shipping Inc v SRTT Marine Trading & Services Pte Ltd* [2026] 3 SLR 1559 ("*Aquilo Shipping*") at [39]).

72 For completeness, I add that even where the parties have agreed for a question to be summarily determined, it remains for the court to be satisfied that it is an appropriate case to do so pursuant to O 9 r 19(1) of the ROC 2021.

Order 9 r 25(3)

73 The claimants also purported that their application in SUM 932 was made, "in the alternative", pursuant to O 9 r 25(3) of the ROC 2021.[77]

74 Order 9 r 25(3) of the ROC 2021 should be considered in the context of the preceding O 9 rr 25(1) and 25(2):

> Directions for trial or hearing (O. 9, r. 25)
>
> 25.—(1) Subject to these Rules, at the appropriate stage, the Court must give directions for the case to proceed to trial or hearing.
>
> (2) The Court may order a bifurcated hearing in that the issues concerning liability are to be heard by a Judge before the issues concerning the amount of damages or the taking of accounts are heard by a Judge or the Registrar.
>
> (3) The Court may order any issue of fact to be heard and decided separately.
>
> …

75 As is evident from the provisions, O 9 r 25 of the ROC 2021 deals with the court's powers to give directions for the trial or hearing of an action (*Singapore Rules of Court: A Practice Guide* (Chua Lee Ming editor-in-chief & Paul Quan gen ed) (Academy Publishing, 2nd Ed, 2026) at para 09.089). O 9 r 25(2) empowers the court to order separate trials of the issues of liability and damages, while O 9 r 25(3) empowers the court "to decide whether one or more questions of fact may be *tried* before the others" [emphasis added] (*Singapore Civil Procedure 2026* vol I (Cavinder Bull SC gen ed) (Sweet & Maxwell, 2026) at para 9/25/1). In my view, O 9 r 25(3) envisages the determination of the factual issue in question by trial or a hearing where witnesses will be

[77] CWS 11 May 2026 at para 49.

examined. That coheres with the nature of how disputed issues of fact are determined as well as the context of the rest of O 9 r 25.

76 The claimants' purported reliance on O 9 r 25(3) of the ROC 2021 is thus inapposite as what the claimants seek is "summary" determination of the issues listed in SUM 932 "on the basis of affidavit and documentary evidence" that has been placed before the court.[78] The claimants have not asked for any issue of fact to be heard and/or decided. And, apart from a bare invocation of O 9 r 25(3) "in the alternative", the claimants made no submissions on the legal principles applicable to the provision or how it applied in the present case. I will therefore proceed on the basis that whether the issues listed in SUM 932 should be summarily determined falls to be decided solely under O 9 r 19(1).

Issues to be determined

77 Two main questions arise in respect of each of the nine issues listed in SUM 932:

(a) whether the issue should be summarily determined pursuant to O 9 r 19(1) of the ROC 2021; and

(b) if the answer to [(a)] is in the affirmative, how the issue should be decided.

78 I will address the nine issues listed in SUM 932 in the following sequence. I will begin with Issues 1 to 6, as these are directed towards a foundational ascertainment of what the current terms of the Moss Trust are. I will then address Issues 8, 9 and 7 in that order. Issue 8 seeks to determine the

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[78] CWS 11 May 2026 at para 50.

validity of Mr Jaeggi and Mr Benezra's status as protectors of the Moss Trust, and its determination logically precedes the determination of Issue 9 concerning their power as protectors. In turn, because Issue 9 essentially asks if the Protector Resolution Clause validly empowered Mr Jaeggi and Mr Benezra to determine Issue 7, it is logical to consider Issue 9 in precedence to Issue 7.

Issue 1

79 Issue 1 asks: Did the 2017 Amendment contain the Claimants' Implied Term?

The claimants' case

80 The claimants submitted that Issue 1 should be summarily determined. A determination on Issue 1 would go towards resolving whether the 2019 Modification and all subsequent amendments to the terms of the Moss Trust (including the 2024 Trust Deed) were valid,[79] and that in turn would "go a long way towards resolving the parties' disputes in OC 848" which were "almost entirely due to their differences on the applicable trust deed".[80] Issue 1 did not raise any dispute of fact that would bar summary determination.[81]

81 The claimants submitted that the legal principles governing the implication of contractual terms in fact, as set out in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*"), should apply

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[79] CWS 11 May 2026 at paras 51(a), 51(c) and 61–66.

[80] CWS 11 May 2026 at para 56.

[81] CWS 11 May 2026 at paras 59 and 68.

in determining Issue 1.[82] Applying those principles, the Claimants' Implied Term should be implied into the 2017 Amendment.

82 First, it was undisputed that the 2017 Amendment contained a gap in that although it purported to vest the power of amendment in the Wife, it did not provide for what should happen if the Wife declined the power of amendment. The Settlor and JBTC had assumed that the Wife would agree to accept the power of amendment and had not considered this gap when executing the 2017 Amendment.[83]

83 Second, the Claimants' Implied Term was necessary to give the 2017 Amendment business efficacy: the Settlor's uncontradicted evidence was that the power of amendment was critical to safeguard the best interests of the beneficiaries, as such a power would provide the Moss Trust with the necessary flexibility for tax planning purposes.[84]

84 Third, had it been put to the parties at the time the 2017 Amendment was prepared that the Claimants' Implied Term existed, the parties would surely have responded "Oh, of course!":[85] (a) Mr Amir Mossanen's uncontradicted evidence was that, during discussions concerning the 2019 Modification, "everyone" believed that the Settlor, the Wife and JBTC had the power to, by mutual consent, assign the power of amendment to someone else besides the

82 CWS 11 May 2026 at paras 71–72.

83 CWS 11 May 2026 at paras 74–75.

84 CWS 11 May 2026 at para 76.

85 CWS 11 May 2026 at para 77.

Wife;[86] (b) JBTC's Singapore counsel had confirmed in January 2019 that the Settlor, the Wife and JBTC could jointly execute the 2019 Modification by mutual consent to vest the power of amendment in JBTC;[87] and (c) after the Wife refused to accept the power of amendment by way of the 2019 Declination, the parties proceeded to act as if the Claimants' Implied Term existed, in that the Settlor, the Wife and JBTC jointly executed the 2019 Modification to vest the power of amendment in JBTC instead.[88]

85 In oral submissions, the claimants' counsel accepted that instead of the formulation *per* the Claimants' Implied Term, it was "possible" on an "intellectual level" for the implied term to be construed as being that, in the event the Wife declined to accept the power of amendment, *the Settlor* would have the power to amend the terms of the Moss Trust to confer the power of amendment on someone other than the Wife (including JBTC).[89]

JBTC's case

86 JBTC submitted that Issue 1 was capable of summary determination as it did not require the court to adjudicate on competing facts presented by the parties: while the exercise of contractual implication involved ascertaining the objective intention of the parties, JBTC's role in the 2017 Amendment was only to acknowledge the amendments therein and it was thus the Settlor's intention

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86 CWS 11 May 2026 at para 77(b); 1st affidavit of Amir Mansour Mossanen filed on behalf of the claimants on 25 March 2026 at para 18.

87 CWS 11 May 2026 at para 77(c).

88 CWS 11 May 2026 at para 77(d).

89 Certified transcript of the hearing of HC/SUM 932/2026 on 15 July 2026 ("Transcript 15 July 2026") at pp 31:5–36:8.

that was relevant (and which JBTC did not plead to).[90] Resolving Issue 1 would also lead to significant savings of time and costs as it would go towards resolving what the current terms of the Moss Trust were.[91]

87 JBTC submitted that it was well-established under English law that the doctrine of implication of terms (by law or in fact) applied to trust deeds. While this point "[did] not appear to have been resolved [in] Singapore jurisprudence", Singapore law "[did] not prohibit" the application of contractual principles on the implication of terms (set out in *Sembcorp Marine*) in respect of trust deeds and instruments.[92]

88 On whether there was a gap in the 2017 Amendment, if the court accepted that it was always the Settlor's intention that the terms of the Moss Trust could be amended and that he did not consider the possibility that the Wife would decline the power of amendment, it "may be argued" that the 2017 Amendment had an unintended gap in that there was no provision for what would happen if the Wife declined to accept the power of amendment.[93] This "must be considered in the context that many trusts do not contain powers of amendment, and this does not make them unworkable".[94] It "may also be noted" that the 2017 Amendment conferred a power of amendment on the Wife during her lifetime and a subsequent power of amendment on JBTC after the lifetime of the Settlor and the Wife, which meant that there was a potential period in

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90 DWS 11 May 2026 at para 42(1).

91 DWS 11 May 2026 at para 43.

92 DWS 11 May 2026 at paras 45–46 and 50.

93 DWS 11 May 2026 at para 57.

94 DWS 11 May 2026 at para 58.

which the Moss Trust could not be amended (*viz*, for the remainder of the Settlor's lifetime if the Wife died before the Settlor).[95]

89 On whether it was necessary to imply a term in order to give the Moss Trust efficacy, the Moss Trust would be much less flexible without a power of amendment, and it was a matter for the court if this sufficed to render implication of a term necessary.[96]

90 On the specific term to be implied, there was "uncertainty". It could be argued that if the Wife declined the power of amendment, the power of amendment would revert to the Settlor. Or, that if the Wife declined the power of amendment, she would be empowered to nominate someone else to exercise the power of amendment. That said, the test for implication of terms was an objective one for the court to apply, and JBTC would abide by the court's decision in this respect.[97]

Decision

Issue 1 should be summarily determined

91 I accept the parties' submissions that Issue 1 should be summarily determined. First, Issue 1 involves a question of construction of a document (*viz*, the 2017 Amendment). Second, the parties agree that the determination of Issue 1 does not turn on any disputed facts. Third, the determination of Issue 1 bears on whether the power of amendment was validly conferred on JBTC by the 2019 Modification, which in turn bears on whether the current terms of the

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95 DWS 11 May 2026 at para 58.

96 DWS 11 May 2026 at para 59.

97 DWS 11 May 2026 at paras 60–61.

Moss Trust are set out in the 2024 Trust Deed (*ie*, Issue 6). The claimants' claims in OC 848 are premised on the 2024 Trust Deed, the validity of which JBTC does not admit (but also does not deny) (see [57] and [60] above). The ultimate determination of Issue 6 (which the determination of Issue 1 is a first step towards) would give the parties clarity on how to proceed on the claims in OC 848; narrow or resolve some of the disputes between them; and result in savings of time and costs.

The relevant law: implication of terms into a trust deed

92 I turn then to the determination of Issue 1.

93 The implication of contractual terms in fact is the process by which the court fills a gap in a contract to give effect to the parties' presumed intentions (*Sembcorp Marine* at [29]). The court takes a three-step approach to determine whether a term should be implied:

(a) First, the court ascertains how the gap in the contract arose (*Sembcorp Marine* at [101(a)]). Implication will be considered only if the gap is a "true" gap in the sense that the parties did not contemplate the issue at all and so left a gap (*Sembcorp Marine* at [94]–[96] and [101(a)]).

(b) Second, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy (*Sembcorp Marine* at [101(b)]).

(c) Third, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at the time of the contract (*Sembcorp Marine* at [101(c)]).

94 In respect of the second step, the Court of Appeal in *Sembcorp Marine* explained that the business efficacy test is used in the context of commercial transactions to identify gaps in the contract that need to be filled for it to be workable, as it is assumed that commercial parties are rational, and as such, seek business efficacy in their transaction (at [84], [85] and [99]). As Bowen LJ (as he then was) put it in *The Moorcock* (1889) 14 PD 64 ("*The Moorcock*") at 68, "the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have" (cited in *Sembcorp Marine* at [84]). However, depending on the nature of and the parties to the contract, for instance one between family members, there could be other external normative standards which may be more appropriate than business efficacy in distilling the parties' presumed intentions (*Sembcorp Marine* at [85] and [99]).

95 It has been held that the interpretation of a contract and the interpretation of a trust deed share "the same ideological premise" of giving effect to the objectively ascertained intentions of the parties to the instrument; the legal principles governing the interpretation of contracts would thus generally apply to the interpretation of trust deeds (*Eller, Urs v Cheong Kiat Wah* [2020] SGHC 106 at [45], affirmed in *ESR Group Ltd v HSBC Institutional Trust Services (Singapore) Ltd* [2024] 1 SLR 1164 at [53]). On principle, this position would extend to applying the legal principles governing the implication of contractual terms in fact to the implication of terms in fact into a trust deed. There is also, as JBTC pointed out, precedent in English case law for doing so (see, *eg*, *A v C* [2026] AC 846 ("*A v C*") at [3] and [65]–[81]).

96 I will therefore apply the three-step approach in *Sembcorp Marine* (at [101]) in determining Issue 1.

Application of legal principles to the facts

97 At the first step, I accept the Settlor's uncontested evidence that:

(a) When he settled the Moss Trust and for several years thereafter, he firmly believed that the Wife would outlive him.[98]

(b) When he and JBTC executed the 2017 Amendment, he did not (and he believed that JBTC also did not) consult the Wife on whether she would agree to accept the power of amendment. He also did not (and believed that JBTC also did not) consider the possibility that the Wife would refuse to accept the power of amendment. He simply assumed that the Wife would not have any concerns with having the power of amendment.[99]

98 I therefore find that there was a "true" gap in the 2017 Amendment in that, because the Settlor (and, for that matter, JBTC) did not contemplate that the Wife might refuse to accept the power of amendment, there was no provision for what should happen to the power of amendment if the Wife declined to accept it. I disagree with JBTC's point that the existence of the gap "must be considered in the context that many trusts do not contain powers of amendment, and this does not make them unworkable" (see [88] above). This "context" is not relevant to the Moss Trust, which was, from inception, designed to be amendable (see [9] and [14] above). JBTC's point also does not change the fact

98 FM at para 9.

99 FM at para 27.

that neither the Settlor nor JBTC contemplated, when executing the 2017 Amendment, that the Wife might refuse to accept the power of amendment. As for JBTC's other point that the 2017 Amendment did not cater for anyone to have the power of amendment during the period after the Wife's death and while the Settlor was still alive (see [88] above), that might well constitute a *separate* gap in the 2017 Amendment in that the Settlor did not contemplate dying after the Wife, and as such, the 2017 Amendment did not provide for what should happen to the power of amendment in that scenario; it does not contradict the existence of the relevant gap under discussion.

99 At the second step, I accept JBTC's submission that the relevant intention behind the 2017 Amendment is that of the Settlor and not JBTC (see [86] above) as it was the Settlor who had, and was exercising, the power to amend the terms of the Moss Trust to confer the power of amendment on the Wife.

100 I further accept the uncontested evidence of the Settlor that it was always his intention that the terms of the Moss Trust could be amended and that he regarded the power of amendment as critical to the interests of the beneficiaries (*ie*, the Wife and the Children) in providing the Moss Trust with the necessary flexibility for tax planning purposes.[100] This evidence is corroborated by (a) the fact that the Original Trust Deed and the 2016 Trust Deed vested a power of amendment in the Settlor (see [9] and [14] above); and (b) the Settlor's e-mail to JBTC's external counsel (who were preparing the 2017 Amendment) dated 29 March 2017 communicating that the Moss Trust must be amendable "in view

[100] FM at paras 16 and 29.

of the fact that we live in a changing world and [an] inflexible trust may be damaging to the interest of beneficiaries in future”.[101]

101 As alluded to at [94] above, outside the context of commercial transactions, there is scope for the application of other normative standards (apart from the “business” efficacy of a contract) to gauge if it is necessary to imply a term to fill the gap. The present case does not concern a conventional commercial transaction. It concerns a family trust (the Moss Trust) settled by a patriarch (the Settlor) with the overarching objective of providing for his family in the long-term. The specific instrument into which the implication of a term is being considered is the 2017 Amendment, which is a deed by which the Settlor amended the terms of the said family trust. In these circumstances, the “efficacy as [the relevant] parties must have intended that at all events [the transaction] should have” (*Sembcorp Marine* at [84], citing *The Moorcock* at 68) ought *not* to be measured in terms of the *commercial workability* of the transaction, *ie*, 2017 Amendment. Instead, efficacy ought to be measured in terms of the *capacity for fulfilment* of the *purpose* of the transaction, *ie*, what the Settlor objectively sought to achieve by the 2017 Amendment, bearing in mind its nature as a deed to amend a trust intended for the transmission and continued enjoyment of family wealth.

102 In my judgment, based on the evidence at [100] above, the purpose of the 2017 Amendment was to ensure the continued amendability of the Moss Trust so as to preserve flexibility in its structure, accommodate future changes in circumstances and safeguard the beneficiaries’ interests, all in keeping with the Settlor’s overarching objective in establishing the Moss Trust (*viz*, providing

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101 LLB at p 469.

for his family in the long-term). The relevant inquiry is thus whether it is necessary, in order to achieve this purpose, to imply into the 2017 Amendment a provision for the continued existence and exercise of the power of amendment if the Wife refused to accept it. I answer this question in the affirmative. The inherent purpose of the Moss Trust, *viz*, its continued amendability, simply could not be achieved if the Wife refused to accept the power of amendment and there was no fallback provision in that situation. The implication of a term is thus necessary to give effect to the Settlor's *presumed* intention that there should be provision for the continued existence and exercise of the power of amendment if the Wife refused to accept it, so as to achieve the Settlor's purpose for the Moss Trust to always be amendable.

103 Turning to the third step, I find that the specific term to be implied in the 2017 Amendment is as follows: if the Wife refused to accept the power of amendment, the Settlor would have a limited power to amend the terms of the Moss Trust for the sole purpose of vesting the power of amendment in another person ("Implied Term (2017 Amendment)"). I reach this view because it was the Settlor who had the power of amendment from the time the Moss Trust was established up to when he conferred (by the 2017 Amendment) the power of amendment on the Wife instead. At the time the 2017 Amendment was being prepared, if the Wife had made known that she did not wish to accept the power of amendment, the Settlor would have been the one to choose another person in whom to vest the power of amendment. It is only logical that, if the Settlor had thought that the Wife might subsequently refuse to accept the power of amendment, he would likewise have expected to be the one to choose another person in whom to vest the power of amendment in that event. By parity of reasoning, JBTC would have shared this same expectation. In other words, had

the Implied Term (2017 Amendment) been put to the Settlor and JBTC at the time of the 2017 Amendment, they would have responded "Oh, of course!".

