

**Judgment 36/2013**

**In the matter of Batoo et al and in the matter of an application by Robb Evans & Associates LLC  
Royal Court  
23<sup>rd</sup> December, 2013**

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**Application for an Order recognising an appointment as Receiver.**

**Approved Text  
23.12.2013**

**IN THE ROYAL COURT OF GUERNSEY  
(ORDINARY DIVISION)**

**IN THE MATTER OF:**

- (1) NIKOLAI SIMON BATTOO**
- (2) BC CAPITAL GROUP SA (in Voluntary Liquidation)**
- (3) BC CAPITAL GROUP INTERNATIONAL LIMITED (also known as BC CAPITAL GROUP LIMITED also known as BC CAPITAL GROUP GLOBAL)**
- (4) BC CAPITAL MANAGEMENT LLP**
- (5) BC CAPITAL GROUP HOLDINGS SA**

(together “the Entities”)

**AND IN THE MATTER OF:**

**AN APPLICATION BY ROBB EVANS & ASSOCIATES LLC FOR AN ORDER  
RECOGNISING ITS APPOINTMENT AS RECEIVER OVER THE ENTITIES**

(“the Applicant”)

**Hearing date: 4<sup>th</sup> October 2013  
Decision handed down: 6<sup>th</sup> November 2013  
Reasons handed down: 23<sup>rd</sup> December 2013**

**Before: Richard James McMahon, Esq., Deputy Bailiff  
Advocate for the Applicant: Advocate T W McGuffin**

**Cases, Texts & Legislation referred to:**

*Terry and Durettebradshaw plc v Butterfield Bank (Guernsey) Limited* [2005-06] GLR 327

*Schemmer v Property Resources Ltd* [1975] Ch 273

*In the Matter of the assets of Ablyazov* 2012 (1) JLR 44

Dicey, Morris and Collins, *The Conflict of Laws*, 14th ed.

*Government of the Islamic Republic of Iran v The Bakarat Galleries Limited* [2007] EWCA Civ 1374

*Robb Evans of Robb Evans & Associates v European Bank Ltd* [2004] NSWCA 82

*The United States Securities and Exchange Commission v Manterfield* [2009] EWCA Civ 27

## Introduction

1. This judgment sets out in more detail the reasons I outlined on 6 November 2013 for dismissing the Application dated 29 May 2013 of Robb Evans & Associates LLC for recognition of its appointment as Receiver. Following the earlier dismissal on 5 September 2013 of the application to be heard made by Messrs Greenwood and Chilton in their capacities as liquidators of other parties to interpleader proceedings brought by EFG Private Bank (Channel Islands) Limited (hereafter referred to as “the Bank”), I proceeded to hear the Application ex parte on 4 October 2013. For ease of reference, I will refer to those proceedings as “the Interpleader Proceedings”. At the conclusion of that hearing, I reserved my decision and invited Advocate McGuffin, who has appeared on behalf of the Applicant, to indicate which of the powers conferred on the Applicant pursuant to the order of 27 September 2012 made by the United States District Court for the Northern District of Illinois Eastern Division (hereafter referred to as “the Illinois Court”) the Applicant wished to have recognised by this Court because I took the view that paragraph 1.2 of the Application was, in any event, cast too widely. He did so in the form of a draft Order. I chose to announce my decision to dismiss the Application on 6 November 2013, with full reasons to follow, because the Interpleader Proceedings in which the Applicant is also involved had been resurrected and my decision on this Application for recognition had an impact on how those Interpleader Proceedings would progress.

