



**In re the Tchenguiz Discretionary Trust**  
Royal Court  
22<sup>nd</sup> November 2017

**JUDGMENT**  
**50/2017**

Hillier judgment on costs and expenses

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

**Civil No. 1505/2010**

**IN RE THE TCHENGUIZ DISCRETIONARY TRUST (“the TDT”)**

**J U D G M E N T**

**Before Patrick John Talbot, Esq., QC, Lieutenant Bailiff – sitting alone**

***Oral hearing 13 September 2017***

**Judgment handed down: 22 November 2017**

**Advocate Jessica E Roland** for the Former Trustees of the TDT

**Advocate Nicholas J Robison** for Rawlinson & Hunter Trustees S.A., the sole trustee of the TDT between about 2 July 2010 and 21 September 2017, and one of the trustees of the TDT between about 21 September and 3 October 2017

**Advocate Elaine R Gray** for the Joint Liquidators of four BVI Companies, creditors of the Former Trustees of the TDT

**Advocate Paul Richardson** for the Protector, Robert Tchenguiz, who is also joined as a party as an adult member of the class of Beneficiaries under the TDT

**Advocate Paul Richardson** for the previous protector, Richard Hillier  
(Advocate Christian Hay is the appointed representative of the minor, unascertained and unborn Beneficiaries under the TDT, including the two minor children of Robert Tchenguiz)

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**J U D G M E N T**

of Lieutenant Bailiff Patrick John Talbot QC  
22 November 2017

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***Introduction***

1. This judgment relates to the application of Mr Richard Hillier, the previous protector under the TDT Trust Deed, (**Mr Hillier**), dated 8 August 2017 for an Order permitting him to claim reimbursement of the costs and expenses incurred by him and on his behalf whilst a party to these proceedings (**Guernsey 2**).

2. The background to this judgment is mostly to be found in the judgments of the Court of Appeal in the appeal in the proceedings known to the parties as Guernsey 1 (**Guernsey 1**) delivered on the 27 June 2014, 29 October 2014 and 10 August 2015, and in my first judgment on costs in Guernsey 2, which I delivered on 27 November 2015 (**the first costs judgment**). In this judgment I shall use the same abbreviations as I used in the first costs judgment, except that I shall refer to Mr Robert Tchenguiz as “**the Present Protector**”. Although the Current Trustee was removed as a trustee of the TDT by notice given by the Present Protector on about 3 October 2017, *i.e.* after the oral hearing in this matter, it was the sole trustee of the TDT during the material part of Guernsey 2 and I shall therefore continue to refer to it in this judgment as the Current Trustee.
3. The application is unopposed by the Former Trustees, the Current Trustee, the Present Protector and the Joint Liquidators. In the light of the probable insolvency of the TDT, I did not consider it necessary to seek submissions on the application from Advocate Hay on behalf of the minor, unascertained and unborn beneficiaries under the TDT, but this judgment should be sent to him after it has been handed down.
4. In the first costs judgment, I set out and applied the general principles of law applicable to cases where trustees and protectors claim reimbursement of their proper expenses, including costs of proceedings, and then applied those principles to the claims of the Former Trustees, the Current Trustee and the Present Protector for reimbursement of their costs and expenses incurred in Guernsey 2. In my view, it is unnecessary for me to set out in this judgment in any depth the effect and scope of those principles.

### ***Discussion***

5. At the date of commencement of Guernsey 2 in May 2010, Mr Hillier was joined as a party in his capacity as the then Protector of the TDT, having been appointed on about 8 October 2009 in succession to the first protector under the TDT Trust Deed. Mr Hillier instructed Guernsey Advocates, Ogier, and English solicitors, Herbert Smith Freehills, to represent him in Guernsey 2; they did so until he was replaced as protector by the Present Protector on about 28 June 2010. Thereafter, Mr Hillier has played a part in Guernsey 2 in his capacity as a director of the Current Trustee, and has provided affidavit evidence on behalf of the Current Trustee, but he ceased to be a party, or perhaps more accurately he ceased to be an active party, on 28 June 2010. This judgment therefore relates to the period during which he was a party to Guernsey 2 as the then protector of the TDT.
6. After I had delivered judgment in the first costs judgment, and in the second judgment on costs and expenses which I delivered on 29 June 2017, (**the second costs judgment**), Mr Hillier decided to apply, pursuant to paragraph 60 of the second costs judgment, for orders similar to those made by me in favour of the Present Protector in Guernsey 2. On his behalf, Advocate Paul Richardson contended that the same general principles applied as those which in the first costs judgment I had ruled applied in the case of the Present Protector, and that Mr Hillier’s claim for reimbursement should be allowed in the total sum of £81,094.65 claimed in the application and the supporting 9th affidavit of Mr Hillier affirmed on 26 July 2017. That sum comprises (i) the sum of £67,094.65 for Ogier’s fees and (ii) £14,000 for Herbert Smith Freehill’s fees incurred by Mr Hillier during the period up to and including 28 June 2010, the date of his replacement as protector under the TDT Trust Deed.
7. In my judgment, the general principles of trust law applicable to Jersey trusts like the TDT and also applicable under Guernsey law, which I set out and applied to the Present Protector’s claims for reimbursement, apply to Mr Hillier’s claims for reimbursement of his reasonable costs and expenses, which are the subject-matter of the application. In particular, the findings which I made in paragraphs 24, 25, 27 and 34 of the first costs judgment also, in my judgment, apply in the case of Mr Hillier. Accordingly, Mr Hillier is entitled to his costs of

all applications made in Guernsey 2 incurred during the period from the inception of Guernsey 2 in about May 2010 up to and including 28 June 2010, and to his expenses incurred during that period, on the indemnity principle out of the assets of the TDT. Since there are no challenges from any other party to the amounts claimed by him in his 9<sup>th</sup> affidavit, I find that he is entitled to be indemnified in the total sum of £81,094.65.

8. I stress, however, that nothing in this judgment is to be regarded as providing any support for the enforcement of Mr Hillier's rights of indemnity as to costs and expenses in priority to the claims of the judgment creditors in Guernsey 1. Questions of priority as between those creditors and any other creditors of the Former Trustees, as trustees of the TDT, are to be decided in due course, I understand, by either the nominated judge in Guernsey 1 or by any other judge appointed to deal with such questions.

**Patrick Talbot QC**  
Lieutenant Bailiff  
**22 November 2017**