104 I disagree with the claimants' submission that the term to be implied should be formulated *per* the Claimants' Implied Term, *ie*, that if the Wife declined to accept the power of amendment, then the Settlor, the Wife and JBTC may, by mutual consent, assign the power of amendment to another party who was not the Settlor or the Wife (see [58(a)] above). First, where the Wife refused to accept the power of amendment, I see no reason the Settlor would have expected her to (still) have any control over whom the power of amendment should be conferred on instead. Second, Mr Amir Mossanen's evidence about what "everyone" purportedly believed in 2019 (see [84(a)] above) is irrelevant because the officious bystander test is applied with reference to how *the Settlor* would have responded to the proposed implied term *at the time of the 2017 Amendment*. Third, the claimants' reliance on what JBTC's Singapore counsel said (see [84(b)] above) is of no assistance because the disclosed communications show only that the counsel made a conclusory statement that there were no issues with the 2019 Modification, without elaboration.[102] Fourth, I disagree with the claimants' characterisation that the 2019 Modification showed that the parties acted as if the Claimants' Implied Term existed (see [84(c)] above). To the contrary, the mechanism by which the power of amendment was vested in JBTC via the 2019 Modification was through *further amendment* of the term in the 2016 Trust Deed conferring the power of amendment (see [24] above). As framed, the Claimants' Implied Term did not confer any power on the Wife or JBTC to amend the relevant term of the Moss Trust to vest the power of amendment in JBTC. Further and in any event, the

102 LLB at pp 588 and 592.

Wife could have had no power to make this specific amendment via the 2019 Modification (even assuming, *arguendo*, that the Claimants' Implied Term purported to confer such power on her) because she had *already* refused to accept "any and all power to amend the terms of the Moss Trust" via the prior 2019 Declination.

105 I therefore conclude that it is an implied term of the 2017 Amendment that if the Wife refused to accept the power of amendment, the Settlor would have a limited power to amend the terms of the Moss Trust for the sole purpose of vesting the power of amendment in another person.

Issue 2

106 Issue 2 asks: If the 2017 Amendment did not contain the Claimants' Implied Term, should the 2017 Amendment be rectified to include a term with the content of the Claimants' Implied Term?

107 The claimants submitted that Issue 2 arose only if the Claimants' Implied Term did not exist.[103] This is correct and remains so where I have found that a differently formulated implied term, *viz*, the Implied Term (2017 Amendment), exists. This is because the implication of terms and the rectification of terms are based on fundamentally incompatible factual foundations. A term may be implied to fill a gap which was *not* contemplated by the parties (see [93(a)] above). In contrast, equitable rectification involves correcting a written instrument where the words used inaccurately or inadequately convey the parties' objectively ascertained intentions (*Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [62]); this presupposes that there was

[103] CWS 11 May 2026 at para 79.

no gap and that the parties *had* contemplated how to address the issue in question but ended up expressing their agreement on the same inaccurately or inadequately in the written instrument (see also *Sembcorp Marine* at [96]). Since I have found that there was a gap in the 2017 Amendment arising from the fact that the Settlor (and JBTC) did not contemplate that the Wife might refuse to accept the power of amendment (see [98] above), it is not possible to proceed on an inconsistent premise that the Settlor *had* applied his mind to how to address this situation at the time of the 2017 Amendment and that the 2017 Amendment should be rectified to reflect such a purported intention. Issue 2 thus does not arise for consideration, and I say no more about it.

Issue 3

108 Issue 3 asks: Did the Settlor, the Wife and JBTC validly agree by way of the 2019 Modification to assign the power of amendment to JBTC acting with the prior or simultaneous consent of the protector(s) of the Moss Trust?

The claimants' case

109 The claimants submitted that Issue 3 should be summarily determined for reasons similar to those set out at [80] above.

110 The claimants submitted that if the answer to either Issue 1 or Issue 2 was in the affirmative, the 2019 Modification would be valid, *ie*, Issue 3 would be answered in the affirmative.[104]

[104] CWS 11 May 2026 at para 63.

JBTC's case

111 JBTC submitted that Issue 3 was suitable for summary determination since Issues 1 and 2 were "likely to be dispositive of [Issue 3]".[105]

112 If Issues 1 and 2 were answered in the negative, Issue 3 should be answered in the negative.[106]

113 If either Issue 1 or Issue 2 was answered in the affirmative, the next question was whether the implied or rectified term (as the case may be) was validly exercised by way of the 2019 Modification. If it was, Issue 3 should also be answered in the affirmative.[107] In this connection, JBTC pointed out that:

(a) The 2019 Modification was not expressed to be made in exercise of the Claimants' Implied Term.[108]

(b) Recital (G) in the 2019 Modification stated that "acting together", the Settlor, the Wife and JBTC "mutually consent[ed]" to the modification of, *inter alia*, the relevant term in the Moss Trust to confer the power of amendment on JBTC.[109]

(c) Clause 4 of the 2019 Modification provided that: "[JBTC] hereby acknowledges the modifications set forth herein".[110]

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105 DWS 11 May 2026 at para 42(3).

106 DWS 11 May 2026 at para 76.

107 DWS 11 May 2026 at para 77.

108 DWS 11 May 2026 at para 79.

109 DWS 11 May 2026 at para 80.

110 DWS 11 May 2026 at para 81; FM at p 361.

114 JBTC stated that it would abide by the court's determination on Issue 3 "in light of the Court's determination of [Issues 1 and 2]".[111]

Decision

Preliminary issue concerning the effectiveness of the 2019 Declination

115 It was common ground between the parties that the 2019 Declination was effective as a refusal by the Wife to accept the power of amendment.[112] I agree.

116 As the learned authors of Lynton Tucker, Nicholas Le Poidevin QC & James Brightwell, *Lewin on Trusts* vol II (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts vol II*") state at para 28-052: "The settlor is free to choose any third party as the donee of a power. *The third party may, of course, decline to act and is free to do so*" [emphasis added]. An effective refusal to accept a power means that the intended donee *never* had the power to begin with. In my view, such a refusal would not be effective if the intended donee had *already* accepted or exercised the power prior to expressing his/her purported refusal to accept the power. In the present case, the Wife declared in the 2019 Declination that she had never exercised or purported to exercise any power to amend the Moss Trust (see [21] above), and this was not disputed by the parties. The Wife was thus entitled to refuse to accept the power of amendment which the 2017 Amendment had sought to confer on her. The parties did not contend that the Wife's refusal had to be expressed in any particular form or was subject to any formalities. The Wife's declaration in the

[111] DWS 11 May 2026 at para 82.

[112] DWS 11 May 2026 at para 23.

2019 Declination that she declined to accept any and all power to amend the terms of the Moss Trust (see [21] above) thus constituted an effective refusal by her of the power of amendment.

The relevant question: whether the Settlor made the 2019 Modification in exercise of his power under the Implied Term (2017 Amendment)

117 I have found that the Settlor had a limited power under the Implied Term (2017 Amendment) to amend the terms of the Moss Trust in this situation for the sole purpose of vesting the power of amendment in another person (see [103] and [105] above). The question which arises for determination is thus whether the Settlor had exercised his power under the Implied Term (2017 Amendment) in making the 2019 Modification such that the 2019 Modification validly vested the power of amendment in JBTC.

118 I am mindful that I have framed the question for determination differently from that posed by Issue 3. The difference is due to my finding (under Issue 1) that the term to be implied in the 2017 Amendment is the Implied Term (2017 Amendment) and not the Claimants' Implied Term. I do not think my approach poses any difficulty. First, O 9 r 19(1) of the ROC 2021 provides that the court may decide any question of law or the construction of any document "on the Court's own accord" (see [63] above), which means that the court may act on its own initiative to make such a ruling even if neither party had requested it (*Aquilo Shipping* at [41]). Second, the essence of the inquiry under both questions is the same. As the claimants themselves put it in their written submissions, what they wanted to know by Issue 3 was: "is the 2019 Modification valid?".[113] The question I have framed entails this inquiry.

[113] CWS 11 May 2026 at para 51(c).

Issue 3 (as reformulated) should be summarily determined

119 While the question is strictly one of mixed fact and law, it involves no contested facts. I therefore find, for reasons similar to those set out at [91] above, that the question should be summarily determined.

The relevant law: imputed exercise of powers doctrine

120 I turn then to the determination of whether the Settlor had exercised the power conferred by the Implied Term (2017 Amendment) in making the 2019 Modification such that the 2019 Modification validly vested the power of amendment in JBTC.

121 A power is the ability to do lawfully something which, absent the power, would be unlawful (*Snell's Equity* (Steven Elliott KC gen ed & John McGhee KC consulting editor) (Sweet & Maxwell, 35th Ed, 2025) ("*Snell's Equity*") at para 10-001). Powers may be public or private, legal or equitable (*Snell's Equity* at para 10-001). Powers in private law include the powers of trustees and others concerned in the administration of a trust (*Snell's Equity* at para 10-001).

122 In the context of powers in private law, to determine whether a particular administrative or distributive or dispositive power has been exercised, the court will look at all the relevant documentation to see whether there was (a) an express or implied reference to the power or to the property subject to the power or (b) an intention to bring about a particular result that could only have been achieved by an exercise of the power (*Halsbury's Laws of England* vol 98 (David Hay ed & Clare Stanley consultant editor) (LexisNexis, 5th Ed, 2024) at para 553). The latter principle is part of what is known as the imputed or implied

exercise of powers doctrine (see, *eg*, *BIC UK Ltd v Burgess* [2019] EWCA Civ 806 ("*BIC*") at [63]), although, as will be seen (at [135(a)] below), I think it is more accurate to describe the doctrine as involving the *imputed* (as opposed to implied) exercise of powers. The imputed exercise of powers doctrine is well-recognised in English law, but does not appear, so far as I am aware, to have been considered in Singapore case law.

123 One of the earlier English cases in which the doctrine was articulated and applied is *Mogridge v Clapp* [1892] 3 Ch 382 ("*Mogridge*"). In that case, a lessor, believing himself to be the absolute owner of certain land, granted a lease of the land purportedly as the absolute owner. The lessor was, however, actually only a tenant for life. Nevertheless, in that capacity, he had the power to grant the lease under the Settled Land Act 1882 (c 38) (UK) ("Act"). The question before the court was whether the lease had been validly granted in the exercise of the lessor's power to do so under the Act, notwithstanding that "the lessor did not know that he was exercising the power given by the Act; he probably did not know that there was such a power, and also did not intend such a power to be exercised, even if he knew it existed" (at 387). Kekewich J (whose decision was affirmed on appeal) held that the lease was valid, stating (at 388):

> … There is an old rule, which I think is applicable to this case, that *where you find an intention to effect a particular object, and there is nothing to exclude the intention to effect it by a power which is available, and there are no means of effecting it except by that power, then you conclude that the intention was to effect it by means of that power, because otherwise it would not be effected at all.* … I think, therefore, that, notwithstanding the existence of the statutory power of leasing was not present to the minds of the parties in this case, and really was absent from their minds, I must hold that there was in law an intention that this lease should operate under this Act – that is to say, there was an intention that it should operate, and that it should operate in the only way it could operate – that is, under the Act. [emphasis added]

124 In *Davis v Richards & Wallington Industries Ltd* [1990] 1 WLR 1511 ("*Davis*"), Scott J (as he then was) applied the doctrine to impute the exercise of a power to remove a trustee. The case concerned a pension scheme for the employees of a group of companies established by an interim trust deed in 1975 ("1975 Deed"). In 1982, a deed prescribing the rules of the pension scheme was executed by the parent company of the group ("Industries") and two trustees of the pension scheme ("1982 Deed"). One Mr Parsons had previously been appointed as the third trustee of the pension scheme but had tendered a signed letter of resignation from his trusteeship in 1981, after which he played no further part as a trustee and was treated by the remaining two trustees as if he had resigned. Mr Parsons was not a party to the 1982 Deed. A question arose as to whether Mr Parsons remained one of the trustees, such that the 1982 Deed was invalid by reason of not having been executed by him. Scott J answered this question in the negative, finding that the 1975 Deed contained an implied term enabling a trustee to resign and that Mr Parsons' letter of resignation in 1981 was effective to relieve him of his trusteeship (at 1528G–1529H).

125 Scott J nevertheless went on to consider whether, assuming Mr Parsons had remained a trustee, the execution by Industries of the 1982 Deed represented Industries' exercise of its power under the 1975 Deed to remove Mr Parsons as a trustee (*Davis* at 1530A–B).

126 In this connection, Scott J first articulated the imputed exercise of powers doctrine as it had been applied in cases dealing with dispositions of property (*Davis* at 1530G–H):

> A disponor (A) purports to make a disposition of property. The disposition cannot be effective unless associated with the exercise of a power vested in A and that A could properly have exercised in order to make the disposition. The disposition

> makes no mention of the power and does not purport to be an exercise of it. The effect of the principle and cases to which I have referred is that *A's intention to make the disposition justifies* ***imputing*** *to him an intention to exercise the power, provided always that an intention not to exercise the power cannot be inferred. If the requisite intent[i]on can be* ***imputed****, the court will treat the disposition as an exercise of the power.* [emphasis added in italics and bold italics]

127 Scott J then reasoned that there was no basis for confining the application of the doctrine to dispositions of property, and opined that it applied to the case at hand (*Davis* at 1530H–1531A):

> … Industries had power to remove Mr. Parsons as a trustee and could properly have exercised that power in order to bring the rules into effect. I can see no difference in principle between the position of A in my example and the position of Industries, nor any reason why the courts should be prepared to apply an ameliorating principle of equity only to dispositions of property. In my judgment, the principle is applicable in the present case, unless an intention on Industries' part not to exercise its power of removal can be inferred.

128 Scott J stressed that, under the doctrine, it was unnecessary to infer a positive intention on the part of the donee of the power to exercise the power; the intention to exercise the power would be imputed to the donee unless it could be inferred that the donee had the positive intention *not* to exercise the power (*Davis* at 1531C–D).

129 On the facts of the case, Industries had intended to bring the rules of the pension scheme into effect by way of the 1982 Deed. If Mr Parsons was still a trustee, he would have had to be removed from that position for the 1982 Deed (to which Mr Parsons was not a party) to be valid. Industries had the power to remove Mr Parsons as a trustee. Applying the doctrine, Scott J found that while the removal of Mr Parsons as a trustee was simply not on anyone's mind, equity would impute to Industries an intention to exercise its power to remove

Mr Parsons as a trustee and treat that power as exercised by Industries' execution of the 1982 Deed, with the effect that the 1982 Deed was valid because Mr Parsons was not a necessary party to it (*Davis* at 1531F).

130 In *LRT Pension Fund Trustee Co Ltd v Hatt* [1993] OPLR 225 ("*LRT Pension Fund*"), a company ("LRT") and three trustees ("original trustees") executed an interim trust deed in 1986 ("interim deed") to establish a pension scheme for LRT's employees. The interim deed contained a clause which reserved to the original trustees and LRT the power of amendment. In 1989, the original trustees, LRT and another company ("LRT Trustee Co") executed a deed of appointment discharging the original trustees and appointing LRT Trustee Co as the trustee under the interim deed. Applying *Davis*, Knox J held that the deed of appointment evinced a clear intention of the original trustees and LRT to substitute LRT Trustee Co for the original trustees as the trustee of the interim deed; the original trustees and LRT could exercise the power of amendment in the interim deed to effect that substitution; it was not shown that the original trustees and LRT had an intention *not* to exercise the said power of amendment; and the execution of the deed of appointment could thus be treated as a direct exercise by the original trustees and LRT of the said power of amendment even though they had no such exercise of the power of amendment in mind (at 260).

131 In *BIC*, the English Court of Appeal recognised that the imputed exercise of powers doctrine, exemplified by cases such as *Davis*, had "a valuable function to perform in cases where trustees intend[ed] to bring about a particular result in the administration of a pension scheme which would depend for its validity on the exercise of a power vested in them" (at [63]). The relevant

enabling power had, however, to be in existence at the time when the relevant transaction took place (at [63]).

132 In *Briggs v Gleeds (Head Office)* [2014] 3 WLR 1469 ("*Briggs*"), Newey J (as he then was) cautioned that the courts must beware of deeming trustees to have exercised a power that they did not in fact have in mind, if the exercise of that power required the examination of materially different considerations from those relevant to the power that the trustees saw themselves as exercising. This was because trustees could be guilty of breach of duty if they failed to take account of material considerations when making a decision. If trustees were treated as having unknowingly exercised a power which they might not have exercised had they had regard to considerations relevant to its exercise, they could be deemed to have failed in their duties in connection with something that they had never actually intended to do in the first place, which could hardly be right (at [95]).

133 Newey J also made a separate point that the doctrine could not normally be invoked unless it allowed the whole of what the decision-maker was trying to do to be achieved (*Briggs* at [96]):

> … the *Davis* and *LRT* approach cannot normally, I think, be used unless it allows the *whole* of what the relevant decision-maker was trying to do to be achieved. Where a decision-maker seeks to do more than one thing in a single document, it would not generally, to my mind, be appropriate to invoke *Davis's* case and the *LRT* case to validate a particular element of the document if the remainder could not be saved. The courts should not readily infer from the fact that a decision-maker had decided on a *set* of changes that he wanted to make each of them individually. In this context, it is significant that the approach adopted in *Davis's* case and the *LRT* case allowed the deeds at issue to have full effect. As [counsel] pointed out, in each case the implied exercise of the relevant power enabled the holders of the power to do precisely what they wanted to do. [emphasis in original]

134 In my respectful view, the crux of Newey J's point is contained in his statement that "the *Davis* and *LRT* approach cannot normally… be used unless it allows the *whole* of what the relevant decision-maker was trying to do to be achieved". It was to *illustrate* this point that Newey J gave the example of how, "[w]here a decision-maker seeks to do more than one thing in a single document", the application of the imputed exercise of powers doctrine *vis-à-vis* that decision-maker should result in the validation of the whole document. This example assumes, however, that the single document does not seek to give effect to *separate* transactions made by *different* decision-makers. Where the document does so, my view is that the principle articulated by Newey J calls for the whole of the *relevant transaction* (and not necessarily the whole of the document) to be capable of being validly effected through the application of the imputed exercise of powers doctrine *vis-à-vis* the *relevant decision-maker*. I will demonstrate, at [139(f)] below and with reference to the 2019 Modification, how the distinction I have drawn applies in practice.