## Background

2. The Application was supported by five affidavits lodged on behalf of the Applicant. Four of them were sworn by Brick Kane, who is the president and chief operating officer of the Applicant. His First Affidavit, sworn on 29 May 2013, has been superseded by his Third Affidavit, sworn on 26 September 2013, as a result of which the First Affidavit was not relied on by Advocate McGuffin. Mr Kane’s Second and Fourth Affidavits were sworn on 5 June and 26 September 2013 respectively. The three Affidavits from Mr Kane set out how the Applicant came to be appointed by the Illinois Court as Receiver and elaborates on the connection with the United States of America of the persons in respect of which the receivership order was made. He has clarified the role of the United States Commodity Futures Trading Commission (hereafter referred to as “the CFTC”) and, in his Fourth Affidavit, he provides an update of developments since the making of the Application. The other Affidavit is from Stephen Richards, dated 28 May 2013, who made investments into what has been described by the Illinois Court as “*the BC Common Enterprise*”. He expresses his preference for the claims and distribution of any funds recovered to be made by the Applicant as Receiver, rather than by the liquidators appointed in the British Virgin Islands. Mr Richards is a US resident and deposes to the fact the he personally knows of other US investors who are similarly affected.
3. Some of the history relevant to this Application has already been described in judgments I have given in the Interpleader Proceedings. Those proceedings were commenced in March 2013 by the Bank. The Applicant for recognition as Receiver is the Fourth Respondent in the Interpleader Proceedings. Mr Kane, in his capacity as one of the Joint Official Liquidators of the First and Second Respondents to the Interpleader Proceedings, is one of the three gentlemen who are the Third Respondents. Messrs Greenwood and Chilton are the Ninth Respondents to the Interpleader Proceedings, effectively representing the other Respondents who are active in that case. Although it is not necessarily an entirely accurate description, on the one hand, the Ninth Respondents to the Interpleader Proceedings assert ownership of assets held by the Bank and the Third and/or Fourth Respondents oppose that assertion claiming that the assets fall to be returned to them for distribution under a different process to

what would occur if they were found to fall into the liquidations being conducted by the Ninth Respondents. The appointment of the Ninth Respondents, in their capacity as liquidators of the Fifth to Eighth Respondents to the Interpleader Proceedings, was recognised by this Court on 21 November 2012. The appointment in The Bahamas of Third Respondents as Joint Official Liquidators was recognised by this Court on 7 December 2012. The context of the Interpleader Proceedings forms the backdrop against which I considered this Application for Recognition.

4. The Illinois Court appointed the Applicant as Receiver on 27 September 2012. Proceedings had been commenced *ex parte* on 6 September 2012 by the CFTC against Nikolai Simon Battoo, BC Capital Group SA, BC Capital Group International Limited, BC Capital Management LLP and BC Capital Group Holdings SA. These entities have described in the proceedings before the Illinois Court as “the BC Common Enterprise”. The CFTC sought a restraining order, asset freeze and a preliminary injunction, together with expedited discovery. The CFTC also sought the appointment of a receiver. In its Complaint, the CFTC cited various violations of the United States Commodity Exchange Act (7 U.S.C. § 1 *et seq.*). Mr Kane has highlighted the following summary of the first alleged violation of the Act (para. 53 of the Complaint):

*“From at least October 2008 to the present, in or in connection with futures contracts made or to be made, for or on behalf of other persons, Battoo and the BC Common Enterprise, by and through its employees, agents and principals including but not limited to Battoo, cheated or defrauded or attempted to cheat or defraud pool participants or prospective pool participants by, among other things knowingly making material representation or omissions and issuing false accounting statements and reports ... all in violation of [the Act].”*

A common thread throughout the CFTC’s Complaint is that Mr Battoo controlled the other Entities named, with the *modus operandi* of the entire enterprise being to defraud investors.

