

Supplementary judgment to substantive judgment handed down 26th April 2021 in respect of orders in ancillary matters following the court's decision that the limited partnership known as CRGF LP be dissolved.

[2022]GRC039

IN THE ROYAL COURT OF GUERNSEY

Between

(ORDINARY DIVISION)

FONDS RUSNANO CAPITAL SA

Plaintiff

-and-

CRGF GP LIMITED

Defendant

Hearing dates: 16 and 17 September 2021

Judgment handed down: 27 June 2022

Before: Richard James McMahon, Esq., Bailiff

Jurats: D P Hodgetts LVO, D J Mortimer and J M Wyatt

Counsel for the Plaintiff: Advocate S L Brehaut
Counsel for the Defendant: Advocate A C Williams

Cases, Texts & Legislation referred to:

The Royal Court (Reform) (Guernsey) Law, 2008
The Limited Partnerships (Guernsey) Law, 1995
The Royal Court Civil Rules, 2007
The Companies (Guernsey) Law, 2008
Arnold v Britton [2015] AC 1619
Cavendish Square Holding BV v Makdessi [2016] AC 1172
Photo Production Ltd. v Securicor Transport Ltd [1980] AC 827
Rainy Sky SA v Kookmin Bank [2012] Bus LR 313
Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Grace v Biagioli [2005] EWCA Civ 1222
Re Bird Precision Bellows Ltd [1986] Ch 658
Partizan Ltd v O J Kilkenny & Co Ltd [1988] BCC 912
VB Football Assets v Blackpool Football Club (Properties) Limited [2017] EWHC 2767 (Ch)
O'Neill v Phillips [1999] 1 WLR 1092
DD Growth Premium 2X Fund (in liquidation) v RMF Market Neutral Strategies (Master) Ltd [2018] Bus LR 1595
Francotyp-Postalia v Whitehead [2011] EWHC 367 (Ch)
Albon v Naza Motor Trading Sdn Bhd [2007] 1 WLR 2489
Ministry of Sound (Ireland) Ltd v World Online Ltd [2003] 2 All ER Comm 823
Williams v Roffey Bros & Nicholls (Contractors) Ltd [1991] 1 QB 1

Introduction

1. This judgment is supplementary to the substantive judgment in this action handed down on 26 April 2021. It should be read with that judgment as the abbreviations used therein continue to be used herein. The Court had hoped that the parties would be able to reach an agreed outcome in respect of the orders ancillary to the Court's decision that the limited partnership known as CRGF LP be dissolved and is disappointed that they have been unable to do so. The consequences of dissolution were explained in the section of the judgment between paragraphs 299 and 314. This supplementary judgment makes some further findings on the evidence adduced and sets out what those orders will now be.
2. Following the hearing in September 2021, judgment was reserved to enable the presiding judge to direct the Jurats in private and prepare this judgment in accordance with the provisions in the Royal Court (Reform) (Guernsey) Law, 2008. Once again, it has taken longer than is desirable for this judgment to be delivered, for which the Court apologises. In the interim, no doubt being conscious of the situation in Ukraine, Advocate Brehaut has withdrawn from representing the Plaintiff, but is recorded as having acted because she presented the case at the hearing in September 2021.

The issues arising

3. The ongoing dispute between the parties centres on what monies, if any, the Defendant is entitled to receive from the funds of the limited partnership in priority from the liquidator, who was appointed to conduct the winding up of the limited partnership, before he pays out anything that remains in his hands in accordance with the provisions found in the Limited Partnerships (Guernsey) Law, 1995 ("the LP Law"). Depending on the outcome, it may even be the case that the Defendant would be required to reimburse monies already taken by it.
4. The background to what now needs to be resolved was set out from para. 299 in the substantive judgment and revolves around the effect of clause 11.3 of the LPA as it interfaces with section 29(2) of the LP Law. We will summarise what was contained in that earlier judgment before going on to determine the issues that arise from the further evidence and submissions made.
5. Clause 11.3 of the LPA provides:

"After satisfying all current and future obligations of the Partnership to creditors in the manner described in the Law and all costs of the winding up, the remaining proceeds, if any, plus any remaining assets of the Partnership shall be distributed, firstly, for payment of outstanding fees of the General Partner and then in accordance with the provisions of Clause 10."

Section 29(2) of the LP Law provides:

"Upon the making of an order under subsection (1) for the dissolution of a limited partnership or at any time thereafter, the Royal Court may make such other orders in relation to the dissolution as it thinks fit, including one for the appointment of one or more liquidators to wind up the partnership's affairs and distribute its assets."

As a result of section 30(10)(b) of the LP Law, the dissolution of the limited partnership takes effect from the date of the Court's order (which was 27 April 2021, although the liquidator was not appointed until 28 May 2021). Section 32 sets out the legislative scheme by which the assets are to be distributed upon dissolution:

"Upon the dissolution of a limited partnership, the assets shall be distributed in the following order –

- (a) *firstly, to creditors other than partners, to the extent otherwise permitted by law, in satisfaction of partnership debts,*
- (b) *secondly, to limited partners who are creditors and who are not also general partners, to the extent otherwise permitted by law, in satisfaction of partnership debts other than debts described in paragraph (c),*
- (c) *finally, subject to the provisions of the partnership agreement, to partners as follows –*
 - (i) *firstly, to limited partners for the return of their contributions or, where appropriate, for the release of their obligations to make contributions,*
 - (ii) *secondly, to limited partners for their share of the profits on their contributions,*
 - (iii) *thirdly, to general partners other than for capital and profits,*
 - (iv) *fourthly, to general partners in respect of capital,*
 - (v) *finally, to general partners in respect of profits.”*

6. Paragraph 308 of the substantive judgment set out the directions given to the Jurats. Section 29(2) of the LP Law affords the Court a broad discretion, but one that must be exercised judicially, where the terms of the LP Law cannot be overridden. The following paragraph quoted clause 17.3 of the LPA:

“Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision shall be enforced to the maximum extent permitted by law and, in any event, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.”

Accordingly, the Jurats were further directed *“that this did not give them carte blanche to ignore the provisions that formed the bargain between the parties, but they could have regard to the realities associated with what this LPA was envisaged to do as between them and, if they considered that either party had grounds to avoid the impact of any particular term, possibly because of something implicit in how they had approached entering into the LPA in the first place, such as the effect of co-management, they could consider whether there was any provision that should now be treated as if severed from the remainder of the LPA for the purposes of winding up the limited partnership.”*

7. In the light of these considerations, the indicative view expressed (adopting the language in para. 304) was that the Jurats had to respect their decision that the LPA was not being rescinded, ie, the Plaintiff’s primary case, whilst noting that *“the business conducted by the partnership has been at a lower level than the parties expected.”* They noted that the Defendant might have chosen to acknowledge, following Mr Erochkin’s resignation, that the purpose of the limited partnership was unable to be realised, which would have been an Event of Dissolution in accordance with clause 11.1 of the LPA, in which case any fees payable to the Defendant would have stopped accruing. They further noted the offer from the Defendant to agree to a dissolution of the limited partnership made at the commencement of the hearing in June 2019, which was rejected by the Plaintiff. This led to the provisional conclusion set out in para. 312 that it would be unjust to afford the Defendant priority for the accrued management and other fees over any return to the Plaintiff, being *“satisfied that clause 11.3 should be disregarded by the liquidator... so that the Defendant would only benefit from accrued and unpaid management*

fees in the event that there is a surplus after the Plaintiff has been paid out what it is entitled to be paid out under section 32(c)(i) and (ii)."

8. An alternative indicative approach was set out in para. 312 under which the accrual of management fees pursuant to clause 6.7 in the LPA might be time-limited. Various possible dates beyond which the management fees would not be payable were canvassed, but each of these was subject to "*further representations of the parties*" with the indications expressly being offered to "*assist the parties to attempt to reach agreement as to the way in which to resolve this type of ancillary matter*".
9. However the discretion available through section 29(2) of the LP Law might be exercised, the Court emphasised that it would not grant the relief the Plaintiff had sought of ordering a transfer of the Didi shares to it. This was *inter alia* because there might be legitimate partnership expenses that need to be settled and the fact that the LPA has continued in existence with obligations arising as a result, which need to be borne in mind in achieving a fair solution. At para. 314, the Court reminded the parties that it would "*endeavour to put the parties into a position that fairly reflects the bargain that was reached*", noting that the parties' relationship had broken down following Mr Erochkine's resignation and thereafter acted differently from how the Plaintiff's personnel expected him to, which is something else to weigh in the balance.
10. It is against that background that the matter came back before the Court. The Plaintiff's position is that, aside from any expenses incurred by the Defendant as general partner, to which it accepts there is a right of indemnification, the Defendant should receive none of the fees set out in the LPA. Alternatively, any fees payable should be calculated by reference to what the Plaintiff actually contributed to the limited partnership rather than the significantly larger Commitment promised, which was never realised, and the fees should only be payable up to 15 July 2016, which is when the second tranche of contribution to the limited partnership was made or, at the very latest, 17 July 2017, which is when Mr Erochkine resigned his employment. By contrast, the Defendant's primary position is that there is no reason to modify the terms of the bargain found in the LPA, meaning that the Defendant is entitled to receive all the accrued and unpaid fees to which it is entitled under its terms. The Defendant's alternative case is that any reduction in the fees owing to it should be calculated by reference to the agreed Total Commitment of RMB900 million (ie, US\$150 million) and up to the commencement of proceedings in March 2018.

