

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

Cause No: FSD 118 of 2016 (NSJ)

Cause No: FSD 30 of 2017 (NSJ)

IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE FUND
(INTERNATIONAL) LIMITED (IN OFFICIAL LIQUIDATION)

AND

IN THE MATTER OF PLATINUM PARTNERS VALUE ARBITRAGE
INTERMEDIATE FUND LTD (IN OFFICIAL LIQUIDATION)

NOTE OF DECISION ON FEE CONSOLIDATION APPLICATION



I have now been able to review HSM's letter dated 27 February 2018 (the *Letter*) – and apologise for the delay in doing so (which was mainly caused by the need to resolve certain points of principle with respect to consolidation applications which arose in another application, which application has only recently been disposed of).

I set out my decision and reasons below (using the definitions contained in the Letter):

1. By the Letter the Feeder JOLs apply for an order that “*the proceedings in Cause No FSD 118 of 2016 [relating to the Offshore Feeder Fund] and Cause No FSD 30 of 2017 [relating to the Intermediate Fund] be treated as consolidated for the purpose of assessing any and all court fees paid or to be paid in connection with either proceeding.*”
2. The draft order provided by HMS on behalf of the Feeder JOLs also states that the filing fee payable on the issue of the winding up petition in respect of the Intermediate Feeder Fund not be payable (payment was deferred pursuant to an order of Jones J and so the order would discharge the deferred payment obligation) and that the fee paid by the Intermediate Fund on the filing of the summons dated 24 August 2017 be repaid

(both the JOLs of the Offshore Feeder Fund and the JOLs of the Intermediate Fund sought the sanction of the Court to their entering into a funding agreement).

3. The application is made under rule 6(5) of the Court Fees Rules 2009 (as amended) which states that:

“Where multiple applications are made under the Companies Law simultaneously in respect of two or more related companies, a Commercial Judge may direct that the applications be treated as consolidated for the purposes of these Rules so that only one set of fees shall be payable.”

4. The order sought involves the payment of only one fee for the issuing of the two winding up petitions (in respect of the Feeder Funds) and one fee for the issue of the two summonses issued on 24 August 2017 and for any other application issued simultaneously by both Feeder JOLs.
5. The Letter explains the relationship between the Feeder Funds and the circumstances which HSM submit justify the orders sought. In addition to the Feeder Funds the Letter refers to a third entity, namely the Master Fund. The Letter explains that there was only one pool of funds provided by the investors who invested in the Offshore Feeder Fund; the Offshore Feeder Fund then passed the funds on to and invested the funds in the Intermediate Fund, which in turn passed the funds on to and invested the funds in the Master Fund. The Feeder JOLs have determined that the Offshore Feeder Fund is the largest unsecured creditor of the Intermediate Fund and that the Intermediate Fund is the largest unsecured creditor of the Master Fund.
6. The Letter goes on to explain a dispute that has arisen between the Feeder JOLs and the JOLs of the Master Fund. The JOL's of the Master Fund have made a preliminary determination that the Offshore Feeder Fund is the true creditor of the Master Fund, The Letter says that proofs have been lodged in the liquidation of the Master Fund by both Feeder Funds to preserve their respective rights. The Feeder Funds therefore are competing to be the creditor of the Master Fund. HSM say in the Letter that the relief claimed by the Feeder Funds are in respect of and arise out of the same series of transactions and raise common questions of law and fact.



7. This approach supports the consolidation of the applications to be made by the Feeder JOLs to determine who is the proper creditor of the Master Fund. It does not support the consolidation of the two winding up petitions. It establishes that the Offshore Feeder Fund is adverse to the Intermediate Fund and does not explain why, if the Offshore Feeder Fund is in substance the only creditor of the Intermediate Fund, it matters whether the Offshore Feeder Fund rather than the Intermediate Fund is the creditor.
8. But the Letter can be read as implicitly making a further argument. This is as follows. The Feeder JOLs consider that as regards assets (as between the Feeder Funds) in substance there is only one fund or pool of assets to be administered, namely the claims against the Master Fund. These assets are either held by the Intermediate Fund (as the Feeder JOLs consider to be the case) or by the Offshore Feeder Fund (as the JOLs of the Master Fund consider to be the case) as creditor of the Master Fund. The Offshore Feeder Fund and the Intermediate Fund each has no other assets so that after the receipt of the dividend paid in the liquidation of the Master Fund all that will need to be done is for the sums received to be distributed to the investors - either because the dividend will be paid to and received by the Intermediate Fund and then, after payment of the costs and expenses of the Intermediate Fund's JOLs, paid to the Offshore Feeder Fund or alternatively the dividend will be paid direct to the Offshore Feeder Fund. Therefore in substance there is only one winding up with a single set of assets and a single group of creditors (I assume that the investors are creditors of rather than shareholders in the Offshore Feeder Fund but the distinction is of no significance on this point). This argument would support the payment of only one fee on the issue of the winding up petitions in respect of the Offshore Feeder Fund and the Intermediate Fund. However, this is not the way in which HSM have put their client's case and it is, as I have explained, inconsistent with the Feeder JOL's stated position that they need and intend to contest the position of the Master Fund's JOLs and the admission of the claims of the Offshore Feeder Fund as the creditor of the Master Fund.
9. In these circumstances:
- (a) I am prepared to treat the two summonses dated 24 August 2017 as consolidated and make the order in the form of paragraph 3 of the draft order provided by HSM.



- (b). I am prepared to order that applications made simultaneously by the Feeder JOLs in the future which relate to the same subject matter shall be treated as consolidated. I am not prepared to make the order in the unqualified form of paragraph 1 of the draft order provided by HSM.
- (c). I am not as presently advised prepared to order that the two winding up petitions be treated as consolidated and so am not prepared to make the order in the form of paragraph 2 of the draft order provided by HSM. If the Feeder JOLs wish to maintain their application for such an order then they will need to confirm and properly explain the basis on which they seek to justify the order and deal with the points I have discussed above.



Mr Justice Segal
Judge of the Grand Court, Cayman Islands
18 October 2018