5. The Entities named are spread across the globe. BC Capital Group SA, which is the First Respondent in the Interpleader Proceedings, is a company incorporated under the laws of the Republic of Panama. It managed a number of commodity pools trading under the names Private International Wealth Management and Private International Wealth Management Insurance, to which the collective label “PIWM” can readily be applied. BC Capital Group International Limited is incorporated under the laws of Hong Kong. It acted as a financial investment advisor to the PIWM pools. BC Capital Management LLP is a limited liability partnership registered with the UK Financial Services Authority under the laws of England and Wales. It provided research and development to the PIWM pools under an agreement with the Hong Kong company. BC Capital Group Holdings SA is incorporated under the laws of Switzerland. It also provided research, as well as trading and execution, to the PIWM pools under an agreement with the Hong Kong company. The Illinois Court accepted the manner in which these relationships were described on behalf of the CFTC. In effect, no differentiation was made between them in any solicitation materials and communications with those participating in the pools, enabling that court to treat them as all part of an indistinguishable group. Mr Battoo was running the operation from London and Switzerland. However, as an analysis of his movements shows, Mr Battoo also visited the United States of America frequently.
6. The Order of the Illinois Court was made on 27 September 2012 by the Honourable Judge Edmond E. Chang. He granted a preliminary injunction. His order records that none of the Entities appeared before him to contest the evidence adduced by the CFTC. The preliminary injunction extends to the Entities and, in most respects, to “*all persons insofar as they are acting in the capacity of agents, servants, employees, successors, assigns, or attorneys of*” the Entities and “*all persons insofar as they are acting in active concert or participation with [the*

*Entities] who receive actual notice of this order by personal service or otherwise”.* No mirror order has been sought from this Court.

7. In relation to the appointment of the Applicant as Receiver, para. 41 of the Order provides:

*“Robb Evans & Associates LLC is appointed Receiver, with the full powers of an equity receiver, over the Defendants and their affiliates and subsidiaries, and of all the funds, properties, premises, accounts, businesses, partnerships, sole proprietorships and any other kinds of assets directly or indirectly owned, beneficially or otherwise, managed or controlled by [the Entities], whether held in their own names or in the names of others (“Receivership Assets”). The Receiver shall be the agent of this Court in acting as Receiver under this Order. The Court has held off appointing a receiver during the TRO proceedings, in order to give the Defendants an opportunity to appear in the case and to provide (or at least start providing) the accounting that was previously ordered. But the Defendants have not appeared and no accounting is forthcoming. In light of the number of interwoven entities, and the need to ascertain what happened to the funds that investors put into the BC Common Enterprise, the Court must now appoint Receiver to untangle the financial condition of the entities, under 7 U.S.C. § 13-1(a). If the Receiver learns of evidence that dissociates one of [the Entities] from the BC Common Enterprise, then the Receiver must file a report with the Court within 2 business days of that discovery.”*

Paragraph 42 of the Order then sets out what the Receiver is directed and authorised to accomplish in 12 sub-paragraphs. Other consequences of the Order are set out in the following paragraphs. They appeared to be sweeping powers, which, if recognised and accepted, as paragraph 1.2 of the Application sought, might not have been entirely consistent with the powers already recognised by this Court attaching to the appointment in The Bahamas of the Joint Official Liquidators, which have been recognised by the Court. That was the principal reason for inviting Advocate McGuffin to confirm which of those powers the Application really sought to have recognised.

8. The draft order submitted following the hearing deals first with the Receiver’s powers to sue for, collect, receive and take possession of all books, records, work papers, records of accounts and other documents, meaning anything in which information of any description is recorded, in relation to the Receivership Asset held at the Bank, and identified a list of particular accounts, none of which are in the names of any of the Entities, but are largely accounts of the companies in respect of which the Ninth Respondents to the Interpleader Proceedings have lodged their claims. The second aspect was to be empowered to prevent the withdrawal or misapplication of funds entrusted to the Entities and otherwise protect the interests of pool participants. The third aspect was to be able to initiate, defend, compromise, adjust, intervene in, dispose of, or become a party to any actions the Receiver deems necessary and advisable to preserve or increase the value of the Receivership Assets or to carry out the mandate under the Illinois Court’s Order. The fourth element would enable the Receiver to choose, engage and employ advocates, other legal advisors, attorneys, accountants, appraisers and other independent contractors and technical specialists as the Receiver deems advisable or necessary in the performance of the duties and responsibilities under the authority granted by this Court. The fifth element was to authorise the Receiver to maintain written accounts and make them available, with supporting documentation, to this Court, the CFTC and the Illinois Court for inspection. The draft recognised the existence of the Interpleader Proceedings by further suggesting that if the powers as recognised involve the Receiver taking possession, causing the transfer or otherwise dealing with the assets which are the subject of the Interpleader Proceedings, the Receiver would be obliged to give 28 days’ prior notice to the other parties to those proceedings of its application to this Court to be able to exercise those powers.