The evidence

11. The additional evidence adduced at this stage of the proceedings came largely from the Defendant. Mr Erochkine swore an amended Sixth Affidavit on 6 September 2021 and a Seventh Affidavit on the same date. As Mr Erochkine explains in para. 15 of his Sixth Affidavit, he had chosen to split his further evidence in this manner so that this Affidavit dealt with "*the less contentious issues relating to the finances of, and expenses incurred by, the Limited Partnership in connection with the Amended LPA, including the fees the partnership has incurred to CRGF GP*" and his Seventh Affidavit "*contains evidence relating to the management services provided by CRGF GP pursuant to the Amended LPA*". In the event, he was cross-examined on both Affidavits.
12. The evidence adduced on behalf of the Plaintiff at this stage comes from Pavel Naftulin, in an Affidavit sworn on 19 August 2021. He is the Head of Legal at Managing Company Rusnano LLC. He deals primarily with a point made at the end of Mr Erochkine's Sixth Affidavit (and which had been included in the original version sworn on 16 July 2021 in the same terms) about a criminal complaint against Mr Erochkine. Mr Naftulin states that his position is such that he would know if this came from JSC Rusnano or from within the Rusnano group and he confirms that any such complaint to which Mr Erochkine has been subject since the hearing in 2019, referring specifically to the summons to which Mr Erochkine refers in para. 73.1 of his Sixth Affidavit, did not arise from any action by the JSC or the group. Mr Naftulin also comments

about the work that Mr Erochkine explains that he undertook on behalf of the Defendant, which Mr Naftulin states formed part of the work Mr Erochkine was obliged to undertake as a Rusnano employee, for which he was remunerated.

13. In addition to all the evidence that has been before the Court in respect of this action, in his Sixth Affidavit, Mr Erochkine highlights the terms of the LPA as to why the Defendant should receive what the parties agreed should be received. He repeats his comments that it was Ms Rapoport who asked that the setup fee and placement fee be deferred so that the Plaintiff's financial statement would not show a significant loss, which would be unacceptable to the ultimate parent company, JSC Rusnano. He refers to the terms of the freezing injunction sought by the Plaintiff in 2018, which expressly permitted the Defendant to draw the management fee prospectively. At para. 36, he deposes to the amounts so drawn from the limited partnership's bank account with Banque Havilland SA, which totalled US\$4,389,842.40, which left the account with a zero balance, and so the bank closed it on 22 January 2020.
14. Mr Erochkine confirms at para. 41 of his Sixth Affidavit that "*the only Limited Partnership assets there have ever been are the Didi Shares and the cash (US\$20,005,000 and a further US\$5,000,000) the Plaintiff originally invested, which was held in the Limited Partnership bank account.*" In relation to the amount withdrawn from the limited partnership's bank account for the management fees of the Defendant, those amounts were used to meet partnership expenses, meet the Defendant's own expenses to keep it in good standing and fund its running costs and the Defendant paid and distributed to Mr Erochkine the remainder as its sole shareholder.
15. Mr Erochkine also deposes to those expenses that the Defendant considers should be reimbursed to it pursuant to clause 7 of the LPA. These include the annual validation fees payable to the Guernsey Registry and fees paid to Saffery Champness Management International Limited for provision of a registered office, as well as costs associated with obtaining certified copies of documents for the limited partnership's bank account. He suggests that the costs of engaging in this litigation should also be recovered under this provision. He distinguishes those costs that the Defendant accepts are not capable of being reimbursed, including those that result from keeping the Defendant in good standing in the British Virgin Islands, or expenses relating to office rental, travel, event tickets and legal advice. Finally, he highlights that the Defendant has been assisting the liquidator appointed to wind up the limited partnership and comments about the way in which the Didi shares might be realised by him.
16. In his Seventh Affidavit, Mr Erochkine sets out that by mid-2017 a significant amount of the Defendant's work had been done because the investment in Didi had taken place and it had developed a full pipeline for investment consideration. At para. 14, he explained that:

"Early in the lifespan of the Limited Partnership, CRGF GP was actively engaged (with and without Conduit Ventures Limited) in identifying potential investments for the Limited Partnership that fell within the remit of its investment objectives and mandates. This involved time spent liaising with contacts as well as expanding that network, conducting research, investigating and obtaining the necessary due diligence on potential investments as well as extensive work with the Plaintiff and related entities. One such potential investment resulted in the purchase of the Didi Shares."

He offers two further examples of projects on which the Defendant worked as part of this pipeline of potential investments. One was TouGas Oilfield Solutions and the second led to a non-disclosure agreement being signed in early 2017 with Codex Capital Partners (UK) Limited. He states that, even after he had resigned his employment in the summer of 2017, the TouGas opportunity was developed further and would have been ready for an investment by the limited partnership but for the dispute that had arisen between the parties.

17. On behalf of the Defendant, Mr Erochkine complains that the conduct of the Plaintiff severely impacted on the Defendant's ability to provide continued management services to its full

capabilities. The Plaintiff insisted that the Defendant should not take any steps in relation to new transactions and the freezing orders obtained before commencing the proceedings restrained the Defendant's actions. However, the Defendant still continued to provide services to the limited partnership. It monitored the investment in Didi, maintained and built a network of contacts, considered potential investment opportunities and kept the pipeline of projects current, all in the hope of resolving the parties' dispute and continuing with the limited partnership. It maintained an office in Lisbon and Mr Erochkin visited a number of places with a view to expanding the pipeline on behalf of the limited partnership. Since he resigned his employment in July 2017, his role at the Defendant had been his full-time job.

18. During the course of his evidence, Mr Erochkin complained that the Rusnano group was trying to take all the benefit from the limited partnership. He relied on a minute he exhibited of the Defendant dated 13 November 2017 which referred to "*Commitments and Contributions be reflected as an initial tranche of USD 50 million and a second tranche of USD 100 million*" supporting the Defendant's contention that the LPA referred to Total Commitments of RMB900 million. Accordingly, the annual management fee would be US\$3.75 million. This arose from the appropriate exchange rate operating in December 2015. He sought to explain the different amount appearing in the financial statements of the limited partnership from commencement on 1 October 2015 to 31 December 2016, which were signed on 15 November 2017 on behalf of Rysaffe Administrateurs Sarl, as showing that this was not related to a lower amount of monies actually committed. In respect of expenditure, under the heading "General Partner Fees", the management fee is recorded as US\$1,347,446. Note 3 explains:

"Under the terms of the Limited Partnership Agreement of CRGF LP dated 1 October 2015 (as amended and restated on 3 December 2015) CRGF GP Ltd was appointed General Partner of the Partnership. A management fee of 2.5% per annum of the total committed Partnership capital is charged. This fee is due and paid entirely by CRGF LP. The fee due to the General Partner for the year ended 31 December 2016 was USD 1,347,446.00."

Note 9 further explains about a contingent liability:

"The terms of the amended limited partnership agreement dated 3 December 2015 state that management, initial setup and placement fees are due to the General Partnership on the basis of total commitments (RMB 900M / USD 150M). To date the General Partnership has only raised management and setup fees in respect of the first tranche of the initial commitment (RMB 300M / USD 50M) and placement fees on contributions called (USD 25,005,000). The General Partnership has reserved the right to charge the balance of fees in future periods at its discretion, therefore there is a contingent liability of up to USD 6,194,792."

19. Mr Erochkin confirmed that under 10% of the management fee drawn from early 2018 to early 2020 was distributed to him. He had received what was distributed to him during 2019. He pointed out that he had not received any salary, was not seeking any reimbursement and had not produced any bank statements.
20. When he was asked about the example he had given about a possible investment into TouGas Oilfield Solutions, he accepted that this had been suggested by Conduit. The Defendant had never made any payment to Conduit because this was something the partnership was going to pay. He suggested that, once an idea was aired, the Defendant then carried out independent work to test the technology involved. He disagreed that this had anything to do with his employment with a Rusnano entity, because it was a limited partnership opportunity undertaken by its general partner. He considered that the role of Conduit was being over-stated. He suggested that the Defendant was obliged to continue its obligations under the LPA from which it had not been released. That was why he had been participating in networks and communities. Having regard to the trips of which there was evidence of travel, he rejected the suggestion that

these showed weekends away. He frequently commented that he was not making up his evidence.

21. In respect of the work undertaken by the Defendant after he had resigned his employment, Mr Erochkine claimed that there had been a huge amount of work. He sought to split it into three stages: access to deals; looking after investments; and exiting investments. He said he had done great work on stage 1, stage 2 had been limited due to what the Plaintiff had done and stage 3 was never reached. He felt that there had been substantial value in the work he had done under the terms of the LPA. He disagreed that there was an incomplete documentary record.
22. On this occasion, the Jurats did not form a favourable impression of Mr Erochkine as a witness. Unanimously, they found him to be evasive in the answers he gave when cross-examined and felt his explanations were hard to believe, particularly when he was dealing with the expenses incurred. They noted that there was little by way of receipts or other means by which proving the money that had been expended could be supported. Indeed, when responding to the presiding judge's directions about whether there might have been incomplete disclosure, noting that that had been a complaint the Defendant had levelled against the Plaintiff previously, they took the view that it was more likely than not that the Defendant had not complied with the ongoing duty of disclosure found in rule 70 of the Royal Court Civil Rules, 2007. If the business of the Defendant continued to be as extensive as Mr Erochkine had stated it was from its creation to the hearing in September 2021, they felt there must have been other documents that should have been disclosed. The presiding judge had highlighted that this second hearing was part of the ongoing proceedings between the parties and not a discrete element to which different rules might apply, hence the reason for recording these findings of the Jurats. In short, unless there has been some documentary evidence supporting what Mr Erochkine said when questioned, the Jurats are less inclined to accept his evidence and, where Mr Naftulin's unchallenged evidence contradicts Mr Erochkine, they prefer what Mr Naftulin has set out.