135 From the above authorities, the following principles under the imputed exercise of powers doctrine can be distilled:

(a) Where a party (X) intends to effect a given transaction and the exercise of a power vested in X is necessary for that transaction to be validly effected, X will be taken to have exercised that power even if (i) there was no reference to the power and/or (ii) an actual intention by X to exercise the power cannot be discerned, *unless* a positive intention by X *not* to exercise the power can be inferred (*Mogridge* at 388; *Davis* at 1530G–1531D; *LRT Pension Fund* at 260; *BIC* at [63]; see also *Lewin on Trusts vol II* at para 29-078). It is clear that the doctrine entails *imputing* to X an intention to exercise the power (see also *Davis* at

1530G–H, cited at [126] above), as opposed to finding an implied actual intention on X's part to exercise the power. For this reason, I consider it more apt to refer to the doctrine as the imputed exercise of powers doctrine (as opposed to the implied exercise of powers doctrine).

(b) The relevant enabling power must be in existence at the time the relevant transaction was effected (*BIC* at [63]).

(c) The application of the doctrine must lead to the validation of the whole of the relevant transaction (*Briggs* at [96]; see also [133]–[134] above).

(d) Particularly where fiduciary powers are concerned, the trustee (or other donee) should not be treated as having exercised the power if its exercise required the examination of materially different considerations from those which the trustee/donee did consider, or there was otherwise doubt whether the trustee/donee would have exercised the power after a proper examination of the considerations relevant to its exercise (*Briggs* at [95]; see also *Lewin on Trusts vol II* at para 29-079).

136 At [160]–[165] below, I expand on the application of the principles set out at [135(a)] and [135(d)] above in the situation where (a) the donee has *purported to exercise a particular power*, (b) which it turns out the donee could not have validly exercised, and (c) the court is asked to impute an intention by the donee to exercise a *different* power.

137 In my view, the imputed exercise of powers doctrine likewise applies in Singapore law. I see no reason in principle or of policy it should not do so.

Application of legal principles to the facts

138 For purposes of exposition, I group the amendments made by the 2019 Modification to the terms of the Moss Trust as follows, because the analysis of their respective validity differs accordingly:

(a) an amendment to cl 3.2(ii) of the 2016 Trust Deed to make the Moss Trust amendable by JBTC with the prior or simultaneous written consent of the protector(s), with immediate effect from the date of execution of the 2019 Modification (see [24] above) ("Amendment to Vest Power of Amendment in JBTC"); and

(b) all other amendments to the terms of the Moss Trust set out in cl 3 of the 2019 Modification (see, *eg*, [25]–[27] above) ("Other Amendments").

139 In respect of the Amendment to Vest Power of Amendment in JBTC, I find that:

(a) The Implied Term (2017 Amendment), being a term implied in the 2017 Amendment, was in existence at the time the Amendment to Vest Power of Amendment in JBTC was made.

(b) The Settlor had power under the Implied Term (2017 Amendment) to make the Amendment to Vest Power of Amendment in JBTC, upon the Wife declaring in the 2019 Declination her refusal to accept the power of amendment.

(c) The Amendment to Vest Power of Amendment in JBTC could only have been validly made pursuant to the Settlor's exercise of his power under the Implied Term (2017 Amendment).

(d) While the 2019 Modification did not refer to the Implied Term (2017 Amendment) and the Settlor did not have the Implied Term (2017 Amendment) or its exercise in mind at the time the Amendment to Vest Power of Amendment in JBTC was made, there is also nothing showing that the Settlor had a positive intention *not* to exercise the Implied Term (2017 Amendment). In this regard, the statement in Recital (G) in the 2019 Modification that "acting together", the Settlor, the Wife and JBTC "mutually consent[ed]" to the Amendment to Vest Power of Amendment in JBTC is neither here nor there, as there was nothing wrong with the Wife and JBTC also being agreeable to that amendment (even though their consent was not actually required under the Implied Term (2017 Amendment)). Nor does cl 4 of the 2019 Modification (recording JBTC's acknowledgment of the amendments in the 2019 Modification) suggest that the Settlor positively intended *not* to exercise his power under the Implied Term (2017 Amendment) to make the Amendment to Vest Power of Amendment in JBTC.

(e) In these circumstances, applying the imputed exercise of powers doctrine, the Settlor should be taken as having intended to exercise his power under the Implied Term (2017 Amendment) to make the Amendment to Vest Power of Amendment in JBTC.

(f) The relevant transaction in the 2019 Modification which *the Settlor* was trying to achieve was the Amendment to Vest Power of

Amendment in JBTC. While the same document (*viz*, the 2019 Modification) also contained the Other Amendments, those were sought to be achieved by *JBTC* (after being vested with the power of amendment). Applying the principle in *Briggs* at [96] as I have explained it (at [133]–[134] above), this is a case where the imputed exercise of powers doctrine can be readily applied *vis-à-vis* the Settlor because it would achieve the whole of the relevant transaction, *viz*, the Amendment to Vest Power of Amendment in JBTC. In any event, the Other Amendments were also and subsequently validly made by way of the 2019 Modification, as I explain at [140] below.

(g) The Amendment to Vest Power of Amendment in JBTC set out in the 2019 Modification was thus validly made, and it validly vested the power of amendment of the terms of the Moss Trust in JBTC with immediate effect upon the execution of the 2019 Modification. The relevant question in connection with Issue 3 (as reformulated at [117] above) is answered in the affirmative.

140 For completeness, while not the subject of Issue 3 (before or after reformulation), I also address the validity of the Other Amendments made by way of the 2019 Modification. In my judgment:

(a) The execution of the 2019 Modification vested in JBTC the power of amendment (see [139(g)] above) which JBTC could simultaneously exercise to make the Other Amendments set out in the 2019 Modification.

(b) The Other Amendments could only have been validly made pursuant to JBTC's exercise of its power of amendment with the prior or simultaneous written consent of the protector(s).

(c) It cannot be inferred that JBTC had a positive intention *not* to exercise its power of amendment. I am mindful that Recital (G) in the 2019 Modification also stated that "acting together", the Settlor, the Wife and JBTC "mutually consent[ed]" to certain of the Other Amendments and "further modif[ied]" the 2016 Trust Deed in the manner set forth in the 2019 Modification. However, to the extent this statement reflects the purported exercise by the named persons of a power to make the Other Amendments, (i) it is irrelevant where the Settlor and the Wife are concerned because they simply did not have such a power, and (ii) it in fact suggests that JBTC *did* intend to exercise its power of amendment. As for cl 4 of the 2019 Modification (recording JBTC's acknowledgment of the amendments in the 2019 Modification), I regard this acknowledgment as neutral; it does not indicate that JBTC intended *not* to exercise its power of amendment.

(d) In these circumstances, applying the imputed exercise of powers doctrine, JBTC should be taken as having exercised its power of amendment to make the Other Amendments.

(e) At the time of the 2019 Modification, the sole protector of the Moss Trust was the Settlor. Under the 2016 Appointment, the Settlor had appointed the Wife to serve as the successor Chairman of the Committee only after his death, resignation or incapacity (see [16] above). Since none of those events had materialised, the Settlor remained the (sole) protector. The Settlor only appointed Mr Jaeggi and

Mr Benezra as protectors in his stead by way of the 2019 Appointment, which was executed after the 2019 Modification (see [29]–[33] above). Thus, only the Settlor's (*qua* protector) prior or simultaneous written consent to the Other Amendments was required for JBTC's valid exercise of its power to make the Other Amendments. The Settlor simultaneously gave his written consent to the Other Amendments, as evidenced by Recital (G) in, and his execution of, the 2019 Modification.

(f) The Other Amendments set out in the 2019 Modification were thus validly made.

141 Accordingly, I answer Issue 3 (as reformulated at [117] above) in the affirmative. In addition, though not strictly the subject for my determination in Issue 3, I find that the Other Amendments were validly made by way of the 2019 Modification.

Issues 4 and 5

142 Issue 4 asks: Is JBTC estopped by convention from denying the validity of the 2019 Modification and all subsequent amendments to the terms of the Moss Trust, including the 2024 Trust Deed?

143 Issue 5 asks: Should the court exercise its alleged inherent jurisdiction to sanction the 2019 Modification and all subsequent amendments to the terms of the Moss Trust, including the 2024 Trust Deed?

144 The claimants' case on Issues 4 and 5 was premised on the 2019 Modification being invalid (which the claimants denied).[114] In the light of my decision that the 2019 Modification was valid (see [139(g)] and [140(f)] above), Issues 4 and 5 do not arise for consideration, and I say no more about them.

Issue 6

145 Issue 6 asks: Are the current terms of the Moss Trust set out in the 2024 Trust Deed?

The parties' positions

146 It was common ground between the parties that if Issues 1 and 3 were answered in the affirmative, it followed that the current terms of the Moss Trust were set out in the 2024 Trust Deed.[115]

Decision

147 I agree that the determination of Issue 6 flows logically from my decisions on Issues 1 and 3. That being so, Issue 6 involves a simple question of law that is suitable for summary determination.

148 In the light of my decision (under Issue 1) that the Implied Term (2017 Amendment) existed (see [105] above), and my decision (in connection with Issue 3) that the 2019 Modification was valid (see [139(g)] and [140(f)] above), it follows that all amendments to the terms of the Moss Trust

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114 CWS 11 May 2026 at paras 51(d) and 51(e); Transcript 15 July 2026 at pp 16:23–17:4 and 66:4–8.

115 CWS 11 May 2026 at para 52; DWS 11 May 2026 at para 94.

made after the 2019 Modification pursuant to JBTC's exercise of its power of amendment were valid, such that the current terms of the Moss Trust are set out in the 2024 Trust Deed.

Issue 8

149 Issue 8 asks: Were Mr Jaeggi and Mr Benezra validly appointed as members of the Committee pursuant to the 2019 Appointment?

The claimants' case

150 The claimants submitted that Issue 8 was suitable for summary determination. First, the answer to Issue 8 went directly to the claimants' entitlement to the declaration sought by them in OC 848 that Mr Jaeggi and Mr Benezra were validly appointed as the protectors of the Moss Trust (see [59(b)] above).[116] Second, no dispute of fact was raised by Issue 8 as JBTC simply made no admission as to whether Mr Jaeggi and Mr Benezra were validly appointed.[117]

151 The claimants submitted that the 2019 Modification was valid and/or that JBTC was estopped from denying the validity of the 2019 Modification, with the result that the 2019 Appointment and Mr Jaeggi and Mr Benezra's appointment as protectors were valid.[118]

152 Even if the 2019 Modification was invalid and JBTC was not estopped by convention from denying the validity of the 2019 Modification, "the implied

116 CWS 11 May 2026 at para 113.

117 CWS 11 May 2026 at para 114.

118 CWS 11 May 2026 at para 116.

exercise of powers doctrine applie[d] to validate the [2019 Appointment]".[119] According to the claimants, "[t]he implied exercise of powers doctrine applies to a situation where trustees or other power-holders have purported to exercise a power (the first power) to achieve a particular result; it was not possible to do what they wanted to do using the first power, but it would have been possible to achieve it if they had exercised a different power (the second power)".[120] In the present case, if the 2019 Modification was invalid, the terms of the Moss Trust would be those set out in the 2016 Trust Deed (as amended by the 2017 Amendment), under cl 9.3 of which the Settlor had the power to appoint new protectors (see [15] above).[121] "Applying the implied exercise of powers doctrine", although Recital (F) in and cl 3 of the 2019 Appointment referred to the Settlor exercising his power to appoint protectors under cl 9.2 of the 2016 Trust Deed (as amended by the 2019 Modification) (see [27] above),[122] there was nothing to exclude the Settlor's intention to appoint Mr Jaeggi and Mr Benezra as protectors by exercising his power to do so under cl 9.3 of the 2016 Trust Deed (as amended by the 2017 Amendment).[123]

JBTC's case

153 JBTC submitted that Issue 8 involved a question of construction of the 2019 Appointment and was suitable for summary determination.[124] A summary

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119 CWS 11 May 2026 at para 119.

120 CWS 11 May 2026 at para 120.

121 CWS 11 May 2026 at para 122.

122 Transcript 15 July 2026 at pp 71:20–72:22; FM at pp 498 and 499.

123 CWS 11 May 2026 at para 123.

124 DWS 11 May 2026 at para 42(6).

determination of Issue 8 would also save time and costs as it would determine the claimants' prayer in OC 848 for a declaration in the same terms.[125]

154 JBTC made no admission as to Mr Jaeggi and Mr Benezra's status as protectors; took no position on Issue 8; and averred that it was "ready, able and willing" to abide by the court's decision on whether they were validly appointed.[126] JBTC noted that if the 2019 Modification was valid, Issue 8 should be answered in the affirmative.[127] If the 2019 Modification was invalid, "it may be the case that [the Settlor] nevertheless retained a power of appointment pursuant to the 2016 Trust Deed … and … was therefore able to effect the 2019 Appointment".[128]

Decision

Issue 8 should be summarily determined

155 I accept that Issue 8 should be summarily determined for the reasons given by the parties.

Power of the Settlor to appoint Mr Jaeggi and Mr Benezra as protectors

156 By way of background, the term "protector" is not a term of art, but a title adopted in trust instruments to describe the holder of a group of powers or requirements of consent (*A v C* at [10]; *Lewin on Trusts vol II* at para 28-044). The appointment of protectors is a common feature of offshore trusts,

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125 DWS 11 May 2026 at para 43.

126 Defence at para 3, DEF (5) and DEF (5)(2); DWS 11 May 2026 at para 112.

127 DWS 11 May 2026 at para 114.

128 DWS 11 May 2026 at para 115.

particularly those establishing family settlements where the settlor and beneficiaries are resident elsewhere: as the local trust companies usually appointed as trustees may lack close knowledge or understanding of the settlor's family, the settlor may find it attractive to include provisions for protectors who are geographically and personally closer to the settlor and the beneficiaries (*A v C* at [5]–[6] and [8]). Unlike a trustee, the law has thus far not attached particular responsibilities, duties, liabilities and rights to the role of a protector (*A v C* at [10]). The functions and responsibilities of a given protector depend on what has been provided for in the relevant trust deed (*A v C* at [12]; *Lewin on Trusts vol II* at para 28-047).

157 In the present case, cl 3 of the 2019 Appointment is the operative provision by which Mr Jaeggi and Mr Benezra were appointed as protectors by the Settlor. To recapitulate (see [33] above), the provision stated:

> In exercise of *the power vested in the Settlor by Clause 9.2 of the Trust* (and of *every (if any) other power enabling the Settlor*), the Settlor hereby appoints Linus [*ie*, Mr Jaeggi] and Maurice [*ie*, Mr Benezra] to be members of the Committee and Linus and Maurice hereby accept such appointment. [emphasis added]

The term "Trust" in cl 3 was defined in Recital (A) to refer, in effect, to the 2016 Trust Deed as last amended by the 2019 Modification (see [30] above).

158 Since I have found that the 2019 Modification was valid in its entirety (see [141] above), the relevant inquiry is whether the Settlor had, and had exercised, the power under cl 9.2 of the 2016 Trust Deed (as amended by the 2019 Modification) to appoint Mr Jaeggi and Mr Benezra as protectors, as stated in cl 3 of the 2019 Appointment. I answer this question in the affirmative. Clause 9.2 of the 2016 Trust Deed (as amended by the 2019 Modification) provided, in the material part, that "[t]he Committee acting by majority shall

have the power, by instrument in writing delivered to [JBTC], to appoint a replacement or additional Protector" (see [27] above). As I have explained at [140(e)] above, prior to the 2019 Appointment, the "Committee" comprised the Settlor as the sole protector of the Moss Trust. The Settlor thus had the power under cl 9.2 of the 2016 Trust Deed (as amended by the 2019 Modification) to appoint Mr Jaeggi and Mr Benezra as protectors, and he validly did so through the execution and delivery to JBTC of a written instrument in the form of the 2019 Appointment. Mr Jaeggi and Mr Benezra were thus validly appointed as members of the Committee pursuant to the 2019 Appointment.

159 Even if, *arguendo*, the 2019 Modification was invalid and the applicable terms of the Moss Trust were those set out in the 2016 Trust Deed as last amended by the 2017 Amendment, I would still find that Mr Jaeggi and Mr Benezra were validly appointed as protectors pursuant to the 2019 Appointment. Where writing of some kind is prepared in which a power is exercised, a common form of words used is: "In the exercise of [a specifically cited] power and of all other powers him enabling [the donee] hereby …"; the reference to "all other powers him enabling" is intended to cater for a case in which the power specifically cited does not in fact warrant the exercise undertaken but some other power may be available, whether in the trust instrument or conferred by statute (*Lewin on Trusts vol II* at para 29-075). In the present case, cl 3 of the 2019 Appointment expressly contemplated the exercise of "every … other power enabling the Settlor" to appoint Mr Jaeggi and Mr Benezra as protectors (*ie*, every other power apart from that in the specifically cited cl 9.2 of the 2016 Trust Deed (as amended by the 2019 Modification)). In this regard, the Settlor had power under cl 9.3 of the 2016 Trust Deed (as amended by the 2017 Amendment), as the first Chairman of the Committee, to appoint other Committee members by an instrument in

writing signed by him and delivered to JBTC (see [15] above). The Settlor effectively did so by way of the 2019 Appointment.