9. Whilst the draft order helpfully focuses attention on the specific powers attached by the Illinois Court's Order to the receivership of the Applicant, it struck me that most, if not all, of what the Applicant sought to have recognised was already available to it through its participation as the Fourth Respondent to the Interpleader Proceedings. This is particularly so when one recalls that none of the parties to the Interpleader Proceedings has suggested that there are any assets that would fall within the definition of "Receivership Assets" within this Court's jurisdiction other than those which are the subject of the Interpleader Proceedings. A consequence of the Interpleader Proceedings is that there should be no dealings in the assets held at the Bank without the Court's involvement.
10. Mr Kane's evidence deals at some length with the connection of the Entities with the United States of America, including referring to the Illinois Court's findings of fact that they had solicited at least US\$140 million from at least 250 pool participants located in that country. Mr Richards is one of those persons. Further investigations have ascertained that the number of US-based investors is in excess of 550. Mr Kane has also commented about how Mr Battoo carried out his operations, explaining that the solicitation of some investors took place at a conference in Las Vegas and that other meetings occurred elsewhere in the United States of America, although another conference took place in Mexico. The telephone and facsimile numbers used for the Hong Kong and Panama companies were the same, albeit in The Bahamas. There was also office space in The Bahamas, and some uncertainty mark remains over whether anything significant was actually done out of London. Mr Battoo was resident in the United States of America up to at least 2007 and still retains interests in a number of entities in Florida. He only stopped visiting the United States of America in 2011. Mr Kane's general comment about the manner in which the Entities operated was that "*if [they] are willing to treat all of the corporate [Entities] as one single entity, then I would respectfully suggest that the Court should do the same*".
11. In his Fourth Affidavit, Mr Kane provided an update on developments between May and September 2013. He has explained that there have been further stages in the proceedings before the Illinois Court. The receivership has also been progressing, involving the gathering in and collation of lots of information to try to ascertain precisely what the BC Common Enterprise entailed. The Applicant believes that it operated "*as a Ponzi-type fraudulent common enterprise*".

### **Recognition in other jurisdictions**

12. Mr Kane has also referred to steps that the Applicant has taken in The Bahamas and Hong Kong.
13. On 12 April 2013, the Court of First Instance of the High Court of the Hong Kong Special Administrative Region made an Interim Order appointing an interim receiver of BC Capital Group International Limited, BC Capital Group Limited and BC Capital Group Global Limited. Mr Kane was appointed in that capacity. The terms of the receivership are set out in Schedule 1 to the order. They are not in identical terms to paragraph 42 of the Illinois Court's Order. Schedule 2 defines the Receivership Assets in broad terms, but does not refer specifically to any assets in Guernsey. The order appointing an interim receiver is coupled with a worldwide freezing order against the three Defendants, who appear from these proceedings to be three distinct entities rather than, as in the Illinois Court, a single entity also known by other styles.
14. The Hong Kong Order recites that it was "*granted pursuant to section 21M of the High Court Ordinance (cap. 4) and in aid of foreign proceedings commenced in*" the Illinois Court. Aside from that reference, the document does not look like an order made simply on the basis of recognising the Illinois Court's Order, but rather a distinct order made in separate

proceedings brought by the Applicant. However, despite its different terms, I am satisfied that the Illinois Court's Order has been given the partial effect it has in Hong Kong.

15. In The Bahamas, there has not been direct recognition of the Illinois Court's Order. However, the Third Respondents in the Interpleader Proceedings have obtained an Order from the Supreme Court dated 5 March 2013 directing that evidence obtained in The Bahamas via the Securities Commission of the Bahamas pursuant to an order of 27 November 2012 may be used by the Third Respondents and/or the Applicant (ie, the Fourth Respondent in those Interpleader Proceedings) in evidence for court proceedings transpiring outside of The Bahamas as may be needful. To that extent, I accept that the Supreme Court in the Commonwealth of The Bahamas is aware of the position of the Applicant and is providing an element of assistance to it by making available information sourced in The Bahamas, principally for the purposes of the Joint Official Liquidators of the second-named of the Entities, which is the First Respondent in the Interpleader Proceedings, but incidentally for use by the Applicant. This does not, however, reach the same level of affording the Applicant any powers in its capacity as a Receiver appointed by the Illinois Court and so I take the view that I am entitled to differentiate between what has happened in The Bahamas and in Hong Kong.
16. I have not been informed about any steps taken in other relevant jurisdictions to secure recognition of the Illinois Court's Order.