Legal submissions

23. In relation to the issues with which this judgment deals, the Plaintiff's initial Skeleton Argument dated 25 June 2021 accepts that the Defendant is entitled to be indemnified for expenses falling within clause 13 of the LPA, seeks repayment to the limited partnership in respect of the management fees taken by the Defendant between October 2018 and July 2020, after which the liquidator can proceed to wind up the limited partnership in accordance with section 32 of the LP Law, disregarding clause 11.3. It is suggested that this outcome is both just and practical.
24. In the Defendant's Skeleton Argument dated 16 July 2021, Advocate Williams makes detailed submissions as to how to construe the LPA, with the result that the provisional view set out in the substantive judgment about its terms should be re-visited. He further submits that section 29(2) of the LP Law should not be given the broad interpretation found in the presiding judge's directions. The bargain that the parties reached found in the LPA should be respected, especially where the Defendant has performed the services it has in good faith. In his submission, section 29(2) cannot be used to override, modify or disregard the provisions in the LPA. The way in which clause 6.7 of the LPA deals with the requirement to pay the management fee, it is apparent that it remains a valid term permitted by law and so should not be considered severable under clause 17.3. It is a promise to pay where the party receiving the payment stands ready to perform the obligations under the LPA. He further distinguishes between the management fee payable pursuant to clause 6.7 and the initial setup fee and placement fee payable pursuant to clause 6.8, which are due to the Defendant in any event. In respect of the Plaintiff's suggestion that the Defendant be required to reimburse the limited partnership in respect of the management fees drawn under the terms of the freezing injunction, Advocate Williams argues that this is a matter for the liquidator and not for any order ancillary to winding up the limited partnership.

25. In reply, Advocate Brehaut submits that it is not open to the Defendant to seek to re-open issues that were argued in 2019 and dealt with in the substantive judgment. The Court has already ruled that section 29(2) contains a broad discretion enabling the Jurats to tailor the relief granted to the Plaintiff on the dissolution of the limited partnership appropriately. Even if it is permissible to seek to re-open these issues, there is an analogy to the unfair prejudice jurisdiction in respect of companies, as found in section 350 of the Companies (Guernsey) Law, 2008, which is in similar language. Consequently, especially when the winding up follows the just and equitable ground, finding an equitable solution is permitted. As regards the evidence relating to the management services allegedly provided by the Defendant, the further evidence of Mr Erochkin has to be treated with caution where the materials exhibited appear to be incomplete. She draws attention to what was set out in para. 18 of the Defendant's Skeleton Argument: "*CRGF GP has itself long recognised that the relationship could not realistically continue*". She also counters the arguments advanced by Advocate Williams that it would be wrong for this Court to make any order involving repayment of management fees already taken on the basis that they are technical arguments that overlook the breadth of the power in section 29(2). This is not raising a new restitutionary claim but rather reflecting what the parties had expected when they entered the LPA as to who would take the ultimate benefit of these fees. It amounts to a facet of accounting between them for the realities of the agreement they envisaged.
26. Following a further review in August 2021, both Advocates took the opportunity provided of making further written submissions covering their alternative positions. Each had adopted what might be regarded as extreme opposite positions as to the entitlement of the Defendant. The Plaintiff was arguing its primary case that the only aspect of remuneration possible was those expenses where there was an indemnity in clause 13 of the LPA. The Defendant was arguing that the fees payable to it had accrued from the outset and continued to accrue under clause 6.7 and 6.8, the total of which exceeded US\$27 million. In respect of the alternative approach, the Plaintiff's secondary case became that fees calculated by reference to what the Plaintiff actually committed payable up to mid-July 2016 or, at the latest, Mr Erochkin's resignation in mid-July 2017 could be ordered if its primary case were rejected. The Defendant's alternative case became that all fees continued to be calculated by reference to the Total Commitment (US\$150 million) but that ending the accrual of the management fees in March 2018, when the proceedings were begun, would be logical.

Discussion on law

27. Although the Defendant has argued that the Court should not countenance the breadth of the power the presiding judge directed the Jurats is available to them under section 29(2) of the LP Law, the position remains as it was. These are questions of law, including extending to how to construe the LPA, and so fall for determination by the presiding judge. The words found in section 29(2) must be given their natural meaning and they are broad. The limitations sought to be placed on them by Advocate Williams are not accepted. Equally, the suggestion from Advocate Brehaut that this is something that cannot be re-visited is incorrect. Unless and until such an issue is determined by this Court, which then becomes *functus officio*, it is open to the Court to re-open anything that remains in issue. The difference here is that the conclusions on the law remain as they were and the directions given to the Jurats on the basic question of the breadth of the power available to them is unchanged, but the indications given by the Jurats in the substantive judgment are not binding on them and so are capable of being re-considered in the light of the further directions given to them and the additional facts from the further evidence that they have now heard.
28. The summary of Advocate Williams' submissions is that section 29(2) cannot be used to override, modify or disregard the provisions of the LPA because:
- (i) that power is subject to the express provisions found in the LP Law, including the terms of section 32, providing that after certain payments have been made in the winding up,

the limited partnership's assets fall to be distributed in accordance with the terms of the LPA;

- (ii) the subsection does not empower the Court to adjust the substantive contractual rights and obligations of the parties in the LPA, but rather to permit the management of the dissolution; and
 - (iii) even if those principles are not accepted, it would be wrong and perverse for the Court to make the adjustments given in the indicative section of the substantive judgment.
29. The presiding judge agrees with Advocate Williams that section 32(c) of the LP Law contains the words “*subject to the provisions of the partnership agreement*”, from which it is apparent that the LPA in the present case can result in a different outcome in that final stage of distributing the assets on dissolution of a limited partnership. As a matter of law, this provision has to be construed as part of the overall regime found in the LP Law. Within section 32, it is clear that the priority on dissolution is afforded to external creditors (para. (a)). What is involved must be a partnership debt. Recovering that partnership debt must also be permitted by law, in the sense of not being precluded from recovery. Illustrations of what will be partnership expenses are found in clause 7.1 of the LPA. The presiding judge directed the Jurats that there might be other matters that would fall within section 32(a), but noted that it was common ground between the parties that there were no external creditors of the limited partnership anyway. Similarly, it was not being contended that section 32(b) was engaged, it being common ground that the only limited partner of the limited partnership was the Plaintiff and it did not have the capacity as a creditor seeking to recover any partnership debt. Accordingly, it was the wording in section 32(c) on which the Jurats needed to concentrate and the further directions given about the interpretation of the LPA to which this stage of the distribution of assets was expressly subject.
30. As before, the presiding judge highlighted first clause 11.3 of the LPA, and the way in which the parties had agreed that the remaining assets of the limited partnership were to be distributed in priority to settle the “*payment of outstanding fees to the General Partner*” and then in accordance with clause 10, which provides in its entirety (clause 10.1):

“Except as otherwise provided herein, distributions shall be paid in the Fund Currency and made to the Partners in proportion to their Commitments. The general Partner shall distribute proceeds derived from investments in a timely manner. Notwithstanding anything to the contrary contained in this Agreement, the Partnership, and the General Partner on behalf of the Partnership, shall not be required to make a distribution to any Partner on account of its interest in the Partnership if such distribution would render the Partnership insolvent or violate the Law or other applicable law. The General Partner may make distributions in specie, in its absolute discretion.”

The first thing to note about clause 10.1 is that the only type of distribution envisaged here is in proportion to a partner's Commitments. It does not make any express provision about distributions on dissolution. This is quite different from the payments out to limited partners first and general partners thereafter found in section 32(c), which sets these out in a hierarchical fashion, or what Advocate Williams has described as a “cascade”. As such, giving effect to clause 11.3 of the LPA would displace completely that hierarchical approach in section 32(c) and references to “distributions” in clause 10.1 would need to be read as applying to the return to the Plaintiff as Limited Partner of any balance remaining as an asset of the limited partnership.

31. The reference in clause 11.3 to “*outstanding fees*” involves consideration of clauses 6.7 and 6.8. Each of those clauses deals with different matters.

32. Clause 6.8 creates an obligation on an admitted Limited Partner to pay in total 3% of “total Commitment” of that Limited Partner “to the General Partner for its own benefit and which may be retained or paid to such third parties as the General Partner may determine.” 1% represents the initial setup fee and 2% the placement fee. The amounts are payable upon admission as a limited partner. It is further provided that these fees “shall be deducted from the Limited Partner’s initial Contribution, however such amounts shall not form a part of the Limited Partner’s Commitments and the Limited Partner’s Remaining Commitment shall not be reduced by reference to such amounts.”
33. There are a number of terms relevant to this clause defined in clause 1. “**“Commitment”** means with respect to any Partner, the amount set forth opposite the name of such Partner on the LP Register; the Commitment of each Partner shall comprise an amount to be subscribed as capital.” The definition of “**Contribution**” is set out as meaning “with respect to any Partner, monies paid to the Partnership in respect of such Partner’s Commitment.” There is also a definition of “**Remaining Commitment**”, which means “for any Partner, the excess of (i) such Partner’s Commitment over (i) the aggregate amount of such Partner’s Contributions.”
34. On the basis that the LPA has to be construed as a whole, the presiding judge further highlighted to the Jurats the manner in which clause 3 deals with Commitments and Contributions. By clause 3.2 “Each Limited Partner shall be required to make an initial Commitment” and then clause 3.3 provides:

“Pursuant to this Agreement, the Limited Partner agrees to make an initial Commitment to the Partnership in an amount being equal to the Euro equivalent of [RMB900,000,000.00] from time to time. It is acknowledged by the Limited Partner that the determination of the Commitment and Remaining Commitment in Euros is not fixed and may be assessed by the General Partner on such occasions and for such purposes as the General Partner shall determine in its absolute discretion and by reference to such rate of exchange as the General Partner may in its absolute discretion considers [sic] appropriate.”