Further observations on the imputed exercise of powers doctrine

160 There is thus no necessity for the claimants to resort to the "implied exercise of powers doctrine" (or, more accurately termed, the imputed exercise of powers doctrine). Nevertheless, I express some reservations over the claimants' description of the applicable principles, which, to recapitulate (see [152] above), was in the following terms:[129]

> The implied exercise of powers doctrine applies to a situation where trustees or other power-holders have purported to exercise a power (the first power) to achieve a particular result; it was not possible to do what they wanted to do using the first power, but it would have been possible to achieve it if they had exercised a different power (the second power). …

161 In *Kain v Hutton* [2008] 3 NZLR 589 ("*Kain*"), trustees purported to exercise their power of advancement in making a transaction. Certain beneficiaries objected that the trustees could not validly exercise the power of advancement to make the transaction. The trustees argued that the court should treat the trustees as having exercised their power of appointment instead, which could be validly exercised to make the transaction. The Supreme Court of New Zealand rejected this argument, holding that a power of appointment and a power of advancement were in substance quite different things (at [32]). Blanchard J, who delivered a judgment on behalf of himself and three other members of the court, held that "[w]here trustees have attempted to use a power they did not in fact enjoy, the courts will not come to their rescue by treating their action as if they had been engaged in exercising a quite different power

[129] CWS 11 May 2026 at para 120.

that they did actually possess" (at [35]). Blanchard J found that the trustees had very deliberately embarked upon a purported exercise of their power of advancement; the trustees were well aware of the distinction between advancement and appointment, having chosen on the same day to effect another transaction by exercising their power of appointment, which suggested that they were intent on something different in relation to the transaction in question; and their "election against the use" of the power of appointment under a clause in the trust deed made it "quite impossible to argue that what occurred should be regarded as an appointment made under that clause" (at [37]). Tipping J, the other member of the court who delivered a concurring judgment, added that the trustees could not properly be treated as having exercised "a power of a materially different kind requiring examination of materially different considerations" (at [60]).

162 In *Briggs*, Newey J stated that the reasoning in *Kain* was "not wholly consistent" with that in *Davis* and *LRT Pension Fund*, which he should follow (at [95]). Nevertheless, as I have highlighted at [132] and [135(d)] above, Newey J went on to espouse the principle that trustees should not be deemed to have exercised a power that they did not in fact have in mind, if the exercise of that power required the examination of materially different considerations from those relevant to the power that the trustees saw themselves as exercising (*Briggs* at [95]). This principle is consistent with what Tipping J expressed in *Kain* at [60].

163 In *Grand View Private Trust Company Ltd v Wong* (2020) 96 WIR 209 ("*Grand View (CA)*"), the Court of Appeal of Bermuda referred to Newey J's statement in *Briggs* at [95] that the reasoning in *Kain* was not wholly consistent with that in *Davis* and *LRT Pension Fund*, and expressed doubt that there was

any inconsistency (at [297]). The court reasoned that *Kain* "can be looked upon as a case in which the court found that there was an intention not to exercise the relevant power" (*Grand View (CA)* at [297]). This view is consistent with the findings of Blanchard J in *Kain* at [37] that the trustees "were intent on something different" from making an appointment and therefore could not be found to have exercised their power of appointment. For completeness, the Judicial Committee of the Privy Council made no comment on the aforesaid views of the Bermudian Court of Appeal in the appeal against *Grand View (CA)* (which succeeded as regards the application of the proper purpose rule to the decision of the trustee under challenge) (*Grand View Private Trust Co Ltd v Wong* [2022] UKPC 47).

164 In my view, having regard to these authorities, there are two reasons why the court will be cautious about imputing to a donee the intention to exercise a "second power" (using the claimants' language) in a situation where the donee had *already purported* to exercise a "first power":

(a) First, the court must consider whether the donee's reference to the exercise of the "first power" shows that the donee had intended *not* to exercise the "second power". Where this is so, an intention to exercise the "second power" cannot be imputed to the donee. This is in line with the well-established principle in *Davis* and other cases that the court will not impute to a donee an intention to exercise a power where a positive intention by the donee *not* to exercise the power can be inferred (see [135(a)] above); and consistent with the view taken in *Grand View (CA)* of the approach in *Kain* (see [163] above).

(b) Second, the court must consider whether the relevant considerations which the donee must take into account in exercising the "first power" and the "second power" respectively are materially different. Where this so, an intention to exercise the "second power" should not be imputed to the donee, in line with the principle discussed at [132], [135(d)] and [162] above.

165 For these reasons, I think the claimants' description of the imputed exercise of powers doctrine (see [160] above) is problematic in not accurately reflecting the law and should not be adopted. The applicable principles under the imputed exercise of powers doctrine remain those I have summarised at [135] above.

Issue 9

166 Issue 9 asks: Is the Protector Resolution Clause valid and enforceable for the purpose of Mr Jaeggi and Mr Benezra resolving any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions within the Moss Trust concerning the distribution of trust assets?

167 The Protector Resolution Clause gives the protectors "absolute authorisation" to "resolve" in their "sole and absolute discretion" "any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions within the Trust" (see [39] above). As the validity and enforceability of such a provision in a trust deed does not appear, so far as I am aware, to have been considered hitherto in Singapore case law,[130] I appointed a Young Independent Counsel ("YIC"), Ms Jennifer Lim, to assist the court in addressing Issue 9.

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130 See also Defendant's Written Submissions dated 7 July 2026 ("DWS 7 July 2026") at para 23.

The claimants' case

168 The claimants submitted that Issue 9 was suitable for summary determination. First, the answer to Issue 9 went directly to the claimants' entitlement to the declaration sought by them in OC 848 that the Protector Resolution Clause was valid and enforceable (see [59(f)] above).[131] Second, no dispute of fact was raised by Issue 9 as JBTC simply made no admission as to whether the Protector Resolution Clause was valid.[132]

169 The claimants submitted that the Protector Resolution Clause was valid, effective and enforceable because "in no way [did] it seek to preclude any party from seeking recourse from the Court in case of error of law, misconduct, etc." on the part of the protectors.[133] The absence of language such as "conclusive" and "final" in the Protector Resolution Clause meant that there was no ouster of the court's jurisdiction.[134] Even if the protectors' determination was stated to be "conclusive" or "final", the court retained the power to intervene.[135] The claimants pointed to how expert determination clauses, which often contained language to the effect that the findings of the expert would be "final" and "binding" on the parties, were held to be valid.[136]

170 The claimants also submitted that it was permissible to empower a party to determine both questions of fact and law, although it was impermissible to

131 CWS 11 May 2026 at para 125.

132 CWS 11 May 2026 at para 126.

133 CWS 11 May 2026 at para 133.

134 Claimants' Written Submissions dated 7 July 2026 ("CWS 7 July 2026") at para 11.

135 CWS 7 July 2026 at paras 11–14.

136 CWS 7 July 2026 at para 15.

preclude recourse to the court in the event of an error of law.[137] The protectors could rely on the Protector Resolution Clause to resolve questions of fact and law in relation to any conflicts and/or ambiguities arising from the administration of the Moss Trust and the interpretation of its terms (construction of written instruments being a question of mixed law and fact),[138] subject to the following:

(a) The court may set aside the protectors' determination of a question of fact if the protectors had (i) exercised their power of resolution in breach of their fiduciary duties; (ii) failed to ask themselves the correct questions; (iii) failed to direct themselves correctly in law; or (iv) arrived at a perverse decision, *ie*, a decision which no reasonable body of protectors could arrive at.[139]

(b) The court may intervene to review the merits of the protectors' determination of any question of law, *ie*, that the protectors had directed themselves correctly in law and had adopted a correct construction of the trust instrument.[140] Recourse may "always" be had to the court to determine the same question of law that the protectors had considered.[141]

171 The claimants further submitted that, by the 28 Aug 2025 Letter, Mr Jaeggi and Mr Benezra had effectively exercised the protectors' power under the Protector Resolution Clause to determine that all of the trust assets

137 Claimants' Written Submissions dated 5 August 2026 ("CWS 5 August 2026") at paras 8–13.

138 CWS 5 August 2026 at paras 20–22 and 24.

139 CWS 5 August 2026 at paras 15, 23 and 31(a).

140 CWS 5 August 2026 at paras 16, 24 and 31(b).

141 CWS 5 August 2026 at para 41.

should be distributed to the trustee of the Delaware Trusts.[142] Mr Jaeggi and Mr Benezra had also determined, by the 28 Aug 2025 Letter, that the statement "any and all of the balance of the Trust Fund remaining and directed under this Clause 4.3" in cl 4.3(v) of the 2024 Trust Deed referred to the shares of the Investment Companies and not to "trophy residence[s]" mentioned in cl 4.3(iii).[143] If the court agreed that Mr Jaeggi and Mr Benezra were entitled to make the determination that they did in the 28 Aug 2025 Letter pursuant to the Protector Resolution Clause, JBTC was bound by their determination.[144]

JBTC's case

172 Prior to the amendment of SUM 932, Issue 9 had been framed as, simply, whether the Protector Resolution Clause was valid, effective and enforceable.[145] At that time, JBTC submitted that the issue involved a question of construction of the 2024 Trust Deed and was suitable for summary determination.[146] JBTC in fact actively sought the court's determination of the validity of the Protector Resolution Clause and stated that it was "ready and willing" to abide by such determination.[147]

173 The claimants subsequently amended Issue 9 to, essentially, focus the question on whether the Protector Resolution Clause was valid and enforceable for the purpose of Mr Jaeggi and Mr Benezra resolving the parties' dispute over

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[142] CWS 11 May 2026 at paras 150–151.

[143] CWS 5 August 2026 at para 36.

[144] CWS 5 August 2026 at para 38.

[145] See, *eg*, DWS 11 May 2026 at para 32(9).

[146] DWS 11 May 2026 at para 42(6).

[147] DWS 11 May 2026 at para 119; DWS 7 July 2026 at paras 23–24.

which assets of the Moss Trust fell to be distributed and how such distribution was to be made following the Wife's death (*ie*, the nub of Issue 7). JBTC appeared to put up some resistance to Issue 9 (in its current form) being summarily determined. JBTC argued that, first, it was not the claimants' pleaded case that Mr Jaeggi and Mr Benezra had determined the proper and correct interpretation of cl 4.3(v) of the 2024 Trust Deed pursuant to an exercise of their power under the Protector Resolution Clause.[148] Second, the interpretation of cl 4.3(v) of the 2024 Trust Deed was already submitted to the court for summary determination in the form of Issue 7; the parties agreed that Issue 7 was suitable for summary determination;[149] and if the court decided on Issue 7, the validity of any determination by the protectors concerning the distribution of trust assets would be moot or academic.[150]

174 On the substantive issue of the validity of the Protector Resolution Clause, JBTC's position appeared to shift across its written submissions.

175 In its first set of written submissions, JBTC submitted that the Protector Resolution Clause "may" amount to an ouster of the court's jurisdiction.[151] At the same time, JBTC noted that the Protector Resolution Clause did not state that the protectors' decision thereunder was "conclusive"[152] and suggested that the clause did not preclude an application to the court to "assist in the interpretation of the relevant instrument".[153]

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148 DWS 5 August 2026 at para 32.

149 DWS 5 August 2026 at paras 33–34.

150 DWS 5 August 2026 at para 36.

151 DWS 11 May 2026 at para 119.

152 DWS 11 May 2026 at para 124.

153 DWS 11 May 2026 at para 127.

176 In its second set of written submissions, JBTC submitted that the protectors' power under the Protector Resolution Clause was fiduciary in nature, such that the court could only set aside a determination by the protectors under the Protector Resolution Clause if (a) the determination was outside the scope of the power; (b) the protectors had given inadequate deliberation to whether and how they should exercise the power; or (c) the power had been used for an improper purpose.[154] Where the exercise of power was set aside, the court would not then substitute its own decision or exercise the power itself.[155] This raised the question of whether, as a matter of public policy, it was permissible for the court's supervisory jurisdiction in respect of a trust to be carried out by a third party (such as the protectors in this case), "so long as this [was] subject to being set aside by the [c]ourt, and therefore re-exercised by the third party, in the event that the third party act[ed] in breach of duty".[156]

177 In its third and final set of written submissions, JBTC submitted that it would not be possible to sever the Protector Resolution Clause so as to enforce determinations on questions of fact but invalidate determinations on questions of law.[157] Further, so far as JBTC was aware, the 2024 Trust Deed did not entrust any determination of fact or exercise of discretion to the protectors.[158] As to whether the Protector Resolution Clause could operate in a manner where the protectors' initial determination was capable of being overridden by a further determination by the court, JBTC observed that: (a) if the protectors'

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154 DWS 7 July 2026 at paras 13–16.

155 DWS 7 July 2026 at para 17.

156 DWS 7 July 2026 at paras 20–22.

157 DWS 5 August 2026 at para 15.

158 DWS 5 August 2026 at para 16.

determination was subject to the court reaching a different determination, the former was of limited value; and (b) there would be a lack of certainty if the protectors' determination was only valid for so long as, and in so far as, the court did not reach a different determination.[159] It may be that the value of the protectors' determination in such circumstances lay in protecting the trustee from any liability for acting in accordance with that determination even if it was subsequently overturned by the court.[160]

The YIC's submissions

178 The YIC submitted that the Protector Resolution Clause vested the protectors with broad powers to resolve any ambiguities or conflicts in the administration or the interpretation of the terms of the Moss Trust.[161]

179 However, the protectors' determinations under the Protector Resolution Clause were not "conclusive" in the sense that they could not be reviewed by the court.[162] Instead, the Protector Resolution Clause should be construed as giving the protectors "a primary role and broad powers in resolving conflicts and ambiguities concerning the administration and interpretation of the terms of the Moss Trust, while leaving intact the Court's power to supervise the Protectors' exercise of its powers and intervene as necessary".[163] This was because:

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159 DWS 5 August 2026 at paras 18 and 22.

160 DWS 5 August 2026 at para 23.

161 Young Independent Counsel's Written Submissions dated 23 June 2026 ("YWS") at paras 3 and 14.

162 YWS at paras 3 and 15.

163 YWS at para 24.

(a) While the Protector Resolution Clause conferred "absolute authorisation" on the protectors to resolve the said conflicts and ambiguities in their "sole and absolute discretion", the court in *Devin Jethanand Bhojwani v Jethanand Harkishindas Bhojwani* [2026] 3 SLR 284 had held that the phrase "absolute discretion" did not preclude the court's intervention in the exercise of a trustee's powers and did not preclude claims by beneficiaries against trustees for breach of trust (at [60]).[164] The same position should apply *vis-à-vis* protectors of a trust.[165]

(b) The 2019 Modification (which introduced the Protector Resolution Clause) and all subsequent amendments to the terms of the Moss Trust (which retained the Protector Resolution Clause) included a clause recording the parties' submission to the non-exclusive jurisdiction of the Singapore courts.[166]

180 While a clause that sought to oust the jurisdiction of the court over a trust would be void,[167] this head of public policy was narrowly applied.[168] A clause "must purport to completely bar the jurisdiction of the Court before it is said to be an unenforceable and void ouster clause, and the Court should not be too ready to interpret clauses to have that effect".[169] The Protector Resolution Clause was valid, effective and enforceable because it did not seek to totally

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164 YWS at paras 15–18.

165 YWS at paras 19–21.

166 YWS at paras 22–23.

167 YWS at paras 27–29.

168 YWS at paras 30–31.

169 YWS at para 32.

exclude the jurisdiction of the court and was thus not an ouster clause:[170] (a) there was no reference to the protectors' determinations pursuant to the Protector Resolution Clause being "final" or "conclusive";[171] and (b) the existence of the non-exclusive jurisdiction clause supported this view as "[t]he non-exclusive jurisdiction clause would be rendered otiose if the Protector Resolution Clause was intended to completely exclude access to the courts".[172]

Decision

Issue 9 should be summarily determined

181 I find that Issue 9 should be summarily determined and I disagree with any suggestion by JBTC that Issue 9 is unsuitable for summary determination following the claimants' amendment to the original framing of the issue.

182 First, Issue 9 as currently framed is not materially different from its pre-amendment form: the crux remains whether the Protector Resolution Clause is valid and enforceable ("core issue"). The amendment simply added more focus to reflect the claimants' interest in knowing whether Mr Jaeggi and Mr Benezra were validly empowered to make decisions under the Protector Resolution Clause "concerning the distribution of trust assets". In my view (and contrary to JBTC's argument about the inadequacy of the claimants' pleadings[173] (see [173] above)), Issue 9 arises because it is the claimants' pleaded case that Mr Jaeggi and Mr Benezra had already made such a decision

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170 YWS at paras 3, 26 and 33.

171 YWS at paras 34–37.

172 YWS at para 39.

173 DWS 5 August 2026 at para 32.

via the 28 Aug 2025 Letter,[174] and that JBTC had, in breach of trust and its duties, refused to comply with that direction (see [57] and [58(f)] above). That said, the determination of Issue 9 ultimately turns on a determination of the core issue. JBTC had agreed that the core issue was suitable for summary determination,[175] and rightly so. The position is no different with Issue 9:

(a) The determination of Issue 9 involves, in the first instance, a question of construction of the Protector Resolution Clause (*ie*, ascertaining the meaning and the legal effect of the clause), followed by a question of law as to whether, on its proper construction, the clause is valid and enforceable, including in the area of decisions of the protectors "concerning the distribution of trust assets".

(b) The determination of Issue 9 does not turn on any disputed facts.

(c) The determination of Issue 9 will lead to savings of time and costs because (i) it will fully determine the claimants' entitlement to their pleaded claim in OC 848 for a declaration that the Protector Resolution Clause is valid and enforceable, and (ii) it will go towards resolution of the claimants' claim against JBTC for breach of trust and duties in allegedly refusing to comply with the alleged direction regarding distribution given by Mr Jaeggi and Mr Benezra in the 28 Aug 2025 Letter.