## The law

17. This Court has previously set out the basis on which recognition applications such as this one should be dealt with. In Terry and Durettebradshaw plc v Butterfield Bank (Guernsey) Limited [2005-06] GLR 327, Deputy Bailiff Collas (as he then was) adopted the approach summarised by Goulding J in Schemmer v Property Resources Ltd [1975] Ch 273 (at page 287):

*“I shall not attempt to define the cases where an English court will either recognise directly the title of a foreign receiver to assets located here or, by its own order, will set up an auxiliary receivership in England. To do either of those things the court must previously, in my judgment, be satisfied of a sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed to justify recognition of the foreign court's order, on English conflict principles, as having effect outside such jurisdiction.”*

18. The Royal Court of Jersey has found no reason to take a different stance (In the Matter of the assets of Ablyazov 2012 (1) JLR 44). It is clearly sensible for a common approach to be taken across the Channel Islands and I will apply precisely the same test to this Application.
19. Reference was also made in those cases to the relevant passage from Dicey, Morris and Collins, *The Conflict of Laws*, which now features as para. 30-127 of the 14th ed.:

*“The circumstances in which the courts will recognise the powers of a receiver appointed by a foreign court are different. These circumstances seem to obtain where the foreign court had jurisdiction over the defendant whose property is made subject to the receivership. Such jurisdiction has been said to exist if there is a “sufficient connection between the defendant and the jurisdiction in which the foreign receiver was appointed to justify recognition of the foreign court's order.” When a sufficient connection will exist cannot be definitively stated. However, first, it seems that an appointment by a court in the country where the company is incorporated will be recognised. Secondly, it is also likely that the appointment will be recognised if the defendant submitted to the jurisdiction of the court by whose order the*

*appointment was made, although such a submission by a subsidiary of the defendant company is likely to be regarded as an insufficient basis for such recognition. Thirdly, it is possible (but no higher than that) that an English court would recognise the order of the foreign court if that order would be recognised by the law of the place where the defendant company was incorporated. Fourthly, there is something to be said for recognising an appointment made by a court in a country where the central management and control of the company is exercised, particularly, perhaps, if there is no likelihood of intervention from the courts of its place of incorporation. Similarly, the relevant connection may be found to exist if the appointment is made by the court of the country where the company carries on business, particularly if that is the only country where business is carried on.”*

I will return to analyse these different routes to recognition in more detail shortly.

20. The second limb of the test is that the Court must be satisfied that, in granting recognition, it will not amount to the enforcement of a foreign penal statute. This principle also formed part of the decision of Gouling J in the Schemmer case (“*preventive criminal justice is no more a proper subject of international enforcement than retributive criminal justice*”), although that approach was criticised in Government of the Islamic Republic of Iran v The Bakarar Galleries Limited [2007] EWCA Civ 1374 as having overlooked the fact that, just because a provision is found in a law which contains criminal sanctions, such as penalties or forfeiture, it does not mean that the provision is necessarily penal in its nature.
21. The distinction between criminal and civil law applying was most helpfully set out in Robb Evans of Robb Evans & Associates v European Bank Ltd [2004] NSWCA 82 (at para. 89):

*“The recoupment of funds with a view to their return to persons deprived of those funds is a normal consequence of the application of civil law. In my opinion, as a matter of substance, that is what is occurring in the present proceedings. There is nothing in this case of the character of a governmental interest in the sense in which that concept is applied in the Australian authorities, i.e. as the exercise of a power peculiar to government. In my opinion the particular proceedings before the Court should not be characterised in that manner. The exclusionary rule does not apply and this Court should not decline jurisdiction.”*

This passage was cited, apparently with approval, in The United States Securities and Exchange Commission v Manterfield [2009] EWCA Civ 27 and the approach was referred to in the Bakarar Galleries case (*supra*).