Clause 3.4 further provides that:

“The initial Commitment shall be split into two tranches, comprising an initial tranche of the Euro equivalent of [RMB300,000,000] and a secondary tranche of the Euro equivalent of [RMB600,000,000] to be calculated by reference to such rate of exchange as the General Partner may in its absolute discretion considers [sic] appropriate.”

35. In relation to construing the use of “Commitment” in these provisions, as defined in clause 1, the presiding judge directed the Jurats that it was a question of fact for them to have regard to what is on the face of the LP Register. By clause 2.1.2:

“The name, address (and mailing address, if different) and Commitment of each Partner shall be listed on a register maintained by the General Partner at the registered office (the “LP Register”). The General Partner shall update the LP Register from time to time as necessary. Any reference in this Agreement to the LP Register shall be deemed to be a reference to the LP Register as amended and in effect from time to time.”

The LP Register produced to the Court for this hearing (although Advocate Brehaut subsequently confirmed that it had been disclosed by the Defendant but had not found its way into the original bundles before the Court in 2019) shows the Plaintiff as the only Limited Partner. It states that it was appointed on 1 October 2015, although that may well be an error because clause 3.5 provides that “Upon the admission of the Limited Partner as a limited partner the Initial Limited Partner shall cease to be a partner and shall be removed from the LP Register.” As the Amended and Restated Limited Partnership Agreement was made on 3

December 2015, the interest of the Initial Limited Partner, Rysaffe Actionnaires Sarl, was to be transferred to the Plaintiff. Although the Establishment Date of the limited partnership was 1 October 2015, the admission of the Plaintiff as a limited partner cannot pre-date the execution of the LPA through which it was admitted. On the face of the LP Register, which shows that it was printed at 9.21 am on 31 May 2017, there is no reference to any Commitment at all.

36. On behalf of the Defendant, Advocate Williams has cited various authorities about the importance of giving effect to the bargain made by parties. The presiding judge directed the Jurats that these principles, derived largely from English law, are applicable as a matter of Guernsey law. As was stated in Arnold v Britton [2015] AC 1619, the function of the court when interpreting a contract “*is to identify what the parties have agreed, not what the court thinks they should have agreed.*” This was stated in the context of the need to have regard to “*commercial common sense*”. Similarly, Advocate Williams has referred to Cavendish Square Holding BV v Makdessi [2016] AC 1172, for the principle that “*the courts do not review the fairness of men’s bargains either at law or in equity.*” This was stated in the context of there being “*a fundamental difference between a jurisdiction to review the fairness of a contractual obligation and a jurisdiction to regulate the remedy for its breach*”, noting that there may be challenges “*going to the reality of consent, such as those based on fraud, duress or undue influence*”, which might affect the basic principle.
37. Advocate Williams argues that freedom of contract and the principle that *pacta sunt servanda* “*are two of the most fundamental principles of our law*”. It may have been better for him to refer to the well-established maxim *la convention fait la loi des parties*, which the presiding judge emphasised to the Jurats was to be kept at the forefront of their minds when deciding whether and, if so, how to exercise the discretion available to them under section 29(2) of the LP Law. In doing so, the presiding judge reminded the Jurats that, as stated in Photo Production Ltd. v Securicor Transport Ltd [1980] AC 827, “*parties to a contract are free to determine for themselves what primary obligations they will accept*”. Further, in Rainy Sky SA v Kookmin Bank [2012] Bus LR 313, “*Where the parties have used unambiguous language, the court must apply it.*” However, the presiding judge rejected the submission made on behalf of the Defendant that the discretion should be withdrawn from the Jurats’ consideration because it is confined to the Court managing the practicalities of the dissolution and winding up of the limited partnership. Instead, the presiding judge directed the Jurats that they had to have regard to the statutory framework in section 32 of the LP Law, where para. (c) refers to that stage of the distribution being subject to the provisions of the partnership agreement and to all the other directions relating to the exercise of their discretion being given to them.
38. The presiding judge started by directing the Jurats that the Defendant’s primary position was that the terms of the LPA must be strictly applied. One consequence for that might be that the LP Register is definitive as to what a limited partner’s Commitment is. An obligation was placed on the Defendant, as general partner, to ensure that the LP Register was at all times accurate. If the Jurats preferred to give to the LPA a strict construction, it would necessarily follow that any fee calculated by reference to Commitment would be a percentage of zero, which was the most extreme position adopted by the Plaintiff.
39. The Jurats were further directed that the Defendant necessarily had to point to other matters that meant that there should be implied into the relationship of the parties some positive amount by which to refer to the Commitment. Advocate Williams had argued that clause 3.3 and 3.4 demonstrated that there was an obligation to make a Commitment in those two tranches aggregating to RMB 900 million. However, when considering whether it was proper to infer a Commitment at that amount, the Jurats might wish to consider that it was the Defendant that was obliged to require the Plaintiff, as limited partner, to make Contributions. This is apparent from reading on in clause 3:

“3.6 Each Partner shall be obligated to make cash Contributions in respect of either or both tranches of the Commitment to the Partnership denominated in the

Fund Currency and free of any bank charges in an aggregate amount equal to its Commitment, at such times and in such amounts as may be requested by the General Partner pursuant to Clause 3.7 to enable the Partnership to (i) make investments, (ii) to permit the payment of Partnership Expenses, the Management Fee, and any other obligations of the Partnership (including any indemnification obligations under this Agreement), and (iii) to maintain appropriate reserves. The Partners shall make such Contributions to the Partnership in proportion to their Remaining Commitments. Contributions may be accepted in specie subject to the agreement of the General Partner. Initial setup and placement fees may be deducted from the Limited Partner's initial Contribution in accordance with Clause 6.8.”

3.7 *Forthwith upon its admission as a limited partner (and not later than two Business Days from the date of its admission as a Limited Partner), the Limited Partner shall pay an initial Contribution equal to [EUR2,500,000] in the Fund Currency to an account specified by the General Partner. Subsequent Contributions of each Partner shall be paid in the Fund Currency in separate Drawdowns in any such sums as may be demanded by the General Partner to an account specified by the General Partner, in the form laid out in Attachment 1 of this Agreement.*

3.8 *Save for the initial Capital Contribution, a Capital Contribution or a proportion thereof shall become due and payable upon issuance of a Drawdown demand as laid out in Attachment 1.”*

40. The presiding judge directed the Jurats that it was a matter for their determination on the facts as to whether the amount of Commitment should be zero or some other amount. They were entitled to have regard to the terms of the bargain made between the parties, which referred to RMB 900 million as the initial Commitment payable in two tranches, although they might note that all the amounts appeared in square brackets, and the manner in which Drawdowns were actually presented by the Defendant to the Plaintiff resulted in a lower amount actually being contributed. Clause 1 contains a definition of “**Drawdown**” as meaning “*each event by which Contributions are made to the Partnership, including the provision of a drawdown notice to the Partners and their Contributions in respect thereof.*” The Jurats could have regard to the fact that neither party appears to have complied with the obligations undertaken by them under the strict terms of the LPA. In those circumstances, they could reach a rational decision as to what amount it was appropriate to use as the Commitment for the purposes of clause 6.7 and 6.8, up to and including RMB 900 million.

41. In giving that direction, the presiding judge preferred the submissions of Advocate Brehaut about the breadth of discretion afforded to the Court by section 29(2) of the LP Law. She has drawn attention to the similar wording found in section 350 of the Companies (Guernsey) Law, 2008, as amended. Subsection (1) provides that, if the Court is satisfied that a complaint in respect of unfair prejudice is well founded “*it may make such order as it thinks fit for giving relief in respect of the matters complained of.*” Subsection (2) then offers some particular examples of what the Court may order, but this is expressly “*Without prejudice to the generality of subsection (1)*”. Following those examples, the subsection concludes with the words: “*and the Court may make such consequential alterations to the company's memorandum or articles and any of its resolutions as the Court thinks fit.*” This reference to the company's constitutional documents can be equated to what Advocate Brehaut submits the Court is empowered to do in respect of the LPA in this case. It is the bargain that the parties have reached but, by analogy with a company, it is open to the Court to order that its terms be modified. Accordingly, the LPA should not be regarded as so sacrosanct as Advocate Williams had argued it was.

42. Advocate Brehaut further supports her submission that the power found in section 29(2) of the LP Law for the Court to “*make such orders in relation to the dissolution as it thinks fit*” by referring to what Lord Wilberforce set out in his speech in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 in the context of an equitable winding up of a company. His Lordship had already referred to the use of “*just and equitable*” in section 25 of the Partnership Act 1892 and commented that “*the members of the company are in substance partners*” (at page 375). The passage relied on is found at page 379:

“The foundation of it all lies in the words “just and equitable” and, if there is any respect in which some of the cases are open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The “just and equitable” provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.”

Advocate Brehaut draws particular attention to the final sentence. The presiding judge further reminded the Jurats that Advocate Williams had regularly referred to the LPA having been executed by experienced sophisticated parties, by which he must have been referring to the persons behind the two corporate entities involved. The Defendant was, of course, a start-up and so had no track record of commercial dealings, so any reference to its level of experience must be to Mr Erochkin, or possibly to those responsible for administering the Defendant at Saffery. He repeatedly referred to Ms Rapoport as knowing what she was doing, even though she was just one of several directors of the Plaintiff.