183 Second, I do not think that Issue 9 is rendered moot by the claimants having also placed Issue 7 before the court. By Issue 7, the claimants seek the

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174 SOC at para 71.

175 DWS 11 May 2026 at para 42(6).

court's determination of which assets of the Moss Trust fell to be distributed and how such distribution was to be made after the Wife's death pursuant to cl 4.3(v) of the 2024 Trust Deed. As the claimants explained, however, their position was that the court should first determine Issue 9, and that the court would only need to determine Issue 7 if Issue 9 was answered in the negative.[176] As foreshadowed at [78] above, I accept the claimants' submission on the sequence in which I should address these two issues. That being so, there is no prospect of Issue 9 being rendered moot by a prior determination of Issue 7.

Construction of the Protector Resolution Clause

184 I turn then to the substantive determination of Issue 9, beginning with the construction of the Protector Resolution Clause.

185 To recapitulate (see [39] above), the Protector Resolution Clause stated:

> … Further, in the event of any and all conflicts and ambiguities that might arise in the administration and interpretation of provisions within the Trust and any and all amendments and modifications thereto, and in order to carry out the Settlor's purpose herein, the Protector shall have the absolute authorisation to resolve such conflicts and ambiguities in his or her sole and absolute discretion.

186 As its wording makes clear, the Protector Resolution Clause purports to empower ("absolute authorisation") the protectors to determine ("resolve") any and all disputes, disagreements and uncertainties ("conflicts and ambiguities") arising in (a) the administration of the Moss Trust and (b) the interpretation of the terms of the Moss Trust.

[176] CWS 11 May 2026 at para 152; Transcript 15 July 2026 at pp 93:18–94:6; CWS 5 August 2026 at para 5.

187 Such determination by the protectors is also stated to be in their "sole and absolute discretion". In my judgment, however, the use of this phrase *vis-à-vis* the protectors' determinations of disputes, disagreements and uncertainties over the administration of the Moss Trust or the interpretation of its terms is a complete *non sequitur*. Discretion in the true sense of the word entails the freedom to choose between two or more permissible options. Thus understood, the determination of the disputes referred to in the Protector Resolution Clause does not involve the decision-makers (*ie*, the protectors) exercising their discretion because such determination is not about making a choice from a range of permissible outcomes. By way of illustration, a decision on the correct interpretation of a term in the trust deed cannot be said to be made in the exercise of discretion because the decision-maker must properly apply rules of construction to arrive at a *single* permissible outcome. Similarly, a decision on whether the trustee had properly administered the trust admits of only a *binary* answer that the trustee had acted either rightly or wrongly, which does not turn on the decision-maker's exercise of discretion.

188 So, if the phrase "sole and absolute discretion" cannot sensibly and does not actually refer to the protectors exercising any discretion, what does the phrase mean? In general, the court presumes that the words used in a term are not intended to be redundant (*Equation Recycling Pte Ltd v Leading Bio-Energy (S) Pte Ltd* [2026] SGHC 126 at [91(e)]). In the present instance, in the context of (a) the wide-ranging scope of matters which the Protector Resolution Clause purports to empower the protectors to decide and (b) the emphasis in the clause on the "absolute" nature of that power (as evidenced by the use of the words "absolute authorisation"), I take the view that the phrase "sole and absolute discretion" is objectively intended to convey that the protectors' determinations under the Protector Resolution Clause are *final and*

conclusive in the sense that such determinations are not to be revisited or corrected by the parties and/or the court. I draw support for this view from the decision of the House of Lords in the Scottish case of *Dundee General Hospitals Board of Management v Walker* [1952] 1 All ER 896 ("*Dundee General Hospitals*").

189 In *Dundee General Hospitals*, a testator gave a legacy of £10,000 to the Dundee Royal Infirmary with a stated proviso in his will that (at 898B–C):

> … provided always, however, that the said £10,000 shall be payable as aforesaid only if my trustees shall in their *sole and absolute discretion* be satisfied that at my death the said infirmary has not been taken over wholly or partly by or otherwise placed under the control of the State or of a local authority or of a body directly or indirectly responsible to the State and/or a local authority. [emphasis added]

190 It was held that despite the words "sole and absolute discretion", this was *not* a case of the existence of a discretion in the true sense of the word, such as when trustees were given a discretion to pay or not pay money by way of maintenance of a beneficiary (*Dundee General Hospitals* at 903A (*per* Lord Morton) and 906E (*per* Lord Tucker)). Rather, the words manifested the testator's intention that the trustees' satisfaction or non-satisfaction as to the existence of the stipulated state of facts should be "*final and conclusive* and *not subject to correction by a court of law* which might take a different view from the trustees" [emphasis added] (*Dundee General Hospitals* at 900F–G (*per* Lord Normand); see also 903B–C (*per* Lord Morton) and 906F–G (*per* Lord Tucker)). The trustees were to be "the sole judges" of all the matters which they had to consider in carrying out the duty which the testator placed on them (*Dundee General Hospitals* at 904H (*per* Lord Reid) and 906F–G (*per* Lord Tucker)), even where those matters involved questions of law (*Dundee General Hospitals* at 900G–H (*per* Lord Normand) and 906F–G (*per* Lord Tucker)).

191 I will discuss *Dundee General Hospitals* in further detail at [210] *et seq* below. At this juncture, it suffices to emphasise that, as with the clause in *Dundee General Hospitals*, the stipulated determinations to be made under the Protector Resolution Clause do *not* involve the exercise of discretion by the stipulated decision-makers (*ie*, the protectors) and the only meaningful way to then interpret the phrase "sole and absolute discretion" in the Protector Resolution Clause is as purporting to make the protectors' determinations final and conclusive in the sense I have described at [188] above. I am unable to accept the submissions of the claimants and the YIC that the Protector Resolution Clause did not provide for the protectors' determinations to be final and conclusive because there was an absence of such express language in the clause. The absence of such express language is not determinative, particularly when, as in the present case, the intent for the protectors' determinations to be final and conclusive was effected through the use of other phraseology (*viz*, "sole and absolute discretion"). Contrary to the YIC's submission, I also do not think the provision in the 2019 Modification and subsequent deeds stating "Singapore law shall govern the construction and interpretation of this [instrument] and the parties hereby submit to the non-exclusive jurisdiction of the courts of Singapore"[177] indicates that the protectors' determinations under the Protector Resolution Clause were not intended to be final and conclusive. While I acknowledge that the non-exclusive jurisdiction clause sits somewhat oddly with the Protector Resolution Clause, to my mind, the disconnect actually suggests the parties' cognisance that the Protector Resolution Clause was susceptible to invalidity and that there would inevitably be a need to resort to the courts to determine disputes and matters of construction of the terms of the Moss Trust.

177 *Eg*, FM at pp 361 and 630.

192 I thus conclude that, on its proper construction, the Protector Resolution Clause purports to empower the protectors to *finally and conclusively* determine *any and all disputes, disagreements and uncertainties* arising in (a) the *administration* of the Moss Trust and (b) the *interpretation of the terms* of the Moss Trust.

193 As construed, three features of the Protector Resolution Clause stand out. First, the clause gives a *general* power to the protectors to *sit in judgment* over *any and all disputes and disagreements* which might arise between any combination of the Settlor, the trustee (*ie*, JBTC), the beneficiaries and even the protectors (as opposed to a *specific* power to merely *determine a discrete, stipulated question*). Second, the protectors' power of determination of disputes extends over a *wide* range of matters concerning the Moss Trust if not *all aspects* of the Moss Trust (since the administration of the trust and the interpretation of its terms arguably cover every aspect of the trust). Third, the protectors' determinations are intended to be *final and conclusive* and not subject to correction by the court.

194 Against this backdrop, the validity and enforceability of the Protector Resolution Clause turn on the following questions of law:

(a) Does a clause in a trust deed which purports to empower someone other than the court to conclusively construe the terms of the trust impermissibly oust the jurisdiction of the courts, such that the clause is void for being contrary to public policy?

(b) Does a clause in a trust deed which purports to empower someone other than the court to conclusively determine disputes over the administration of the trust impermissibly oust the jurisdiction of the courts, such that the clause is void for being contrary to public policy?

195 I proceed to consider and address these questions.

The relevant law: ousting the jurisdiction of the courts

196 I begin with a survey of the cases cited by the parties and the YIC.

(1) *Raven*

197 In *In re Raven* [1915] 1 Ch 673 ("*Raven*"), a testator bequeathed by his will a legacy to "the National Association for the Prevention of Consumption". The will contained a clause by which the testator directed that (at 674):

> … if any doubt shall arise in any case to *the identity of the institution intended to benefit* the question shall be decided by my trustees whose decision shall be *final and binding on all parties*. [emphasis added]

198 As it turned out, there was no society whose name was merely "the National Association for the Prevention of Consumption", but there was a society whose full name was "The National Association for the Prevention of Consumption and other Forms of Tuberculosis" ("Association"), which had constituted a branch whose full name was "The Leicester and Leicestershire Branch of the National Association for the Prevention of Consumption and other Forms of Tuberculosis" ("Branch"). The Association took the position that the court should decide which institution the legacy should be given to. The Branch desired the trustees to decide this question. The trustees sought the court's determination of whether they had the power, under the clause, to decide the question.

199 Warrington J (as he then was) reasoned that a testator could not confer a legal right by giving a legacy and at the same time deprive the legatee of one of the incidents of that legal right, *viz*, having the court determine the question of whether that legal right was or was not to be enjoyed (*Raven* at 677). That question had to be determined by the court according to legal principles, but the clause sought to effect the contrary by having the trustees determine the question on such grounds as they thought fit (*Raven* at 677). Citing extensively from the Irish case of *Massy v Rogers* [1883] 11 LR Ir 409 ("*Massy*") with approval, Warrington J held that it was contrary to public policy to attempt to deprive persons of their right of resorting to the court for the purpose of establishing their legal rights and concluded that the clause was unlawful and inoperative (*Raven* at 677–680).

200 It is instructive to consider *Massy* given Warrington J's extensive reference to and reliance on that case. In *Massy*, a testator's will contained the following clause (at 409):

> I have now stated my will, to the best of my ability, clearly as to the disposal of my different properties; yet, in order to prevent disputes, I shall add this clause: And it is my will that *all differences of opinion as to my intention* shall be left to the decision of the executors, whose *decision shall be final* if they agree; and if they do not, they shall appoint an umpire, *from whose judgment there shall be no appeal.* [emphasis added]

201 The executors commenced an action for the execution of the trusts of the will and the administration of the estate. They contended that their previous decisions on questions of construction of the will (in accordance with which they had made certain payments) should be regarded, pursuant to the above clause, as conclusive upon the parties interested.

202 Chatterton VC found that the clause did *not* involve the vesting of a discretion in the executors in the administration of the estate, but rather, was an attempt by the testator to "reserve for the decision of his executors as a *forum domesticum* all questions upon the construction of his will, and to oust the jurisdiction of the ordinary tribunals to deal with them" (*Massy* at 416). However, the power which the testator sought to vest in the executors was "one which the law entrusts to Her Majesty's Courts, which must be freely open to all her subjects" (*Massy* at 416). Citing the general principle that parties cannot by contract oust the jurisdiction of the courts, Chatterton VC held that, similarly, a testator could not do so by a stipulation in his will (*Massy* at 416–417). The clause was thus unlawful and inoperative (*Massy* at 417).

203 To my mind, two features of the clause in *Massy* stand out:

(a) First, in stipulating that the executors should decide "all differences of opinion as to [the testator's] intention", the clause purported to have disputes over the construction of the will determined by the executors. Indeed, this was how the executors and Chatterton VC interpreted the clause (see [201] and [202] above). It cannot be gainsaid, however, that the task of interpreting a will "properly belongs to the court" (Lynton Tucker, Nicholas Le Poidevin QC & James Brightwell, *Lewin on Trusts* vol I (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts vol I*") at para 6-013), and the same position applies in respect of a trust deed.

(b) Second, the clause provided for the finality of the decision by someone other than the court on such disputes: where the executors agreed, their decision was stated to be "final", and where they did not, the judgment of the umpire they appointed was stated to be non-appealable. Indeed, Chatterton VC alluded to the clause resulting in the courts not being "freely open" (*Massy* at 416).

Having regard to these two features, it is clear that the clause sought to exclude access to the courts for the determination of disputes over the construction of the will, when these were matters properly falling within the jurisdiction of the courts. In short, the clause purported to oust the jurisdiction of the courts.

204 In my respectful view, Chatterton VC was thus right to hold that the clause was unlawful and inoperative. Chatterton VC's conclusion and reasoning are consistent with the position under Singapore contract law that contracts which oust the jurisdiction of the courts are contrary to public policy and void and unenforceable because the common law jealously guards the right of access to the courts (*CKR Contract Services Pte Ltd v Asplenium Land Pte Ltd* [2015] 3 SLR 1041 ("*CKR*") at [17]–[18]).

205 Returning to *Raven*, while the matter which the clause in *Raven* purported to have the trustees decide, *viz*, "the identity of the institution intended to benefit", was narrower in scope than that in *Massy*, it nevertheless entailed construing the (legacy-conferring) terms of the will. The clause in *Raven* also similarly provided that the trustees' decision on the matter would be "final and binding on all parties". Warrington J thus concluded that the clause was contrary to public policy for attempting to exclude resort to the courts for the establishment of legal rights and hence unlawful and inoperative. In my respectful view, *Raven* is consistent with *Massy* and was rightly decided.

(2) *Wynn*

206 In *In re Wynn, decd* [1952] 1 Ch 271 ("*Wynn*"), a testator's will contained a clause which stated (at 272):

> … I authorize and empower my trustees to determine what articles pass under any specific bequest contained in this my will … and whether any moneys are to be considered as capital or income and how valuations are to be made and/or value determined for any purpose in connexion with the trusts and provisions of this my will … and to apportion blended trust funds and to determine *all questions and matters of doubt arising in the execution of the trusts of this my will* … and I declare that every such determination whether made upon a question actually raised or only implied in the acts or proceedings of … my trustees shall be *conclusive and binding upon all persons interested under this my will* … [emphasis added]

207 The sole trustee under the will had made a decision to treat the proceeds of sale of a part of the trust estate as capital. He later entertained doubts about the correctness of his action and sought the court's determination of whether the sale proceeds should be apportioned between capital and income. The beneficiaries interested in capital contended that the trustee had already made a conclusive and binding determination of the matter pursuant to the above clause. The beneficiaries interested in income contended that the clause was void for being contrary to public policy in that it purported to oust the jurisdiction of the courts.

208 Danckwerts J (as he then was) considered that he was bound to hold, on the authority of *Raven*, that (*Wynn* at 278–279):

> … a provision which refers the determination of all questions and matters of doubt arising in the execution of the trusts of a will to the trustees, and which attempts to make such determination conclusive and binding upon all persons interested under the will, is void and of no effect; because it is both repugnant to the benefits which are conferred by the will

> upon the beneficiaries; and also because it is contrary to public policy as being an attempt to oust the jurisdiction of the court to construe and control the construction and administration of a testator's will and estate.

209 In my reading of this passage, Danckwerts J found the clause contrary to public policy for purporting to oust the jurisdiction of the courts, and hence "void and of no effect", because of two dimensions of the clause. First, the clause referred to the trustees the determination of "all questions and matters of doubt arising in the execution of the trusts of [the] will", which entailed "constru[ing] and control[ling] the construction and administration of … [the] will and the estate". These matters, however, fell within the jurisdiction of the courts. Second, the clause "attempt[ed] to make [the trustees'] determination conclusive and binding upon all persons interested under the will". I respectfully agree with Danckwerts J's reasoning and conclusion in this regard, which, in my view, are consistent with the decisions in *Massy* and *Raven*.

(3) *Dundee General Hospitals*

210 I have earlier referred to *Dundee General Hospitals* (see [189]–[190] above), in which a testator gave a legacy of £10,000 to the Dundee Royal Infirmary with a stated proviso in his will that:

> … provided always, however, that the said £10,000 shall be payable as aforesaid only if my trustees shall in their sole and absolute discretion be *satisfied* that *at my death* the said infirmary has *not been taken over* wholly or partly by or otherwise *placed under the control* of the State or of a local authority or of a body directly or indirectly responsible to the State and/or a local authority. [emphasis added]

211 The trustees decided not to pay the legacy because they were not satisfied that, at the testator's death, the Dundee Royal Infirmary had not been placed under the control of the State. The Dundee Royal Infirmary pursued a

claim for payment of the legacy. The House of Lords unanimously affirmed the decision of the court below to dismiss the action.

212 The proviso was construed, having regard to the word "satisfied", as making the gift contingent on the trustees' "state of mind" about the existence of a particular state of facts at the testator's death, and *not* on the existence in fact or in law of some objective state of control over the Dundee Royal Infirmary (*Dundee General Hospitals* at 899F (*per* Lord Normand), 902G (*per* Lord Morton) and 906D–E (*per* Lord Tucker)). Consequently, the duty of the trustees was simply to apply their minds honestly to a consideration of the question whether a certain event had or had not happened at the date of the testator's death (*Dundee General Hospitals* at 903A (*per* Lord Morton)).

213 As alluded to at [190] above, the words "sole and absolute discretion" manifested the testator's intention that the trustees' satisfaction or non-satisfaction as to the stipulated state of facts should be final and conclusive (*Dundee General Hospitals* at 900F–G (*per* Lord Normand), 903B–C (*per* Lord Morton), 904H (*per* Lord Reid) and 906F–G (*per* Lord Tucker)). Nevertheless, the proviso did not exclude recourse to the court to challenge the validity of the trustees' decision on the ground that they had considered the wrong question, had not applied their minds to the question, had perversely shut their eyes to the facts, or had not acted honestly or in good faith (*Dundee General Hospitals* at 905A–B (*per* Lord Reid) and 906G–H (*per* Lord Tucker)). No such grounds existed in the case. Instead, the allegation was that the trustees' decision was unreasonable in the sense that no reasonable man could have reached that decision. Assuming (while reserving their position or expressing doubt on whether) reasonableness was a test of the validity of the trustees' decision, the Law Lords held that the trustees' conclusion was such as a reasonable man could

have reached (*Dundee General Hospitals* at 901E–H (*per* Lord Normand), 903D–E (*per* Lord Morton), 905B–906B (*per* Lord Reid), 907A–C (*per* Lord Tucker) and 907H (*per* Lord Cohen)).