## Discussion

22. The second limb of the test is, in my judgment, satisfied in this case. By reference to the Australian decision in the Robb Evans case (*supra*), noting that it has been accepted in England as highlighting the importance of the domestic court assessing for itself whether the substance of what is occurring is the enforcement, directly or indirectly, of a foreign power’s penal statute, I accept at face value the indication given in a letter from the CFTC to Mr Kane dated 30 November 2012 that “*in cases in which a Court freezes a defendant’s assets, it is the practice of the [CFTC] that any funds recovered are first used to satisfy investors and pool participants for losses, before using any funds to satisfy civil monetary penalties*”. Although a very narrow reading of this statement might lead to the conclusion that there remains the potential for the Receiver’s actions resulting in funds being used to satisfy civil monetary penalties, the overall impression I have formed is that there is unlikely to be any surplus to be applied for that purpose. Accordingly, the possibility is a theoretical one rather than a reality.

23. Having conducted my own analysis of what it is that the Receiver is undertaking, I am prepared to conclude that it is acting on behalf of the investors as a means of recovering in a uniform and unified manner what it can to distribute to those investors under the auspices of the Illinois Court and that, despite being appointed pursuant to an application made by the CFTC, this is not a case in which it is exercising a power peculiar to government.
24. The reason, therefore, for concluding that the Application should be dismissed was that I was not satisfied that the first limb of the test relating to a sufficient connection had been established. I reached that conclusion after considering the Entities collectively, as suggested by Advocate McGuffin as being consistent with the approach of the Illinois Court, and separately, just in case that approach assisted.
25. Neither of the first two situations mentioned in Dicey, Morris and Collins applies. The four companies within the Entities are not incorporated anywhere in the United States of America, nor have they, or Mr Battoo submitted to the jurisdiction of the Illinois Court.
26. The third situation mentioned in that work applies only to the third-named Entity, BC Capital Group International Limited. In that regard, I was prepared to accept that the Hong Kong Order had been granted in aid of the proceedings before the Illinois Court, even though the Order does not just recognise the Illinois Court's Receiver, but appoints Mr Kane personally as interim receiver. I regard that as being sufficient evidence that the Hong Kong Court was recognising the Illinois Court's Order.
27. Had the application been for recognition only of the Hong Kong Order, it could well have been arguable that that would have brought it under the first situation, making recognition of Mr Kane as interim receiver of BC Capital Group International Limited far more straightforward. However, because there has been no evidence that the Illinois Court's Order would be recognised in Switzerland, as against BC Capital Group Holdings SA and possibly even Mr Battoo, if that is where he now resides, or against BC Capital Management LLP in England or BC Capital Group SA in Panama, I have been presented with the difficulty that, for four of the five Entities, I cannot be satisfied that the third situation of connection through actual or possible recognition has been demonstrated. I do not consider that it would be appropriate to extrapolate from what has happened in Hong Kong and conclude that a broadbrush approach can be taken to all of the Entities and, if looked at collectively, in my view the balance lies against recognition relying on this third situation. Mr Kane effectively recognised these difficulties at para. 28 of his Third Affidavit:

*“... this case is by no means conventional and there is nothing usual or ordinary about this case. Whether by accident or design, Mr Battoo has incorporated the BC Common Enterprise across four separate legal jurisdictions, none of which has any connection or factual link to the investors who were targeted by Mr Battoo and the BC Common Enterprise. Therefore a conventional approach to the facts of this case may result in justice not falling between two, but between four stools.”*