43. Returning to the unfair prejudice jurisdiction, Advocate Brehaut also refers to the brief comment at the end of para. 73 in *Grace v Biagioli* [2005] EWCA Civ 1222: “*The court is entitled to look at the reality and practicalities of the overall situation, past, present and future.*” One of the cases cited in that judgment (*Re Bird Precision Bellows Ltd* [1986] Ch 658) is also relied on for what Oliver LJ stated (at page 669):

“It seems to me that the whole framework of the section, and of such of the authorities as we have seen, which seem to me to support this, is to confer on the court a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company ...”.

Reference might also be made to what Rimer J concluded in *Partizan Ltd v O J Kilkenny & Co Ltd* [1988] BCC 912, 919: “*those words [‘any other order that it thinks fit’] are intended to do no more than to confer upon the court the widest jurisdiction to make appropriate orders for the disposal one way or another of the petition itself.*” The principles set out in para. 425 of *VB Football Assets v Blackpool Football Club (Properties) Limited* [2017] EWHC 2767 (Ch), are also helpful, including that the Court should not regard itself as bound by the relief sought by a petitioner for unfair prejudice.

44. The presiding judge considered it helpful as well to refer the Jurats to the principles derived from Lord Hoffmann’s speech in *O’Neill v Phillips* [1999] 1 WLR 1092 that were extracted into para. 61 of the judgment in *Grace v Biagioli*:

- “(1) *The concept of unfairness, although objective in its focus, is not to be considered in a vacuum. An assessment that conduct is unfair has to be made against the legal background of the corporate structure under consideration. This will usually take the form of the articles of association and any collateral agreements between shareholders which identify their rights and obligations as members of the company. Both are subject to established equitable principles which may moderate the exercise of strict legal rights when insistence on the enforcement of such rights would be unconscionable;*
- (2) *It follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements to be enforced in the particular circumstances under consideration. Unfairness may, to use Lord Hoffmann’s words, “consist in a breach of the rules or in using rules in a manner which equity would regard as contrary to good faith”: see p. 1099A; the conduct need not therefore be unlawful, but it must be inequitable;*
- (3) *Although it is impossible to provide an exhaustive definition of the circumstances in which the application of equitable principles would render it unjust for a party to insist on his strict legal rights, those principles are to be applied according to settled and established equitable rules and not by reference to some indefinite notion of fairness;*
- (4) *To be unfair, the conduct complained of need not be such as would have justified the making of a winding-up order on just and equitable grounds as formerly required under s. 210 of the Companies Act 1948;*
- (5) *A useful test is always to ask whether the exercise of the power or rights in question would involve a breach of an agreement or understanding between the parties which it would be unfair to allow a member to ignore. Such agreements do not have to be contractually binding in order to found the equity;*
- (6) *It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the majority shareholder to exclude the petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder.”*

45. In giving directions to the Jurats, the presiding judge emphasised that this passage relates to a corporate entity and so is not directly relevant to the limited partnership between the parties which the Court has ordered be dissolved and a liquidator appointed. However, the references to equity are relevant by analogy. The presiding judge directed the Jurats that this Court is indeed a court of *équité*. As such, it tempers the law, mitigating its vigour. It is a rule of justice that can be preferred to the letter of the law, whilst recognising that, when the law is clear and certain, there is no scope to rely on any principle of *équité*. As such, it needs to be remembered that equity follows the law. Further, it does not necessarily follow that all the principles and maxims of equity found in England and Wales fall to be applied here in *équité*. The presiding judge referred the Jurats to the principle that there is reference here to both agreements and understandings, noting that there is no need for this to be contractually binding. Although it was a matter for the Jurats, they could have regard to their prior finding that there was an expectation that there would be some other arrangement between the parties so that a portion of the fees payable to the Defendant under the LPA would be remitted to a Rusnano entity.

Similarly, and as highlighted by Advocate Brehaut, they could take into account the concession in para. 18 of Advocate Williams' main Skeleton Argument that the Defendant "*has itself long recognised that the relationship could not realistically continue*".

46. In short, the presiding judge repeated the directions set out in para. 308 of the substantive judgment about the effect of section 29(2) of the LP Law, whilst expanding upon them in the light of these further submissions. He reminded the Jurats that they could not reach an outcome that is inconsistent with the terms of the LP Law. This is because the Court is obliged to give effect to what the legislature has enacted. However, the strict letter of the LPA, which the Defendant itself will need to rely upon avoiding due to its failure to record any Commitment in the LP Register, is something that can be tailored in order to ensure that the outcome is not an unconscionable one, in the sense of producing something that is inequitable. In deciding whether and, if so, how to tailor any further orders to be made under section 29(2), the presiding judge reminded the Jurats that they had chosen not to rescind the LPA, which had been the Plaintiff's primary case, and needed to bear that decision in mind.
47. Advocate Williams also referred to the terms of the injunctive relief obtained by the Plaintiff both in the BVI and domestically. In that regard, the presiding judge drew the Jurats' attention to the terms of the order made in the BVI in March 2018, which prohibited the Defendant from issuing any Drawdown requests otherwise than with the prior consent of the Plaintiff. The terms of that injunction were then modified in June 2018. The focus turned to prohibiting the Defendant from disposing of, or dealing with, or diminishing the value of the assets of the limited partnership, save in the proper and ordinary conduct of business as set out in the LPA. In particular, fees payable to the Defendant in accordance with the LPA could be paid from the assets of the partnership and any dispute in respect thereof needed to be referred to this Court. By an order made in July 2018:

"Until further order of the court, the Respondent is prohibited from withdrawing or seeking to withdraw any amount from the Limited Partnership, CRGF LP, in payment of the "Management Fee" (as defined under clause 6.7 of the Amended and Restated Limited Partnership Agreement dated 3 December 2015) in respect of any Management Fee that has accrued to be paid but has not been taken by the Respondent prior to the date of this Order. Accordingly, and for the avoidance of doubt, the Respondent is at liberty to draw Management Fees prospectively from the date of this Order and on a quarterly basis in advance, commencing 1 October 2018."

The Jurats were entitled to note that the Management Fees had been taken regularly thereafter until the account with Banque Havilland had been emptied, resulting in it being closed. The Jurats could also bear in mind that this meant that there was no longer any reserve within the partnership assets. Paragraph 2.5.5 of the LPA provides that "*The General Partner shall have the power and authority to maintain a cash reserve in the Partnership's bank accounts of not less than EUR2,500,000 at any time, which amount shall be an "appropriate reserve" for the purposes of Clause 3.6.*"

48. The presiding judge directed the Jurats that there was no suggestion that the Defendant had in any way breached the terms of the injunctions obtained. Further, the terms of the LPA were such that the Defendant was not obliged to maintain any appropriate reserve, but they might wish to consider how far the overall effect of the provisions of the LPA expected such a reserve to be maintained, eg, by reference to clause 3.7 when read with clauses 2.5.5 and 3.6. In addition, the Jurats were directed that the terms of the injunctions granted to the Plaintiff did not mean that their ability to make orders they thought fit pursuant to section 29(2) of the LP Law was limited because what had been taken by the Defendant was permitted thereunder. All it did was to clarify that what was taken by way of Management Fee from October 2018 did not breach the terms of the injunctions.

49. This issue leads to consideration of Advocate Williams' submissions about whether the Court is empowered to order any repayment of fees taken in this manner. He suggests that the Court cannot entertain any such claim because the ability to pursue any repayment vests in the liquidator. In support of that proposition, he points out that there had been an attempt by the Plaintiff to short circuit the normal litigation process before this Court. Ordinarily there would need to be a Cause tabled and the usual stages of litigation would follow. It should not be addressed in the way the Plaintiff had proposed it would be as part of the orders to which section 29(2) of the LP Law applies. In further support, he refers to *DD Growth Premium 2X Fund (in liquidation) v RMF Market Neutral Strategies (Master) Ltd* [2018] Bus LR 1595, which was an appeal to the Privy Council from the Cayman Islands. In doing so, he argues that these were payments to which the Defendant was contractually entitled and so no recovery by the liquidator would be countenanced, where para. 62 states: "*It is fundamental that a payment cannot amount to enrichment if it was made for full consideration; and that it cannot be unjust to receive or retain it if it was made in satisfaction of a legal right.*"
50. In reply, Advocate Brehaut suggests that these are technical arguments that fail to recognise the wide jurisdiction conferred by section 29(2) of the LP Law. What the Plaintiff proposes is not a new restitutionary claim, but arises from the Court exercising the jurisdiction available to it to reach an equitable outcome. The Plaintiff acknowledges that there are some aspects of what the Defendant has taken that reflect what it would be entitled to be paid under the Defendant's indemnity. Any such sums found by the Jurats to be covered by the indemnity would not need to be repaid. However, if the Court concluded that the total taken was greater than the entitlement of the Defendant, then it would be open to the Court to make such an order.
51. The presiding judge directed the Jurats that there is a wide jurisdiction to avoid an inequitable outcome. The Jurats could proceed to declare what they considered the Defendant had been entitled to under the terms of the LPA. This did not require them to go further and make an order that the Defendant reimburse the limited partnership but that was a course of action open to them under that wide jurisdiction. Much would depend on the route they took to determining the amount to which the Defendant had been entitled. Clearly, there would be no issue if they concluded that the amount already taken falls below the amount permitted to be taken. The precise relief to be awarded would depend on their conclusions.
52. At this point, the presiding judge also reminded the Jurats that some of the arguments made by Advocate Williams about the need for pleadings overlooked that the only reason these proceedings turned into an action was because of the Plaintiff's claim to rescind the LPA. If the Plaintiff had confined itself to an application to dissolve the limited partnership under the LP Law, the proceedings would have taken a different course. There would have been no pleadings, but only a bare application with supporting evidence. Although there might have been an application to cross-examine some or all of the witnesses on their evidence, there was no guarantee that this would have been permitted. In effect, the application under the LP Law may have been dealt with very differently and the Jurats themselves might not have needed to sit. They should bear these matters in mind when considering how to exercise the powers in section 29(2), which fell to them because of the different approach that had had to be taken to these proceedings as a result of combining the statutory application with the claim to rescind the LPA. In brief, they were directed that they could make findings as to what the Defendant had been entitled to take from the assets of the limited partnership, following which the appropriate relief would be decided.
53. Advocate Williams has also taken issue with the reference at para. 309 of the substantive judgment to clause 17.3 of the LPA dealing with severance, which provides:

"Every term and provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such term or provision shall be enforced to the maximum extent permitted by law and, in any event,

such illegality or invalidity shall not affect the validity of the remainder of this Agreement.”