214 It should be noted that *Massy*, *Raven* and *Wynn* were not considered in *Dundee General Hospitals*. Regardless, in my view, the former trilogy of cases and *Dundee General Hospitals* are reconcilable. Unlike the clauses in *Massy*, *Raven* and *Wynn*, the clause in *Dundee General Hospitals* did not purport to confer any broad or general power on the trustees to determine the interpretation of the will or how the estate was to be administered. Rather, the clause in *Dundee General Hospitals* merely made a gift conditional on the trustees' decision on a specific and discrete question of fact, with that decision being open to the court's review on certain grounds in law. It is understandable that, in these narrow circumstances, the clause was not found to oust the jurisdiction of the courts.

(4) *Tuck*

215 In *In re Tuck's Settlement Trusts* [1978] 1 Ch 49 ("*Tuck*"), a baronet made a settlement by which he put money in trust for "the Baronet for the time being if and when and so long as he shall be of the Jewish faith and be married to an approved wife". The settlement contained the following definition of "an approved wife" (at 63C–D):

> 'An approved wife' means a wife of Jewish blood by one or both of her parents and who has been brought up in and has never departed from and at the date of her marriage continues to worship according to the Jewish faith *as to which facts* in case of dispute or doubt the *decision of the Chief Rabbi* in London of either the Portuguese or Anglo German Community … shall be *conclusive*. [emphasis added]

216 The trustees applied to the court for a determination of (a) whether the trust, particularly in relation to the conditions as to Jewish blood and faith in the definition of "approved wife", was void in law for uncertainty, and (b) whether the clause making the opinion of a Chief Rabbi conclusive as to the facts on the relevant questions ("Chief Rabbi clause") was void for purporting to oust the jurisdiction of the courts. At first instance, it was held that even if there was any uncertainty in law in the conditions attaching to the benefits under the trust, the settlor's entrusting to a Chief Rabbi of any decision to resolve disputes or doubts on facts was not an ouster of the jurisdiction of the courts and cured any uncertainty, leaving the settlement valid. An appeal against that decision was dismissed by the English Court of Appeal but on grounds that differed among the three members of the court.

217 Lord Russell of Killowen held that there was no uncertainty in the description of "an approved wife" (*Tuck* at 64C–65D and 65F) and declined to rule on whether the Chief Rabbi clause had the effect of ousting the court's jurisdiction (*Tuck* at 65E).

218 Eveleigh LJ held that there was no uncertainty in the expression "Jewish faith" because the settlor had effectively defined "Jewish faith" as the Chief Rabbi's definition of the term (*Tuck* at 66A–B). The settlor had *not* left it to the Chief Rabbi to discover what the settlor meant or to provide a meaning for the expression used by the settlor (*Tuck* at 66B–C), and it was in any event doubtful that *Dundee General Hospitals* was authority on which the court would permit the Chief Rabbi to do so (*Tuck* at 66C).

219 Eveleigh LJ's approach has been explained by the learned authors of Christopher Hare & Vincent Ooi, *Singapore Trusts Law* (LexisNexis, 2021) as follows (at para 2-110):

> … Eveleigh LJ drew a more subtle distinction between two different scenarios: in the first scenario, a third party could be called upon to resolve conclusively any uncertainty in the definition of the class (such as a settlement directing GBP 50 to each of my three favourite grandchildren and providing that, where there is uncertainty, this is to be resolved by A); and, in the second scenario, a third party's opinion might *itself form part of the definition of the class* (such as a settlement directing GBP 50 to the three of my grandchildren whom A deems to be my favourite). According to his Lordship, the conceptually uncertain class in the first scenario **could not be resolved by delegating that task to a third party, as that would involve an illegitimate ouster of the court's jurisdiction with respect to a question of law**. In contrast, the second scenario involved a *conceptually certain class* from the outset, as the settlor or testator **defined the class by reference to the third party's opinion, which the settlor or testator was effectively adopting as his own opinion**. Eveleigh LJ considered the delegation in *Re Tuck* to fall within the second category of case **as the Chief Rabbi's opinion formed part of the class' definition, the court's jurisdiction was not being usurped**. [emphasis in original in italics; emphasis added in bold; references omitted]

220 Finally, Lord Denning MR held that if there was any conceptual uncertainty in the provisions of the settlement, it was cured by the Chief Rabbi clause; but if the Chief Rabbi clause was inoperative, he would construe the settlement so as to hold that there was no conceptual uncertainty and that the settlement was thus valid (*Tuck* at 62F–G).

221 In holding that the Chief Rabbi clause was operative, Lord Denning rejected the appellant's argument that, based on *Raven* and *Wynn*, the settlor had ousted the jurisdiction of the courts by entrusting the decision on whether a wife was of "Jewish blood" and "Jewish faith" to a rabbi instead of to the court (*Tuck*

at 60H–61B). Lord Denning stated that those cases had to be "reconsidered in the light of *Dundee General Hospitals*" (*Tuck* at 61A–C). However, Lord Denning did not explain what in the reasoning or conclusions of the House of Lords in *Dundee General Hospitals* warranted "reconsider[ation]" (and in which respects) of the decisions in *Raven* and *Wynn*. In my respectful view, for the reasons set out at [214] above, *Raven* and *Wynn* are not inconsistent with and remain good law after *Dundee General Hospitals*. Indeed, further support for my view is found in Eveleigh LJ's expression of "doubt" that *Dundee General Hospitals* "allow[ed] [him] to say" that the court would permit the Chief Rabbi to determine the meaning of terms in the will (*Tuck* at 66C) (see [218] above).

222 Lord Denning then went on to state in a long passage (*Tuck* at 61E–62E):

> I see no reason why a testator or settlor should not provide that any dispute or doubt should be resolved by his executors or trustees, or even by a third person. To prove this, I will first state the law in regard to contracts. *Here the general principle is that whenever persons agree together to refer a matter to a third person for decision, and further agree that his decision is to be final and binding upon them, then, so long as he arrives at his decision honestly and in good faith, the two parties are bound by it. They cannot reopen it for mistakes or errors on his part, either in fact or of law, or for any reason other than fraud or collusion. … Even if his decision involves points of law as well as of fact, his decision is binding on the two parties.* This is especially the case where his decision involves the interpretation of words used in the business in which he is expert. Such an agreement (to abide by the decision of a third person) does not oust the jurisdiction of the courts. **It only offends when the parties go further and seek by their agreement to take the law out of the hands of the courts and put it into the hands of a private tribunal without any recourse to the courts in case of error of law**: see *Czarnikow v. Roth, Schmidt & Co.* [1922] 2 K.B. 478 and *Lee v. Showmen's Guild of Great Britain* [1952] 2 Q.B. 329, 342.
>
> If two contracting parties can by agreement leave a doubt or difficulty to be decided by a third person, I see no

> reason why a testator or settlor should not leave the decision to his trustees or to a third party. He does not thereby oust the jurisdiction of the court. If the appointed person should find *difficulty in the actual wording of the will or settlement*, the executors or trustees can always apply to the court for directions so as to assist in the *interpretation* of it. But *if the appointed person is ready and willing to resolve the doubt or difficulty, I see no reason why he should not do so. So long as he does not misconduct himself or come to a decision which is wholly unreasonable, I think his decision should stand.* After all, that was plainly the intention of the testator or settlor. … The testator may want to cut out all that cackle, and let someone decide it who really will understand what the testator is talking about: and thus save an expensive journey to the lawyers and the courts. ….
>
> [emphasis added in italics and bold]

223 In my respectful view, there appear to be internal inconsistencies in this passage:

(a) On the one hand, the portions emphasised in italics appear to posit that, where a clause provides for a third party to determine the interpretation of the terms of a will, that determination cannot be reopened for errors of law, but notwithstanding that, such a clause does not oust the jurisdiction of the courts.

(b) On the other hand, the portion emphasised in bold reflects that the jurisdiction of the courts is ousted where the parties' agreement seeks to "take the law out of the hands of the courts and put it into the hands of a private tribunal without any recourse to the courts in case of error of law".

224 As Lord Denning cited in this passage his earlier decision in *Lee v The Showmen's Guild of Great Britain* [1952] 2 QB 329 ("*Lee*"), it is instructive to consider that case. *Lee* concerned a challenge to the validity of a decision by the

committee of an association. Denning LJ (as he then was) held that the jurisdiction of a private tribunal, such as the committee of the association in question, was founded on contract, such as the rules of the association to which all its members subscribed (at 341–342). As for the extent to which an agreement could leave a decision to a private tribunal without ousting the jurisdiction of the courts, Denning LJ stated (at 342):

> … Another limitation arises out of the well-known principle that parties cannot by contract oust the ordinary courts from their jurisdiction … They can, of course, agree to leave questions of law, as well as questions of fact, to the decision of the domestic tribunal. They can, indeed, make the tribunal the final arbiter on questions of fact, but they cannot make it the final arbiter on questions of law. They cannot prevent its decisions being examined by the courts. If parties should seek, by agreement, to take the law out of the hands of the courts and put it into the hands of a private tribunal, without any recourse at all to the courts in case of error of law, then the agreement is to that extent contrary to public policy and void …

In gist, Denning LJ opined in *Lee* that it was permissible for contracting parties to leave questions of law (and of fact) to the decision of a third party so long as they did *not* make the third party "the final arbiter on questions of law" and did *not* preclude "recourse … to the courts in case of error of law". This position is consistent with that part of *Tuck* summarised at [223(b)] above.

225 It is possible to regard *Massy*, *Raven* and *Wynn* as cases where the settlor purported to make a third party "the final arbiter on questions of law" (since the clauses therein provided for the executors' or the trustees' construction of the terms of the will, which involves questions of law, to be final or conclusive), and in that sense, consistent with Denning LJ's decision in *Lee* at 342 as to when a provision impermissibly ousts the jurisdiction of the courts. Indeed, Romer LJ expressly opined in *Lee* (at 354) that *Raven* and *Wynn* were "rightly decided":

> … The courts jealously uphold and safeguard the prima facie privilege of every man to resort to them for the determination and enforcement of his legal rights. As an example of this, *it has been held that any attempt by a testator to divert from the courts the power of deciding questions of construction that may arise on his will and vesting that power in his executors instead will fail: In re Raven*; *In re Wynn*. Directions of this kind by testators will be disregarded, partly on the ground that they are contrary to public policy as being attempts to oust the jurisdiction of the courts, and partly as being repugnant to the benefits conferred by the will on the beneficiaries. *If the cases to which I have referred were rightly decided, as I think they were*, it may well be that the same considerations of public policy, which act as a fetter on testamentary attempts to oust the jurisdiction of the courts on questions of law would defeat contractual attempts to bring about the same result… [emphasis added; references omitted]

226 Notwithstanding that *Massy*, *Raven* and *Wynn* on the one hand, and *Lee* on the other hand, can be rationalised as not being inconsistent on when a provision will be found to impermissibly oust the jurisdiction of the courts, I think a question of principle is raised by Lord Denning's reliance in *Tuck* (a case concerning a trust) on his earlier decision in *Lee* (a case concerning the contractually founded jurisdiction of a private tribunal): to what extent can or should contract law's relative receptiveness towards contracting parties' agreement for a third party to decide questions of law and/or fact pertaining to their contractual relationship apply in the trust context? The normative basis espoused in *Lee* (at 342) and *Tuck* (at 61E–62E) for why such third party determination clauses in contracts are permissible is that contracting parties should be held to their contractual bargain. However, this rationale does not transpose neatly or wholly where analogous provisions in trust deeds are concerned. Beneficiaries of a trust cannot be said to have agreed to the terms of the trust and should not be regarded as bound by those terms in the same way or degree as contracting parties are bound by the terms of their contract; and even more importantly, a "significant distinction between trusts and contracts"

is that the court has a supervisory jurisdiction over the administration of trusts (*Crociani v Crociani* [2014] UKPC 40 ("*Crociani*") at [36]). In my view, flowing from these differences, there is greater latitude in the contractual context for a clause to provide for someone other than the court to conclusively determine questions of law and/or fact than there is in the trust context, and the court must exercise caution when evaluating arguments for the permissibility of third party determination clauses in trust deeds by analogy to what is permissible under contract law principles. For these reasons, I do not accept the claimants' attempt to justify the Protector Resolution Clause by relying on the validity of contractual clauses for final and binding expert determination.

227 As I have cited (at [226] above) the decision of the Judicial Committee of the Privy Council in *Crociani*, I should say for completeness that that case did not concern a clause for a third party to determine any question, but rather, concerned an application to stay proceedings on the ground that they were brought in breach of an exclusive jurisdiction clause contained in a trust deed. After referring to the principle that the onus is on a claimant who has brought a claim in court in breach of a contractual exclusive jurisdiction clause to justify the continuation of that claim, normally by establishing "strong reasons" for doing so (*Crociani* at [34]), Lord Neuberger (delivering the judgment of the Board) opined that it should be less difficult for a beneficiary under a trust to resist the enforcement of an exclusive jurisdiction clause in a trust deed than for a contracting party to resist the enforcement of such a clause in a contract (*Crociani* at [35] and [37]). Less weight should be given to an exclusive jurisdiction clause in a trust deed than to such a clause in a contract because (*Crociani* at [36]):

> *In the case of a clause in a trust, the court is not faced with the argument that it should hold a contracting party to her*

> *contractual bargain.* It is, of course, true that a beneficiary, who wishes to take advantage of a trust can be expected to accept that she is bound by the terms of the trust, *but it is not a commitment of the same order as a contracting party being bound by the terms of a commercial contract.* Where, as here (and as presumably would usually be the case), it is a beneficiary who wishes to avoid the clause and the trustees who wish to enforce it, one would normally expect the trustees to come up with a good reason for adhering to the clause, albeit that their failure to do so would not prevent them from invoking the presumption that the clause should be enforced. *In the case of a trust, unlike a contract, the court has an inherent jurisdiction to supervise the administration of the trust* – see eg *Schmidt v Rosewood Trust Ltd* [2003] UKPC 26, [2003] 2 AC 709 para 51, where Lord Walker of Gestingthorpe referred to 'the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts'. This is not to suggest that a court has some freewheeling unfettered discretion to do whatever seems fair when it comes to trusts. However, what is clear is that *the court does have a power to supervise the administration of trusts, primarily to protect the interests of beneficiaries, which represents a clear and, for present purposes, significant distinction between trusts and contracts.* [emphasis added]

In my view, and as I have highlighted at [226] above, the considerations in *Crociani* at [36] are relevant to why the court should be cautious about an unattenuated application of contract law principles in considering when a third party determination clause in a trust deed is permissible and when it ousts the jurisdiction of the courts.

228 In any event, and returning to Lord Denning's decision on the Chief Rabbi clause in *Tuck* (see [221]–[222] above), I do not think this decision forms part of the *ratio decidendi* of *Tuck*. The primary basis of the decision of Lord Russell and Eveleigh LJ was that the disposition under the settlement was sufficiently certain. In particular, I respectfully prefer Eveleigh LJ's characterisation of the Chief Rabbi clause, *viz*, that the clause (a) merely provided for the Chief Rabbi's opinion to form part of the definition of "an

approved wife", (b) did not call for the Chief Rabbi to construe any part of the terms of the settlement and (c) thereby did not involve an illegitimate ouster of the jurisdiction of the courts (see [218]–[219] above). On this characterisation, no question for the court arose, and no opinion from the court was necessary, as to the validity of the Chief Rabbi clause.

229 For these reasons, I do not regard *Tuck* as undermining, much less overruling, the decisions in *Massy*, *Raven* and *Wynn*, which remain good law.

(5) *Harris (HC)* and *Harris (CA)*

230 *Harris v Lord Shuttleworth* [1992] OPLR 151 ("*Harris (HC)*") and *Harris v Shuttleworth* [1994] PLR 47 ("*Harris (CA)*") concerned one Mrs Harris, who was an employee of a society and a member of the society's pension fund. After she was dismissed from the society's employment, she sought an immediate ill health pension under rule 19 of the rules of the fund ("rule 19"), which provided (*Harris (CA)* at [27]):

> If the Trustees are satisfied that the retirement from the service of a member … has occurred by reason of incapacity that member shall be entitled to receive from the Fund a pension … The grant of any such pension shall be subject to the production of satisfactory medical reports and other satisfactory proof of such incapacity. …

231 The trustees of the fund decided that Mrs Harris was not entitled to a pension under rule 19 because the termination of her employment did not constitute a retirement and the available medical evidence did not support the view that she was permanently incapacitated from office work. She then commenced an action against the trustees, claiming, *inter alia*, a declaration that she was entitled to a pension under rule 19.

232 At first instance, Moseley HHJ (sitting as a Deputy High Court Judge) construed rule 19 as conferring no discretion on the trustees. The trustees' function under rule 19 was to consider whether there had been a retirement and whether that retirement had occurred by reason of incapacity, with their satisfaction of these matters (*ie*, "the state of mind of the trustees") being "a condition" of a member's entitlement to a pension under the rule (*Harris (HC)* at 157 and 158). Moseley HHJ held that, in this light, the court's role was to determine whether the trustees had properly exercised the function entrusted to them in rule 19; if they had, their decision stood whether the court agreed with it or not, but if they had not, the appropriate course was for the court to remit the matter to the trustees so that they could properly exercise their functions (*Harris (HC)* at 158). The court's review of the trustees' decision was limited to ensuring that (a) the trustees had not acted *ultra vires* but had asked and considered the correct questions; (b) the trustees had not acted capriciously; and (c) the trustees had "[gotten] their law, including questions of construction, right" (*Harris (HC)* at 159–160).