28. That passage also relates to the fourth of the situations described in Dicey, Morris and Collins. Although I appreciate that in this age of instantaneous electronic communications business can be effected remotely much more readily than even a few years ago, having thoroughly reviewed the evidence in support of the Application, I was not satisfied that “*the central management and control*” the Entities was in the United States of America. In saying that, I accept that Mr Battoo was resident in that country until 2007, but also have to acknowledge that the architecture of the so-called BC Common Enterprise has been constructed in such a way that corporate vehicles elsewhere have been used to establish some distance from that country. I am also conscious that the allegations against Mr Battoo and the way he operated the BC Common Enterprise generally relate to a time after he was resident in that country. Apart from identifying the occasions on which Mr Battoo visited the United States of

America and the fact that the Entities did not appear to distinguish between themselves when seeking business, particularly at events in that country, possibly leaving the impression that this was a US-focused business, there are other factors pointing away from the United States of America being “*the central management and control*”. By way of example, although it was not the place of incorporation of any of the Entities, The Bahamas was used for telephone and mail communications. Accordingly, the balance does not, in my view, tip in favour of concluding that the United States of America can be said to be the place from which “*the central management and control*” took place.

29. That potentially leaves the final words in the passage quoted from Dicey, Morris and Collins relating to the place where the company carries on business. The findings of the Illinois Court and Mr Kane’s own evidence do not go so far as to suggest that the United States of America is the only jurisdiction in which the BC Common Enterprise carried on business. I accept that a good number of the investors or pool participants affected are resident in the United States of America. However, that alone is not sufficient, in my judgment, to warrant recognition of the appointment of the Applicant by this Court. Aspects of the business have been conducted within that country, but the overall impression is that the business, as distinct from the location of the investors placing their funds into that business, was being carried elsewhere.
30. This is, therefore, a case in which the usual approach cannot be advanced by the Applicant. Each of the situations described in Dicey, Morris and Collins is, in my opinion, taking the position further away from potential recognition in the sense of describing a form of connection that ranges from the greatest probability of recognition being granted to situations where recognition is possible but there must be some additional good reason for granting it. In my judgment, none of the situations described applies to the Applicant to the extent that recognition should be granted. I have reached the conclusion taking all the Entities collectively and also looking at them separately. Indeed, the only situation where looking at them separately might lead to a different conclusion is the third situation where the appointment might be recognised because it would be recognised in the place of incorporation and then only in respect of the third-named Entity, where I take the view that the balance still lies against recognition of the appointment in general.
31. I did go on to consider whether recognition of the Applicant’s appointment solely in respect of the third-named Entity should be granted, but concluded that it would probably make the Applicant’s role as Receiver unduly complicated to try to distinguish between taking steps in Guernsey in respect of that Entity alone and the general lines of enquiry in relation to the whole of the BC Common Enterprise its acts to date show that it is following. Further, because the role of that Entity was as a financial investment advisor to the PIWM pools and there was no suggestion that it had directly participated in holding any of the assets in question in Guernsey, to have recognised the appointment as Receiver solely in respect of that Entity may not have assisted the Applicant anyway. I was also influenced in my decision not to grant partial recognition in this way by the fact that the Applicant is actively participating in the Interpleader Proceedings and can potentially achieve similar outcomes, albeit not in precisely the same way, through that involvement.

## **Conclusion**

32. It was for these reasons that, whilst recognising the difficulties faced by the Applicant, I decided not to grant the Application. To have done so would, in my view, have gone beyond the criteria for recognition accepted in English law, as summarised in Dicey, Morris and Collins and would have resulted in an expansion of the circumstances in which recognition can be sought. Because the list is not intended to be exhaustive, I considered carefully whether I could say that there was, in any event, a sufficient connection with the United States of America establishing a proper basis for granting the Application, but concluded that the focus in that country is on the position of the investors rather than the actual way in which the

business was carried out. Further, because of the Applicant's participation in the Interpleader Proceedings, this is not a case in which the opportunity for defrauded investors to recover assets held in Guernsey is dependent on recognition of the Applicant. I endorse what was said in the *Terry* case (*supra*), that "*the courts of this Island will not tolerate those who attempt to misuse Guernsey's financial services for illegal or improper purposes*", but am satisfied that this issue will be addressed through the Interpleader Proceedings without there being any need to stretch the situations in which the power to recognise a receiver's appointment exists.