In doing so, he may have overlooked the context in which this reference was made. As a matter of law, the wide jurisdiction conferred by section 29(2) of the LP Law does not mean that there is any need to refer to clause 17.3. However, it was explained to the Jurats (and has been repeated) that the words “*invalid for any reason whatsoever*” show that it would be feasible when considering an equitable outcome to disregard any provision where the Jurats consider that that is the appropriate course to take. In other words, it was referred to, and continues to be referred to, not as a means in law of severing any provision, but rather as an example of how even the LPA envisaged that severance was a possibility. As such, this was a further reason, and not the only reason, by which the Jurats could, as they wished, overlook the strict letter of the law as found in the LPA.

54. In those circumstances, the presiding judge considers it unnecessary to address all the legal arguments advanced on this issue by Advocate Williams, although he has reminded the Jurats of the observation in *Francotyp-Postalia v Whitehead* [2011] EWHC 367 (Ch) that the so-called “blue pencil” test “*is a very limited jurisdiction and ... it should not be used ... as an attempt to rewrite a contract*”. He repeated the direction given previously that the power in section 29(2) of the LP Law did not give the Jurats carte blanche to disregard what the parties had agreed unless they were satisfied that those terms would produce an inequitable outcome.
55. Whilst Advocate Brehaut acknowledges that the Defendant is entitled to rely on clause 13 of the LPA relating to its indemnity, she argues that this does not extend to the costs of these proceedings, whereas Advocate Williams submits they are also covered. This is a question of construction for the presiding judge.
56. Clause 13 of the LPA provides:

“The Partnership irrevocably agrees to the General Partner (including any officers, directors, managers, employees, agents or representatives of the General Partner) indemnifying itself out of the Partnership so as to discharge any liability incurred by it in respect of the Partnership.”

The Defendant relies on clause 7.1.6, which deals with one type of “*Partnership Expenses*” given as an example: “*The costs incurred in respect of any litigation or arbitration, where the Partnership is one of the parties, for the Partnership’s interests*”. It further refers to clause 7.2: “*On an ongoing basis, the Partnership shall pay or reimburse the General Partner, as the case may be, for all Partnership Expenses.*” In relation to the words “*in respect of*” in clause 13, Advocate Williams refers to what was stated in *Albon v Naza Motor Trading Sdn Bhd* [2007] 1 WLR 2489: they “*have the widest possible meaning of any expression intended to convey some connection or relation between the two subject-matters to which the words refer*”.

57. The presiding judge directed the Jurats that the costs of these proceedings, whatever order would be made as between the parties, did not fall within clause 7.1.6 and so fell outside the indemnity in clause 13. As a result, they did not need to factor into their deliberations that the assets of the limited partnership might be affected by the Defendant being entitled to draw the costs associated with its participation in the proceedings before there would be assets available to distribute. The main reason for reaching that conclusion is that, in his judgment, this was not litigation for the limited partnership’s interests, but rather litigation between the partners themselves, which might be regarded as usual hostile proceedings where there would be a winner and a loser. The Plaintiff’s Cause was to rescind the LPA or alternatively obtain a dissolution of the limited partnership in circumstances where otherwise it would continue. The Defendant resisted the relief sought by the Plaintiff. Although the Court had decided that the rescission claim failed, had it been successful there would have been no limited partnership in respect of which the parties were litigating. The fact that the Plaintiff obtained an order to

dissolve the limited partnership and to have a liquidator appointed, which is different from where a general partner will normally conduct the winding up, also demonstrated that this was not litigation for the partnership's interests. Each party was pursuing its own individual agenda here. This was not the type of situation to which clause 7.1.6 was directed where the general partner would be involved in proceedings on behalf of the partnership with some external party. Instead, this was a dispute between the partners themselves where they might be acting in the capacity of partners but their different positions showed this was not a joint effort on behalf of the partnership.

58. Having addressed the principal bases on which Advocate Williams sought to re-open what had been addressed at the main hearing in 2019, the presiding judge proceeded to remind the Jurats that they were primarily concerned with how to approach any accrued fees, although they were also required to consider whether there were any Partnership Expenses falling within the Defendant's indemnity. In considering clauses 6.7 and 6.8, although there were certain issues that were common to both, they needed to approach each set of fees separately, taking into account all the evidence that had been adduced in relation to them. If they considered it appropriate to do so, they could decide what amount was the Plaintiff's Commitment and they could also decide whether there was a point in time after which the Management Fee payable under clause 6.7 would stop being claimable by the Defendant.
59. On that cut-off date, the Jurats were directed that this fell within the broad discretion available pursuant to section 29(2) of the LP Law. They could also have regard to the fact that the language used was "*In consideration of the management services provided by the General partner*". In that regard, the presiding judge directed them that the various submissions made by Advocate Williams about how to construe clause 6.7 did not affect how they could approach this issue. Whilst he was right to point out that clause 6.7 provided for the Management Fee to be payable in advance, which indicated that it was more akin to the Defendant, as general partner, being ready, willing and able to perform what was expected of it to be paid its Management Fee (referring, eg, to *Ministry of Sound (Ireland) Ltd v World Online Ltd* [2003] 2 All ER Comm 823 or substantial performance (referring to *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1991] 1 QB 1), they could take into account that, once the proceedings began in the BVI and an injunction was obtained effectively preventing the Defendant operating under the terms of the LPA, they might consider what role the Defendant had to play. They could take into account that finding that the Management Fee is calculated by reference to the Commitment envisaged by clause 3.3 would potentially mean that the Plaintiff would be entitled to receive more than the amount contributed to the limited partnership by the Plaintiff. Accordingly, they might wish to consider whether they regarded that as an equitable outcome.

Jurats' findings

60. The findings of the Jurats are their unanimous findings. They have attempted to strike a fair balance between acknowledging that the Defendant has an entitlement to receive more than just those matters to which its indemnification operates but also have firmly taken the view that the Defendant's primary case would lead to an inequitable outcome because it would result in the Defendant probably receiving more than the value of the investment made by the Plaintiff, with the Plaintiff receiving nothing at all or, at best, very little. Given the manner in which the limited partnership's purpose failed, largely as a result of the inability to progress the Tianjin Bohai fund, following the strict letter of the LPA would produce an outcome that would prejudice both parties and so there is a recognised need to introduce some flexibility.
61. The Jurats appreciate that the Plaintiff voluntarily entered into the LPA. It must, therefore, be taken to have understood the consequences of what it agreed when the LPA was executed. Equally, those acting on behalf of the Defendant, whether that be the personnel at Saffery who were formally appointed to act or whether that be with Mr Erochkin's input and influence, must also be taken to have understood the obligations imposed upon the Defendant. In particular, maintaining the LP Register was something that the Defendant was obliged to do

and the Jurats find that it did not do a very good job and so must to an extent face the consequences of its non-compliance. In other words, the Defendant is first dependent on the Jurats introducing some flexibility on the face of the LPA before it can be entitled to any of the fees in clause 6.7 and 6.8. However, the Jurats are satisfied that that is an appropriate course for them to take.