233 The trustees' counsel, however, sought to argue that rule 40 of the rules of the fund ("rule 40") rendered the circumstances in which the court could intervene in the trustees' decision "even narrower" than those identified by Moseley HHJ (set out at [232] above) (*Harris (HC)* at 160). Mrs Harris' counsel countered that rule 40 was void for being a provision purporting to oust the jurisdiction of the courts (*Harris (HC)* at 160). Rule 40 stated (*Harris (CA)* at [34]):

> The Fund shall be administered and controlled by the Trustees and the following provisions shall apply:
>
> (i) The Trustees shall be empowered conclusively to determine all matters, questions, and disputes touching or in connection with the Fund's affairs and all claims thereon. In

> deciding any question of fact they may act upon any evidence or presumption as they shall think fit although not legally admissible as evidence or a legal presumption. They shall have power to determine any question or doubt arising on the construction of the Trust Deed or Rules or otherwise relating to the Fund and every such determination shall be conclusive and binding on all parties.

234 Referring to Denning LJ's statement of principle in *Lee* at 342 (see [224] above), Moseley HHJ opined that "[t]he principle renders void a provision only 'to the extent' that it purports to oust the jurisdiction of the courts in matters of law" (*Harris (HC)* at 161). Moseley HHJ was "prepared to assume" that rule 40 was void as being contrary to public policy "to the extent" that the third sentence of the rule purported to oust the jurisdiction of the courts in matters of construction, but "[saw] no reason why [the first sentence and the part of the third sentence of rule 40] which [made] the decision of the trustees conclusive on questions of fact should not be valid and enforceable" (*Harris (HC)* at 161). In Moseley HHJ's view, the court could interfere with the trustees' "conclusive" determination on questions of fact in the same circumstances which he had earlier identified in relation to rule 19 (set out at [232] above) (*Harris (HC)* at 161–163).

235 Moseley HHJ then proceeded to construe the words "retirement" and "incapacity" in rule 19, and found that the trustees had not erred in law in their construction of the words (*Harris (HC)* at 165–166). Moseley HHJ emphasised that because the condition in rule 19 was whether the trustees were satisfied of certain matters, his inquiry must concentrate on their state of mind and decision, and on whether or not they attained a proper standard in reaching that decision (*Harris (HC)* at 166). Moseley HHJ concluded that the trustees had done so on the facts and dismissed Mrs Harris' claim.

236 On appeal, the parties did not challenge that part of Moseley HHJ's judgment on the circumstances in which the court could intervene in the trustees' decision. The English Court of Appeal observed that "[d]espite Rule 40", the court "ha[d] control over the Trustees" but "[was] not a Court of Appeal from their decisions"; "the Judge's decision on the limits of his task and thus of his jurisdiction was entirely correct" (*Harris (CA)* at [36]–[37]). *Harris (CA)* at [36]–[37] was cited by Park J in *The Trustees of the Saffil Pension Scheme v Curzon* [2005] EWHC 293 (Ch) as standing for the following proposition (at [24]):

> … in general a court … should not interfere with decisions which trustees take in relation to claims for benefits under the rules of their particular schemes. If the trustees have to form a judgment on some question of fact which is relevant to whether a member of the scheme is or is not entitled to a benefit under the rules, the court will in general not substitute its own judgment for that of the trustees. However, there are limits to that general proposition. One of them is that if the trustees decide a question in a way which the court considers perverse in the sense which [*Harris (CA)*] explained, the court will intervene. Further, it is not precluded from doing that by provisions in the rules which state that it is the trustees who need to be satisfied whether a particular condition is fulfilled or not, or by rules which say that the trustees' decision is to be final. …

The decision in *Harris (CA)* is otherwise not relevant for present purposes.

237 I make four points about the decisions in *Harris (HC)* and *Harris (CA)*.

238 First, *Harris (HC)* affirmed the longstanding principle (established in *Massy*, *Raven* and *Wynn*) that a provision for the interpretation of the terms of a will or trust to be conclusively determined by someone other than the court seeks to oust the jurisdiction of the courts and is void for being contrary to public policy. Moseley HHJ expressly proceeded on the basis that the third sentence

of rule 40 purporting to oust the jurisdiction of the courts in matters of construction was void for being contrary to public policy (*Harris (HC)* at 161 (see [234] above)). While Moseley HHJ went further to opine that a provision for trustees to conclusively decide "questions of fact" would be valid because it would not preclude the court from nevertheless intervening in the trustees' decision within the limits he identified (*Harris (HC)* at 161–163 (see [234] above)), he did *not* extend this view to provisions for someone other than the court to conclusively determine the interpretation of the terms of a trust deed. The English Court of Appeal in *Harris (CA)* did not specifically comment on, much less disapprove, this aspect of the decision in *Harris (HC)*.

239 Second, as regards Moseley HHJ's finding that not all parts of rule 40 were void (*Harris (HC)* at 161 (see [234] above)), I accept in principle that such an approach may be taken where a clause comprises several distinct provisions, some of which have the effect of ousting the jurisdiction of the courts and some of which do not. Where a clause on its proper construction gives rise to such clear delineation, it is unobjectionable to find that the former but not the latter provisions therein are void for purporting to oust the jurisdiction of the courts. Indeed, such an approach would be consistent with the Singapore courts' caution that the ground for finding a contract contrary to public policy for ousting the jurisdiction of the courts is a narrow one (*CKR* at [18]; *Tay Shing Lee Eileen v Liang Ting Pang Jeffrey* [2024] SGHC 261 ("*Tay Shing Lee Eileen*") at [32] and [34]). Emphasising its narrow scope, this ground has been expressed as applying where there is "a *total* exclusion of recourse to the courts of law to adjudicate on one's legal rights versus imposing conditions and limitations upon that recourse without altogether shutting out the courts under all circumstances" [emphasis in original] (*Tay Shing Lee Eileen* at [38]; see also *CKR* at [19]). The distinction drawn (between a clause that totally excludes

recourse to the courts and a clause which merely imposes conditions upon that recourse) serves as an *example* of how the court applies this category of public policy narrowly. The underlying and fundamental point is that a clause must totally exclude recourse to the courts before it constitutes an ouster clause. In my view, this fundamental point also justifies the court taking the approach that, where a clause comprises distinct provisions, some of which have the effect of ousting the jurisdiction of the courts but some of which do not, only the former provisions within the clause would be considered contrary to public policy.

240 Third, in respect of rule 40 itself, however, I am less certain that the first sentence (*viz*, "[t]he Trustees shall be empowered conclusively to determine all matters, questions, and disputes touching or in connection with the Fund's affairs and all claims thereon") and part of the third sentence (*viz*, "[t]hey shall have the power to determine any question or doubt … relating to the Fund") should be construed as allowing the trustees to determine no more than "questions of fact", as Moseley HHJ appeared to hold (*Harris (HC)* at 161 (see [234] above)). This appears to gloss over the references to "disputes" and "doubts" relating broadly and generally to "the Fund", which the sentences purported the trustees were to determine. Allowing the trustees (a) to conclusively determine disputes over the administration of a trust, goes beyond (b) requiring their satisfaction on a question of fact as a condition for a particular payment to be made. In *Harris (HC)*, the operative rule at the crux of the action, *viz*, rule 19, only entailed the latter course. The legality of the former course, which is wide-ranging and arguably purports to usurp the court's function of supervising the administration of the trust (see also *Wynn* at 278–279 as set out at [208]–[209] above), was not considered in *Harris (HC)* (or *Harris (CA)*). Notably, a finding that the provisions contained in the first and third sentences of rule 40 were void in their entirety would not change the conclusion in

Harris (HC) (endorsed in *Harris (CA)*) that the trustees' decision under rule 19 was capable of being reviewed by the court within limits.

241 Fourth, for completeness, albeit not relevant to the present case, *Harris (HC)* includes error of law as a ground for interfering with the trustees' decision under rule 19, in contrast to the more limited grounds for intervention set out in *Dundee General Hospitals* (see [213] above) in relation to a similar provision (*Harris (HC)* at 160, 162 and 163). This appears to have been endorsed in *Harris (CA)* (at [36]–[37]).

(6) *Creasey*

242 In *Creasey v Sole* [2013] EWHC 1410 (Ch) ("*Creasey*"), a testatrix provided by her will for her interest in "Michael's Land" to be given to one of her sons, Michael. "Michael's Land" was defined in cl 10.1.1 of the will, and cl 10.2 provided that the interpretation of the expression "Michael's Land" (and certain other terminology) "shall be fixed by reference to this clause 10 but in the interpretation thereof of my Trustees whose decision shall be final [*sic*]". Morgan J observed that since the decisions in *Massy*, *Raven* and *Wynn*, "the courts [had] become more familiar with clauses providing for matters in dispute to be determined by independent experts. Such experts can be given jurisdiction to decide both matters of fact and matters of law although it will commonly be the case that the court has a concurrent jurisdiction on matters of law. These considerations may affect the attitude of the court to a clause like clause 10.2" (at [66]). In the event, however, Morgan J declined to express a concluded view on the legal effect of cl 10.2 because the executors of the will took the position that they did not have the power to make a final determination on the interpretation of the definitions and wished the court to decide all points arising

as to the interpretation and application of those definitions, and the defendants (who were the testatrix's children) were content for the court to determine those matters (at [67]). Morgan J held that he had jurisdiction to determine the matters arising as to the definition "whether that [was] because the relevant part of clause 10.2 [was] void or because [he had] concurrent jurisdiction with the executors or because the executors [were] seeking the assistance of the court in the relevant respects or because the executors [were] surrendering their power or discretion to the court" (at [67]). In my reading of this last statement, there is recognition that cl 10.2 was potentially void for purporting to oust the jurisdiction of the courts on a matter of construction of the will. Beyond that, I do not draw further guidance from *Creasey* since no opinion was expressed on the ultimate legality of cl 10.2.

(7) Conclusion

243 Having canvassed the foregoing case law, I summarise the salient legal principles (which, in my view, are equally applicable under Singapore law) as follows:

> (a) A provision in a will, settlement or trust deed purporting to oust the jurisdiction of the courts to determine a person's legal rights under the relevant instrument is contrary to public policy, and thereby void and unenforceable.
>
> (b) It is "a matter of degree" when a provision will be found to oust the jurisdiction of the courts (*Snell's Equity* at para 29-040).
>
> (c) A provision purporting to confer a wide and general power on someone other than the court to conclusively construe the terms of the will, settlement or trust will be found to oust the jurisdiction of the courts

(*Massy* at 416–417; *Raven* at 677–680; *Wynn* at 278–279; *Tuck* at 66C (*per* Eveleigh LJ); *Lee* at 354 (*per* Romer LJ); *Harris (HC)* at 161). The task of construing such instruments properly falls within the province of the courts (*Lewin on Trusts vol I* at para 6-013).

(d) A provision purporting to confer a wide and general power on someone other than the court to conclusively determine disputes over the administration of an estate, settlement or trust will also be found to oust the jurisdiction of the courts (*Wynn* at 278–279). The task of controlling the administration of an estate, settlement or trust properly falls within the supervisory jurisdiction of the courts (*Wynn* at 278–279; *Crociani* at [36]). A wide clause like that in *Wynn* – for "all questions and matters of doubt arising in the execution of the trusts" to be conclusively determined by someone other than the court (see [206] above) – would, if valid, "overrid[e] the jurisdiction of the court in many respects" (*Lewin on Trusts vol I* at para 6-013).

(e) It is possible that the jurisdiction of the courts may not be ousted where a provision seeks to confer only a specific power on some person to (conclusively) determine a discrete question of fact (see generally *Dundee General Hospitals*; *Harris (HC)* at 157–158 and 161–163). In any event, the court may intervene in such a determination, within limits (as to which, see [213] and [232] above).

(f) Where a clause comprises several distinct and clearly delineated provisions, some of which have the effect of ousting the jurisdiction of the courts and some of which do not, it is unobjectionable for the court to find that the former but not the latter provisions within the clause are void for purporting to oust the jurisdiction of the courts (*Harris (HC)* at 161) (see [239] above).

244 It follows that the questions of law engaged by Issue 9, as set out at [194] above, are answered in the affirmative.

Application of legal principles to the facts

245 I have found that the Protector Resolution Clause purports to confer a broad and general power on the protectors to finally and conclusively determine disputes, disagreements and uncertainties over the administration of the Moss Trust and the interpretation of its terms (see [192]–[193] above). In line with the legal principles distilled at [243(c)], [243(d)] and [244] above), the Protector Resolution Clause is therefore contrary to public policy for ousting the jurisdiction of the courts, void and unenforceable.

246 In particular, the claimants' interest in Issue 9 lies in Mr Jaeggi and Mr Benezra's alleged determination of which assets of the Moss Trust fell to be distributed and how such distribution was to be made after the Wife's death. Such a determination would turn on the construction of cl 4.3(v) of the 2024 Trust Deed. In essence, therefore, Issue 9 asks if the Protector Resolution Clause validly empowered Mr Jaeggi and Mr Benezra to conclusively determine the construction of cl 4.3(v) of the 2024 Trust Deed. In my view, the Protector Resolution Clause purported to empower Mr Jaeggi and Mr Benezra to do so, but in so purporting, ousted the jurisdiction of the courts. This exactly illustrates why the Protector Resolution Clause is void and unenforceable. Issue 9 is answered in the negative.

247 For completeness, to the extent the parties and the YIC suggested that the Protector Resolution Clause could somehow be valid because the court could, regardless of what the clause stated, decide *de novo* on any matter already determined by the protectors,[178] I disagree. First, based on my review, the authorities do not support such a proposition. Second, the argument side-steps identification of the legal basis on which the court would be determining the matter *de novo*. There was no suggestion by the claimants that the protectors had surrendered the exercise of their purported power under the Protector Resolution Clause to the court. It would thus be only and precisely because the Protector Resolution Clause is void that the court would determine the matter wholly and afresh without any regard for the prior purported determination of the protectors.

Issue 7

248 Issue 7 asks: Was JBTC obliged, following the death of the Wife, to distribute the assets of the Moss Trust, being shares in the Investment Companies, in equal shares to the trustee of the Amir Trust and the trustee of the Nat Trust pursuant to cl 4.3(v) of the 2024 Trust Deed?

249 Issue 7 falls to be determined given that Issue 9 has been answered in the negative.

The claimants' case

250 The claimants submitted that Issue 7 was suitable for summary determination. First, the answer to Issue 7 went directly to the claimants'

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178 See, *eg*, Transcript 15 July 2026 at p 169:3–6; CWS 5 August 2026 at para 41; DWS 5 August 2026 at para 23.

entitlement to the order sought by them in OC 848 for JBTC to specifically perform its obligation to distribute the assets of the Moss Trust pursuant to cl 4.3(v) of the 2024 Trust Deed (see [59(h)] above).[179] Second, no dispute of fact was raised by Issue 7 as JBTC simply made no admission as to the claimants' interpretation of cl 4.3(v).[180]

251 The claimants submitted that cl 4.3(v) of the 2024 Trust Deed required JBTC to divide the balance of the "Trust Fund" into two equal shares to be distributed to the Amir Trust and the Nat Trust respectively.[181] Clause 1.16 read with the First and Fifth Schedules defined the "Trust Fund" as comprising the shares of the Investment Companies as well as US$1,000 in cash. It followed from a plain reading of cl 4.3(v) that, upon the Wife's death, JBTC was obliged to transfer the *shares* of the Investment Companies and US$1,000 in cash in equal shares to the Amir Trust and the Nat Trust.[182]

252 It was untenable for JBTC to argue that, because cl 4.3(iii) of the 2024 Trust Deed referred to any "trophy residence" being administered or distributed in accordance with cl 4.3(v), cl 4.3(v) obliged JBTC to transfer such real estate properties held by the Property Investment Companies *in specie*.[183] As the Moss Trust indirectly held all of its real estate properties through the Property Investment Companies, and cl 4.3(v) referred to the distribution of the Trust Fund (*ie*, the shares in the Investment Companies), it followed that when cl 4.3(iii) referred to the distribution of any "trophy residence" in accordance

179 CWS 11 May 2026 at para 153.

180 CWS 11 May 2026 at para 154.

181 CWS 11 May 2026 at para 157.

182 CWS 11 May 2026 at para 158.

183 CWS 11 May 2026 at paras 159–160.

with cl 4.3(v), cl 4.3(iii) was referring to the distribution of the shares of the Property Investment Companies which held such real estate properties.[184] This interpretation accorded with common sense. Real estate property owned by a company could be conveyed by way of a direct sale or by a sale of the shares of the company. By parity of reasoning, any "trophy residence" in the present case could be distributed by distributing the shares of the Property Investment Company that owned such real estate property.[185] If cl 4.3(v) provided for the distribution of only any "trophy residence" referred to in cl 4.3(iii), one would expect cl 4.3(v) to specifically refer to such "trophy residence" or to cl 4.3(iii), but cl 4.3(v) did not do so.[186]

JBTC's case

253 JBTC submitted that Issue 7 involved a question of construction of the 2024 Trust Deed and was suitable for summary determination.[187] A summary determination of Issue 7 would also save time and costs as it would determine the claimants' prayer in OC 848 for an order for specific performance in the same terms.[188]

254 JBTC submitted that there were two possible interpretations of cl 4.3(v) of the 2024 Trust Deed.[189]

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184 CWS 11 May 2026 at paras 160(a)–(c).