62. The first consideration for the Jurats has been to put into context their decision not to accept the Plaintiff's case for rescinding the LPA. They remain of the view that the effect of that decision must be that the parties cannot be placed into as good a position, or even a better one, than if the Court had accepted that the LPA was void. The Plaintiff's small concession about those matters that would be covered by the Defendant's indemnification under clause 13 of the LPA would not, in their view, produce an appropriate level of payment for what has been done. They are satisfied that there should be some level of payment under the terms of the LPA to the Defendant for the fees in clause 6.7 and 6.8 rather than it being zero.
63. They largely reject the evidence given by Mr Erochkine about what was entailed for the Defendant in relation to the purchase of the Didi shares. They accept that at these material times Mr Erochkine was employed within the Rusnano group to perform the jobs allocated to him, as explained by Mr Naftulin. They regard Mr Erochkine's claim that the Defendant was independently performing functions on behalf of the limited partnership as something he has sought to explain as a justification after the event of what was happening at the time. Instead, they are satisfied that the reality was that Mr Erochkine was employed to perform the functions under his various contracts of employment, which included him liaising with Conduit to work up potential investments. Saffery personnel were involved in doing the administrative tasks. Indeed, the Defendant, as general partner, did not comply with what the parties had agreed at clause 3.7 of the LPA because it did not require the Plaintiff to make the Contribution it had promised to make within a short period after its admission as a limited partner. They find that the manner in which the partners chose to operate the limited partnership supports their view that neither party was insisting on strict adherence to its terms. In particular, the Defendant did not require Contributions from the Plaintiff other than for the investment made in the Didi shares and then a further US\$5 million to serve as a reserve from which expenses of the partnership could be made. There were only ever these two Drawdown requests made by the Defendant and the Jurats regard that as being significant, because it supports their conclusion that the parties were not adhering to the strict terms of the LPA. They recognise that, once the Plaintiff obtained injunctive relief in the BVI in March 2018 there was a prohibition on further Drawdown requests being made for the time being.
64. The Jurats have noted that the fees payable under clause 6.7 and 6.8 are slightly different because the initial setup fee and the placement fee are described as becoming payable on the admission of a limited partner and they are described as being payable to the Defendant, as general partner "*for its own benefit*". However, like the Management Fee payable under clause 6.7, the amount payable is fixed by reference to "*Total Commitment*" (although in clause 6.8 "*total*" does not have a capital letter). Accordingly, the Jurats have first considered what the figure should be for "*Commitments*".
65. They find that it would be unfair if the failure of the Defendant to record any Commitment in the LP Register meant that it would be unable to receive anything under clause 6.7 or 6.8. Having regard to the two Drawdown requests actually made, they are satisfied that the initial setup and placement fees under clause 6.8 should be calculated by reference to what was actually contributed to the limited partnership by the Plaintiff. In particular, they are satisfied that one way of viewing the second Drawdown request for US\$5 million was to have within the limited partnership both the reserve to which clause 2.5.5 refers, as well as funds from which these fees could be drawn by the Defendant, even if there was a request not to take those fees at that stage. More particularly, when it is apparent that the underlying basis for what was included in clause 3.4 about the two tranches expected to give effect to the agreement found in clause 3.3 to make a Commitment of RMB900 million, the Jurats are satisfied that it would be

inequitable to use such a high figure for the purpose of calculating the fees that should be regarded as receivable by the Defendant. In doing so, they have paid particular attention to the definition of “*Contribution*” as being “*monies paid to the Partnership in respect of such Partner’s Commitment*” and so, where the LP Register does not record the Plaintiff’s Commitment, they have chosen instead to pay attention to the reality of what took place and equated actual “*Contribution*” as if that were the most equitable figure on which to calculate fees payable.

66. In respect of the initial setup fee and the placement fee in clause 6.8, the Jurats have, therefore, used the amount actually contributed by the Plaintiff, which was US\$25,005,000, as the amount to which these fees should be regarded as payable from the partnership assets to the Defendant. Accordingly, the fees to which the Defendant would be entitled were US\$250,050 and US\$500,100 respectively, aggregating as US\$750,150. In particular, aside from deciding that the amount for the total Commitment should be what was actually contributed, the Jurats have taken account of the fact that those initial setup and placement fees were expressed to be for the Defendant’s own benefit and not dependent upon anything particular happening. These are both one-off payments, calculated by reference to what it is appropriate to find was the Plaintiff’s Commitment for these purposes.
67. The Jurats are further satisfied that, having determined that the amount actually contributed by the Plaintiff to the limited partnership should be the basis on which to calculate these fees, the same approach should be adopted for the Management Fees payable under clause 6.7. In their judgment, it would be perverse to use a different amount in place of what is missing from the LP Register for each type of fees. Instead, they are satisfied that there is merit in being consistent here.
68. The Jurats have noted that the second sentence of clause 6.7 provides that “*Management Fees shall continue to accrue and be payable until the completion of the winding up of the Partnership in accordance with Clause 11.4.*” In the circumstances where this limited partnership was prohibited from operating as it had been envisaged it would, the Jurats are satisfied that it would be wrong to hold the parties to this part of their bargain. Doing so would create a windfall for the Defendant, even by reference to the reduced amount being used by the Court as the Plaintiff’s Commitment. Clause 11.4 does refer to a liquidator (although the reference their to “*such liquidator*” might be a reference to “*any duly elected liquidator*”, as found in clause 11.2, which may not attach to a liquidator appointed by the Court), but the Jurats are satisfied that this is an area where they can properly exercise the wide discretion afforded to them by the terms of section 29(2) of the LP Law.
69. Having regard to the whole of the LPA, the Jurats find that the earliest date on which any Management Fee would become payable cannot be before the date of execution of the LPA. That was 3 December 2015. It could not be further backdated to the establishment of the limited partnership on 1 October 2015. They have noted that the Management Fees are payable in advance. Even though what was contributed by the Plaintiff did not take place until July 2016, meaning that it might be argued that the omission from the LP Register of any figure for the Plaintiff’s Commitment could only operate from a time when an actual Contribution were made (with US\$20,005,000 being contributed on 8 July 2016), the Jurats are satisfied that it would be an equitable outcome in the circumstances under which the limited partnership had been established and operated at that time to treat the Commitment that should have been entered at the outset as if it had been entered by the Defendant from the admission of the Plaintiff as the only limited partner. Again, in reaching that conclusion, the Jurats rely upon the flexibility afforded to the Court by section 29(2) of the LP Law. In other words, on admission as the limited partner, the Plaintiff had agreed to pay the initial setup and placement fees and also the first quarterly Management Fee for the services to be provided under the terms of the LPA by the Defendant. Because the annual Management Fee by reference to a Commitment of US\$25,005,000 is US\$625,125, it follows that US\$156,281.25 was payable as that first quarterly Management Fee.

70. The next issue for the Jurats was to decide whether, instead of such a Management Fee continuing to accrue in accordance with clause 11.4, it would produce an equitable outcome to identify a date after which the Management Fee would no longer accrue. They were not persuaded by Advocate Brehaut's submission that this should cease when the second of the Drawdown requests was settled (when US\$5 million was contributed on 15 July 2016). The Jurats are satisfied that the promise to pay a Management Fee was prospective whilst the Defendant was prepared to perform the management services to be provided under the LPA. The stronger argument would have been only to start the accrual of the Management Fee once there were actually assets in the limited partnership for the Defendant as general partner to manage but, for the reasons just mentioned, the Jurats prefer to start the accrual of the Management Fee from the admission of the Plaintiff as the limited partner. Further, the Jurats are not persuaded that Advocate Brehaut's secondary position amounts to an equitable outcome. Mr Erochkin's resignation in July 2017 clearly changed the dynamic between the parties, as described in the substantive judgment. However, that step did not change the working relationship between them under the LPA. It might even be regarded as a form of unexpected separation of interests at that time, but the Jurats take the view that it is important to remember that the negotiations that then took place between the parties were such that the Plaintiff affirmed the LPA. They consider that that is a significant finding because, instead of relying on any misrepresentation that might have meant the LPA could be rescinded, the parties engaged in trying to reach terms under which this dispute would have been avoided. Just as the Jurats have reminded themselves of their decision that the LPA should not be rescinded, they have reminded themselves that the effect of the Plaintiff affirming the LPA is that its terms could continue to be relied upon by both parties. The step that brought the parties' relationship to an end was the Plaintiff obtaining injunctive relief in the BVI and commencing these proceedings, which took place in March and April 2018. Although it is accurate for the Defendant to point out that it continued to have some responsibilities in respect of the Didi shares, the chilling effect of the injunctions obtained was that the Defendant's role change by order of the Court. It was no longer able to make Drawdown requests, so there was no scope to require any further Contribution by the Plaintiff. Subsequently, it was not, without the Plaintiff's consent, able to function as a general partner would under the terms of the LPA because it could not dispose of any of the limited partnership's assets. In those circumstances, the Jurats are satisfied that the accrual of Management Fees by reference to the Plaintiff's actual contribution should cease when the injunction was granted in the BVI on 26 March 2018.
71. Further, and as already described in the substantive judgment, the Jurats have taken into account the apparent expectation of the parties that there would be some additional agreement, by way of the proposed side letter, that may have resulted in some of the fees, which relates principally to the Management Fee, being returned to a Rusnano entity. They have noted that such an agreement was never executed, but there were discussions about it, from which they find that the amount that the Defendant might have expected to retain would have been lower, and more likely than not considerably lower, than the amount that it would have retained had that fee been calculated by reference to what appears on the face of the LPA as the Plaintiff's expected Commitment. In those circumstances, they are satisfied that it is open to them to reach the conclusions they have about what is an equitable amount for the Defendant to be treated as retaining for its own benefit.
72. The Jurats have tested their conclusion by reference to the terms of the injunctions, which permitted the Defendant to draw the Management Fee prospectively from October 2018. They have noted that the approach taken at the time was to refer to the expected Commitment of RMB900 million. Although the extract of the LP Register shows it was printed on 31 May 2017, this had not, they find, been put before the Court previously. In other words, as they have found, had a copy of the LP Register been produced in that form, it would have raised the question as to what the basis for calculating the Management Fee being claimed was. They have taken into account that this was material in the hands of the Defendant, rather than the Plaintiff. Accordingly, they do not consider that any particular reliance can be placed upon the

Court permitting the Management Fee to be drawn by reference to the larger amount treated as the Plaintiff's Commitment. Further, they find that the terms of the injunctions were intended to preserve the position of the parties pending resolution of their dispute. The exclusion of what might at that time have been regarded as accrued Management Fees demonstrated that the courts involved were not determining that those fees were recoverable by the Defendant. In effect, the Jurats are satisfied that this was regarded as a temporary measure to ensure liquidity pending a final resolution of the dispute. In particular, they are aware that, had their findings been different, the LPA might have been rescinded and so no such fees would have been payable to the Defendant in any event. That must have been in the minds of those constituting the courts when the injunctions were being heard. In summary, therefore, the injunctions do not have an effect on the determination they are now required to reach about what is the most equitable approach to take to the accrual of fees.

73. By treating the Management Fee to which the Defendant is entitled as being based on the actual Contribution and running from 3 December 2015 until 26 March 2018, US\$156,281.25 would have become payable on 10 occasions, up to and including the last payment made quarterly in advance on 3 March 2018. Because the payment would have been made before the proceedings were commenced, the Jurats accept that there is no basis on which to consider any pro rating of what had become payable. By that time, including the initial setup and placement fees payable on admission, the total fees to which the Jurats find the Defendant was entitled amount to US\$2,312,962.50. This is below the amount that the Defendant withdrew from the limited partnership's account with Banque Havilland from October 2018 to January 2020 and the Jurats are satisfied that the additional drawings taken should be available to the liquidator as part of the winding up of the partnership.
74. In addition to the fees that were payable to the Defendant from the assets of the limited partnership, the Jurats have also considered those expenses to which the Defendant's indemnity in clause 13 attaches. Whilst noting that Advocate Brehaut did not dispute the claims made on behalf of the Defendant in Mr Erochkine's Sixth Affidavit, at paragraphs 54 and 55, as expenses to which the Defendant would be entitled to be reimbursed, the Jurats question whether the material supporting one of these expenses can properly be relied upon. Paragraph 54.2 in that Affidavit refers to a responsibility fee paid annually to Saffery Champness Management International Limited for the provision of a registered office in Guernsey for the calendar year 2020. The invoice exhibited shows an amount of £10,000, but the date on it is 1 April 2019. No explanation is offered as to why this entity would have invoiced the limited partnership so far in advance of the period in question. Additionally, during 2019 there was a positive balance on the limited partnership's accounts at Banque Havilland at which time the administrator's fees were regularly being taken. Accordingly, whilst the Jurats are not minded to disallow this potential claim, they consider that the liquidator will need to satisfy himself that the amount for which the claim is made has actually been paid by the Defendant. Indeed, because this is said to be an annual expense, the liquidator may wish to satisfy himself that the fee associated with maintaining a registered office, as required by section 6 of the LP Law, was raised throughout the currency of the limited partnership, settled by the Defendant and is now claimable as a partnership expenses in accordance with clauses 7.1 and 13. This may result in more than £10,000 being covered by the indemnity and, if so, the Jurats are satisfied that the Plaintiff's concession about clause 13 should apply to all such partnership expenses.
75. The other claims referred to in para. 54 of Mr Erochkine's Sixth Affidavit relate to annual validation fees from May 2018 to May 2020, which each time were £500 and costs associated with obtaining certified copies of documents required for the limited partnership's bank accounts with Banque Havilland. The total paid in respect of three invoices in 2018 was US\$2,568.06. Once again, the Jurats are satisfied that such expenses fall within the terms of clause 7.1 as partnership expenses and so should be capable of being indemnified out of the assets of the limited partnership. They are surprised at the apparent paucity of documentation disclosed by the Defendant in relation to this type of matter that would be claimable by it as a partnership expense. That said, subject to their comments in the preceding paragraph about the

liquidator satisfying himself that expenses of this nature have been paid and would fall within the Defendant's indemnity, they are satisfied that the Defendant should be permitted to retain the monies already drawn from the assets of the limited partnership where they would be payable to it pursuant to clause 13. What they cannot do, however, is accurately to quantify what is covered in this respect, which will be a task for the liquidator.

76. As a result of their conclusions, the Jurats start with their findings that the fees to which the Defendant is entitled under the terms of the LPA, as adjusted by the approach they have taken to establish an equitable outcome, total US\$2,312,962.50. These are the fees referred to in clause 6.7 and 6.8. Because the Defendant has withdrawn from the limited partnership's accounts with Banque Havilland US\$4,389,842.40, the Jurats are persuaded that it is appropriate for the Court to order that the Defendant is required to repay to the limited partnership, so that the amount becomes available for distribution by the liquidator in the winding up of the limited partnership, the difference between these two amounts, but always subject to retaining such other amounts as the liquidator is satisfied properly represent partnership expenses claimable under the Defendant's indemnity. In principle, this means that the starting point, before deducting such other amounts as fall due, is that US\$2,076,879.90 should be returned by the Defendant to the limited partnership.
77. The Court is conscious that the evidence of the Defendant is that it simply does not have assets in that amount available to it, so any requirement imposed to repay monies to the limited partnership would involve it becoming insolvent. It will be something for the liquidator to consider further and goes beyond what this Court can order under the terms of section 29(2) of the LP Law if that happens. All this Court will note is that the Management Fees were taken by the Defendant at a time when it must have known that there was an ongoing dispute as to whether there would be some obligation to repay those monies. If, as appears to be the case, the Defendant then resolved to distribute what it had in its account to Mr Erochkin under whatever terms those distributions were made when the Defendant arguably had some liability, contingent or otherwise, needing to be reflected in its financial statements, there may be some remedy available in the British Virgin Islands to seek to put the Defendant back into a more solvent position. For now, the Jurats are satisfied that it is open to the Court to make an order requiring the Defendant to return the amount to the limited partnership found not to have been within the Defendant's entitlement to take.
78. Even if this Court is wrong to treat section 29(2) of the LP Law as permitting it to make an order that the Defendant, as general partner, repay to the limited partnership the excess monies taken from the latter's assets, it would grant a declaration to the Plaintiff that, as between the two partners, the only fees that could properly be taken from the partnership assets by the Defendant under clause 6.7 and 6.8 of the LPA totalled US\$2,312,962.50. It would make that declaration as a bare minimum as a means of assisting the liquidator with how to resolve any continuing dispute between the parties as to what each should receive once the liquidator is ready to distribute the limited partnership's assets. It may also ultimately have the effect of making the Plaintiff a creditor of the Defendant and so enabled to pursue any remedy open to it elsewhere.
79. The conclusions reached are founded on section 29(2) affording a wide discretion to the Court, exercisable judicially by the Jurats, to achieve what they regard as a fair and equitable outcome for the parties on the dissolution of the limited partnership. They do not depend on any form of severance of the terms of the LPA under clause 17.3 and nor do they depend on assessing what management services were actually performed by the Defendant over the relevant, or indeed any other, period of time. They accept that the way in which that explanation was offered to them was intended to demonstrate the breadth of the discretion available to them and which they have now exercised. However, these are not powers that they have purported to exercise separately from reaching a conclusion as to what can be achieved under section 29(2). The total amount to which the Defendant has been found entitled as fees, recognising that certain expenses have already been taken from the limited partnership's assets to pay the

administrator, very roughly represents 10% of what the Plaintiff invested. In the opinion of the Jurats, when balanced against what Mr Erochkine was employed to do within the Rusnano group, the Jurats think that that is a fair return to the Defendant, which for these purposes they treat as the vehicle through which Mr Erochkine would derive benefit. In particular, they are satisfied that the Defendant's claim to take as much, and possibly more than, the value of the Plaintiff's entire investment in the limited partnership would produce a profoundly inequitable outcome. Accordingly, they have no difficulty in rejecting the Defendant's primary case on that basis.

80. The conclusion of the Jurats in respect of what it is appropriate for the Defendant to have received from the limited partnership's assets is intended to assist the liquidator in winding up the partnership's affairs. It follows that the Jurats are satisfied that, once the amounts to which the Defendant is entitled have crystallised, the liquidator can treat those amounts as being taken by the Defendant in accordance with the priority afforded to it for accrued fees under clause 11.3, but is so limited in accordance with the discretion being exercised, and thereafter the liquidator should apply section 32 of the LP Law to the cascade of distributions that would follow, once the liquidator has in his hands the monies to be repaid and has realised the Didi shares, or otherwise deals with them as he sees fit.

Conclusion

81. For the reasons given, the Court has rejected the primary cases of both parties. The Defendant is, in the Jurats' judgment, entitled to receive more from the assets of the limited partnership than just those expenses to which the indemnity in clause 13 of the LPA attaches. Equally, the Defendant is not entitled to receive fees calculated by reference to a Commitment of RMB900 million on the basis that, in the circumstances in which this limited partnership operated, that would be inequitable as between the partners. Accordingly, the focus for their decision-making has been on where, inbetween those two extremes, the entitlement of the Defendant should sit. They have determined that the entitlement of the Defendant was to receive the initial setup fee and the placement fee and also Management Fees for the period 3 December 2015 to 26 March 2018 in accordance with clause 6.7 and 6.8 of the LPA, but calculated by reference to the actual total Contribution made by the Plaintiff to the limited partnership of US\$25,005,000. The aggregate of all those fees is US\$2,312,962.50. In addition, the Jurats agree that the Defendant is entitled to receive those expenses to which its indemnity under clause 13 attaches and has indicated how it considers the liquidator might approach those issues. On the basis that the amount already withdrawn from the limited partnership's assets at Banque Havilland of US\$4,389,842.40 will inevitably exceed the total to which the Jurats find the Defendant is entitled, the Court orders the Defendant to repay into an account to be specified by the liquidator the difference between the total entitlement and what has already been withdrawn. In the alternative, it would make a declaration that that amount, once it has been calculated, forms part of the assets of the limited partnership to which the liquidator can have recourse when winding up its affairs.
82. As regards the costs associated with all the steps following the handing down of the Court's substantive judgment in April 2021, the presiding judge will refer to them in the other supplementary judgment dealing with the question of the costs of the proceedings.