185 CWS 11 May 2026 at para 160(d).

186 CWS 11 May 2026 at para 161.

187 DWS 11 May 2026 at para 42(6).

188 DWS 11 May 2026 at para 43.

189 DWS 11 May 2026 at para 99.

255 The first interpretation was that cl 4.3(v) did not apply to the totality of the assets of the Moss Trust, but only to those "directed" under cl 4.3.[190] Insofar as the assets "directed" were concerned, this arguably related to cl 4.3(iii), which provided for the administration and management of "trophy residences" and referred directly to cl 4.3(v).[191] Reading cll 4.3(iii) and 4.3(v) together, at the Wife's death, "any such residence" was to be divided and distributed.[192] This could be construed as a direction to JBTC to strip out the "trophy residences" from the Property Investment Companies ("Stripping Out Direction") and to administer them in accordance with cl 4.3(v) while retaining the shares in the Investment Companies and any other assets held under the Moss Trust.[193] A construction which included the Stripping Out Direction avoided a potential difficulty which could arise if the Property Investment Companies held both a "trophy residence" and some other property.[194] The term "trophy residence" was not defined in the 2024 Trust Deed or earlier instruments,[195] and JBTC "require[d] clarity and direction" as to what this meant.[196]

256 The second interpretation was that cl 4.3(v) of 2024 Trust Deed applied to the totality of all assets of the Moss Trust and the phrase "remaining and directed under this Clause 4.3" should be read broadly and included all sub-sections of cl 4.3, including cl 4.3(i) which referred to the "entire Trust

190 DWS 11 May 2026 at para 100.

191 DWS 11 May 2026 at para 101.

192 DWS 11 May 2026 at para 102.

193 DWS 11 May 2026 at para 103(2).

194 DWS 11 May 2026 at para 103(3).

195 DWS 11 May 2026 at para 103(1).

196 DWS 11 May 2026 at para 104.

Fund". On this interpretation, JBTC was required to distribute shares in the Investment Companies to the Delaware Trusts.[197]

257 JBTC submitted that the drafting history of cl 4.3(v) of the 2024 Trust Deed was pertinent.[198] Clause 4.3(v) was first introduced by way of cl 3 of the 2019 Modification (see [25]–[26] above).[199] JBTC suggested that as it had only "acknowledge[d] the modifications" in the 2019 Modification, the Settlor's intentions were more relevant for purposes of interpretation.[200] The chronology and contemporaneous correspondence leading up to the 2019 Modification showed that:[201]

(a) By an e-mail dated 18 October 2018 from the Settlor's representative to JBTC, JBTC received an undated Memorandum of Wishes signed by the Settlor, which stated, *inter alia*:[202]

> 4.6 After death of my wife.
>
> As many years has already elapsed from the creation of the trust, it is now more appropriate that at death of my wife *the remaining assets of the trust* to be divided between two trusts appropriately formed for benefit of Natasha Mossanen Rahban and her issues and second trust for benefit of Amir Mansour Mossanen and his issues. … it is my wishes that the Trustee will distribute *the remaining assets of the trust* into the two trusts as mentioned in this clause and *the main trust, Moss Trust (Singapore), can thereafter be terminated.*

197 DWS 11 May 2026 at para 105.

198 DWS 11 May 2026 at para 106.

199 DWS 11 May 2026 at para 107.

200 DWS 11 May 2026 at para 109.

201 DWS 11 May 2026 at para 110.

202 LLB at pp 545–547.

> 5. Special Note
>
> Lastly, as the major part of the Trust Fund are in the form of very special properties, the Trustee, protectors and future beneficiaries should be aware that such trophy properties should not be sold in a hurry and the properties should be kept for as long as it takes until the right cycle or buyer is found even if it takes a few years.
>
> [emphasis added]

(b) By an e-mail dated 30 January 2019 from the Settlor to JBTC and others, the Settlor stated: "in case I decided to become a US person or Madlen passes away *all assets of Moss* will be equally distributed to the two trust[s]" [emphasis added].[203]

(c) By an e-mail dated 21 March 2019 from JBTC to the Settlor, JBTC recorded its representatives' discussion with the Settlor that the terms of the Moss Trust should be amended such that "the Moss trust should essentially hold only capital for Mrs Moss during her lifetime. *On her death, the capital should be distributed to the two US trust[s]*" [emphasis added].[204]

(d) By an e-mail dated 16 May 2019 from the Settlor's legal counsel, one Ms Brittain, to JBTC (copied to the Settlor, among others), Ms Brittain stated: "Upon Madlen's death, if not before, *the trust will be distributed 50:50 to two trusts* that are designed for Dr. Mossanen's children. He wants the $1,000,000 outright bequest…but *the remainder*

203 LLB at p 635.

204 LLB at p 637.

will go into two separate trusts that are "Qualified Trusts" as defined under the terms of the Singapore trust" [emphasis added].[205]

(e) By an e-mail dated 12 July 2019 from Ms Brittain to the Settlor (copied to JBTC and Mr Amir Mossanen), Ms Brittain stated, with reference to the draft 2019 Modification at the time: "As you see, *your trust* goes to the 2 [Delaware] trusts at Madlen's passing, whether or not Settlor survives" [emphasis added].[206]

258 JBTC stated that it would "stand guided" by the court's findings and determination on the interpretation of cl 4.3(v) of the 2024 Trust Deed.[207]

Decision

Issue 7 should be summarily determined

259 I accept that Issue 7 should be summarily determined for the reasons given by the parties.

Construction of cl 4.3(v) of the 2024 Trust Deed

260 It was common ground between the parties that cl 4.3(v) of the 2024 Trust Deed called for the distribution of the assets of the Moss Trust to the trustee of the Delaware Trusts upon the Wife's death. The pertinent question was which assets fell to be distributed and how such distribution was to be made.

[205] LLB at pp 708–709.

[206] LLB at p 747.

[207] DWS 11 May 2026 at para 111.

261 In my judgment, cl 4.3(v) of the 2024 Trust Deed required JBTC, following the death of the Wife, to distribute *all* of the assets of the Moss Trust in equal shares to the trustee of the Amir Trust and the trustee of the Nat Trust, and this entailed distributing the shares in the Investment Companies to the trustee of the Amir Trust and the trustee of the Nat Trust. I elaborate.

262 It is uncontroversial that when interpreting a provision of a trust deed, the text of the provision, considered in its context, is of first importance (*HSBC Institutional Trust Services (Singapore) Ltd v Quarz Capital Asia (Singapore) Pte Ltd* [2024] SGHC 153 at [25]–[26]). I thus begin with the text of cl 4.3(v) of the 2024 Trust Deed (see [37] above), which is reproduced again:

> *Upon the death of the Settlor's Wife, whether or not the Settlor is then living*, but a Child or any issue of a Child of the Settlor shall survive the Wife, *then any and all of the balance of the Trust Fund remaining and directed under this Clause 4.3, if any*, shall be divided into two equal shares, and one such share shall be distributed to the Trustee of The Moss Trust Amir, a Delaware Irrevocable Dynasty Trust to be added to that trust, and the other such share shall be distributed to the Trustee of The Moss Trust Nat, a Delaware Irrevocable Dynasty Trust to be added to that trust, and shall be governed thereafter by the terms of those trusts, or if there be no beneficiaries then living, then any and all of the balance of the trust assets remaining shall be distributed as directed in accordance with Clause 4.4. [emphasis added]

263 The other sub-clauses of cl 4.3 of the 2024 Trust Deed provided for JBTC to apply for the Wife's benefit and/or to distribute to the Wife the income and/or capital of the Trust Fund (while the Wife was alive) in certain scenarios (see [37] above). Against this context, the phrase "then any and all of the balance of the Trust Fund remaining and directed under this Clause 4.3, if any" in cl 4.3(v) simply refers to the entire balance of the Trust Fund after taking into account any applications and/or distributions of the Trust Fund that may have been made under the other sub-clauses of cl 4.3. As it is the entire balance of

the Trust Fund which had to be distributed to the trustee of the Delaware Trusts, it follows that the shares in the Investment Companies (which formed part of the Trust Fund pursuant to the Fifth Schedule (see [38] above)), and not just select real estate properties held by the Property Investment Companies, had to be distributed.

264 I do not think this interpretation is contradicted by the last sentence in cl 4.3(iii) of the 2024 Trust Deed, which stated:

> … At the Wife's death, whether or not Settlor is then living, any such residence shall be administered or distributed in accordance with Clause 4.3(v) below, …

I accept that the phrase "any such residence" referred to any "trophy residence" which was "directly or indirectly, a part of the Trust Fund", as stated in the opening lines of cl 4.3(iii) (see [38] above). In my view, read in context with the rest of cl 4.3, the last sentence in cl 4.3(iii) simply serves a belt-and-braces function of making clear that trophy residences were not exempt from being distributed as part of the entire balance of the Trust Fund under cl 4.3(v). A trophy residence obviously refers to a real estate property. Beyond that, it is unnecessary to determine which real estate properties forming part of the Trust Fund were "trophy residences". This is because *none* of the real estate properties forming part of the Trust Fund were "directly" held trust assets; they were "indirectly" held through the Property Investment Companies. Under cl 4.3(iii) read with cl 4.3(v), the "indirectly" held real estate properties (whether trophy residences or not) were to be distributed along with the entire balance of the Trust Fund. Notably, the Property Investment Companies held other assets in addition to the real estate properties (see [41(b)] and [41(c)] above). In such a situation, cll 4.3(iii) and 4.3(v) operate in harmony to require the distribution of the shares in the Property Investment Companies as that would ensure in one fell swoop the distribution of all the assets "indirectly" held by the Property Investment Companies, as part of the distribution of the entire balance of the Trust Fund.

265 I am fortified in my interpretation of cll 4.3(v) and 4.3(iii) of 2024 Trust Deed by the contemporaneous communications between the Settlor and JBTC about the intended amendments to the 2016 Trust Deed, which culminated in the 2019 Modification introducing cl 4.3(v) into the terms of the Moss Trust (see [257] above). Extrinsic evidence is admissible as part of the contextual approach to the interpretation of terms where it "is relevant, reasonably available to all the contracting parties and relates to a clear or obvious context" and goes towards proof of what the parties objectively agreed upon (*Sembcorp Marine* at [34]); this approach has also been applied in the interpretation of trust documents (*The Ngee Ann Kongsi v Teochew Poit Ip Huay Kuan* [2019] SGHC 256 at [32]). The said communications between the Settlor and JBTC satisfy these criteria. They show that the Settlor intended by cl 4.3(v) for the entire balance of the Trust Fund to be distributed to the Delaware Trusts after the Wife's death. To be clear, as it was JBTC that exercised its power of amendment to make the amendment in the 2019 Modification introducing cl 4.3(v) (see [140(d)] above), I take the view that it is JBTC's objective intention behind the amendment which is relevant. That said, as the trustee, JBTC would have had regard to the wishes of the Settlor. And, more critically, at the end of the exchange cited by JBTC at [257] above, (a) JBTC sent an e-mail reply to Ms Brittain (copied to the Settlor, among others) dated 17 July 2019 confirming that JBTC had "[n]o comments",[208] to which (b) Ms Brittain replied on the same day stating: "Well, that's a relief. Thank you. I will send

208 LLB at p 750.

executed agreement right away".[209] In my view, this exchange indicates that JBTC shared the objective intention for cl 4.3(v) to provide for the entire balance of the Trust Fund to be distributed to the Delaware Trusts after the Wife's death.

266 I therefore conclude that cl 4.3(v) of the 2024 Trust Deed required JBTC, following the death of the Wife, to distribute *all* of the assets of the Moss Trust in equal shares to the trustee of the Amir Trust and the trustee of the Nat Trust, and this entailed distributing the shares in the Investment Companies to the trustee of the Amir Trust and the trustee of the Nat Trust.

Observations on cl 3.2(iii) of the 2024 Trust Deed

267 For completeness, I note that cl 3.2(iii) of the 2024 Trust Deed stated:[210]

> This power of amendment shall not be exercised to add any person (including the Settlor) as a beneficiary who might benefit during the lifetimes of either the Settlor or the Wife. During the lifetimes of the Settlor and the Wife or that of the survivor, the Wife shall be the only beneficiary of the Trust. All provisions of the Trust shall be applied and interpreted to produce only that result.

268 The parties made no submissions on cl 3.2(iii) of the 2024 Trust Deed, and did not suggest that it affected the interpretation of cl 4.3(v), much less that it detracted from the parties' joint premise that the interpretation of cl 4.3(v) called for the distribution of assets of the Moss Trust to the trustee of the Delaware Trusts upon the Wife's death (the only issue being which assets fell to be distributed and how such distribution was to be effected). In the absence

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209 LLB at p 750.

210 FM at p 633.

of submissions from the parties, it is not appropriate for me to venture an interpretation of cl 3.2(iii), and I confine myself to the following observations.

269 A term to the effect of cl 3.2(iii) of the 2024 Trust Deed was present in the Original Trust Deed (cl 3.2), at which time it was provided that distributions to the Children would only be made after both the deaths of the Settlor and the Wife (see [8] above). This term remained materially unchanged in the successive amended trust deeds even after the 2019 Modification introduced cl 4.3(v).

270 However, another term of similar import was amended after the 2019 Modification introduced what became cl 4.3(v) of the 2024 Trust Deed. To elaborate, cl 4.11 of the Original Trust Deed provided that:[211]

> In keeping with the wholly discretionary nature of this Trust, no beneficiary or other person except as specifically provided in this Trust shall have any ascertainable, proportionate, actuarial, or otherwise fixed or definable right to, or interest in, all or any portion of the Trust Fund during the lifetime of either the Settlor [or] the Wife. …

271 This provision continued to appear in cl 4.9 of the 2016 Trust Deed.[212]

272 On 27 November 2019, JBTC sent Ms Brittain an e-mail with a draft of the 2020 Trust Deed, which still contained this provision (now in cl 4.8).[213] On 24 December 2019, Ms Brittain sent an e-mail to JBTC pointing out that cl 4.8 of the draft 2020 Trust Deed needed to be revised:[214]

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211 FM at p 75.

212 FM at pp 118–119.

213 LLB at pp 827 and 836.

214 LLB at p 863.

> … 4.8 – This needs to be revised: Because after death of Madlen, the trust assets go to the children who become beneficiaries. This is a necessary revision. I would take out 'either the Settlor or'. The provision is not correct because the children may ascend to beneficiary during the lifetime of Dr. Mossanen.

273 On 6 January 2020, JBTC sent an e-mail to Ms Brittain with a revised draft of the 2020 Trust Deed in which cl 4.8 was marked up as follows:[215]

> In keeping with the wholly discretionary nature of this Trust, no beneficiary or other person except as specifically provided in this Trust shall have any ascertainable, proportionate, actuarial or otherwise fixed or definable right to, or interest in, all or any portion of the Trust Fund during the lifetime of ~~either the Settlor or~~ the Wife.

274 The provision in this amended form ultimately appeared as cl 4.8 in the (executed) 2020 Trust Deed[216] and the 2024 Trust Deed.[217]

275 However, as mentioned at [269] above, cl 3.2(iii) of the 2024 Trust Deed remained unchanged. I leave the parties to consider whether they may wish to pursue rectification or amendment of cl 3.2(iii) of the 2024 Trust Deed. In any event, for the reasons stated at [267]–[268] above, I have not let this provision affect my determination of Issue 7.

Conclusion

276 In summary, I find that:

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215 LLB at pp 901 and 911; see also LLB at para 88.

216 FM at p 558.

217 FM at p 636.

(a) Issues 1, 3 (as reformulated), 6, 8, 9 and 7 are suitable for summary determination (see [91], [119], [147], [155], [181]–[183] and [259] above).

(b) In respect of Issue 1, it is an implied term of the 2017 Amendment that if the Wife refused to accept the power of amendment, the Settlor would have a limited power to amend the terms of the Moss Trust for the sole purpose of vesting the power of amendment in another person (see [97]–[105] above). I have referred to this implied term as the Implied Term (2017 Amendment) (see [103] above).

(c) Issue 2 does not arise given my finding on Issue 1 (see [107] above).

(d) In respect of Issue 3, the Settlor had exercised his power under the Implied Term (2017 Amendment) in making the 2019 Modification such that the 2019 Modification validly vested the power of amendment in JBTC (see [117], [139] and [141] above). In addition, the Other Amendments (defined at [138(b)] above) were validly made by JBTC by way of the 2019 Modification (see [140] and [141] above).

(e) Issues 4 and 5 do not arise given my findings at [(d)] above (see [144] above).

(f) Issue 6 is answered in the affirmative: the current terms of the Moss Trust are set out in the 2024 Trust Deed (see [148] above).

(g) In respect of Issue 8, Mr Jaeggi and Mr Benezra were validly appointed as members of the Committee, *ie*, as protectors of the Moss Trust (see [157]–[159] above).

(h) Issue 9 is answered in the negative: the Protector Resolution Clause is contrary to public policy for ousting the jurisdiction of the courts, void and unenforceable (see [245]–[246] above).

(i) Issue 7 is answered in the affirmative: cl 4.3(v) of the 2024 Trust Deed required JBTC, following the death of the Wife, to distribute *all* of the assets of the Moss Trust in equal shares to the trustee of the Amir Trust and the trustee of the Nat Trust, and this entailed distributing the shares in the Investment Companies to the trustee of the Amir Trust and the trustee of the Nat Trust (see [260]–[266] above).

277 Unless the parties agree on costs, they should file their written submissions on costs, limited to five pages, within two weeks from the date of this judgment. Notwithstanding that the costs of SUM 932 have yet to be determined, I order that, in respect of my decision in this judgment, the time referred to in O 18 r 3(1) of the ROC 2021 starts to run from the date of this judgment.

278 Last but not least, I record my appreciation to the YIC, Ms Jennifer Lim, for the assistance rendered through her articulate written and oral submissions on Issue 9.

- Sgd -
Kristy Tan
Judge of the High Court

Woo Shu Yan, Gerald Paul Seah and Aisha Rami Nazzal (Drew & Napier LLC) for the claimants in OC 848 / applicants in SUM 932;
Aaron Lee, Low Zhe Ning and Zhang Weihao (Allen & Gledhill LLP) for the defendant in OC 848 / respondent in SUM 932;
Jennifer Lim (Calvin Liang LLC) as independent counsel.