

The Royal Court of Guernsey considered the entitlement of a former trustee, Geneva Trust Company (GTC), to remuneration and expenses from the Tchenguiz Settlement, addressing threshold issues of trust solvency and the principles governing claims post-removal. The Court held that GTC has some entitlement to remuneration and properly incurred expenses, with the precise amount to be determined by agreement or further hearing, and noted greater scope for reduction of claims during the caretaker period.

[2025]GRC087

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

Between:

GENEVA TRUST COMPANY (GTC) S.A.
(formerly Rawlinson & Hunter Trustees S.A.)
(in its capacity as former trustee of the Tchenguiz Settlement) **Applicant**

-and-

ORBITUS TRUSTEES (GUERNSEY) LIMITED
(in its capacity as current trustee of the Tchenguiz Settlement) **Respondent**

Hearing date: 9 October 2025

Judgment handed down: 11 November 2025

Before: Sir Richard McMahon, Bailiff

Counsel for the Applicant: Advocate A M Davidson
Counsel for the Respondent: Advocate P Richardson

Cases, texts & legislation referred to:

The Trusts (Guernsey) Law, 2007
In re H. Sossen 1969 Settlement (unreported, 28 May 2004; 2003-04 GLR Note 18)
The Trusts (Guernsey) Law, 1989
In re Tchenguiz Discretionary Trust 2017 GLR 13
In re Tchenguiz Discretionary Trust (unreported, 18 December 2015)
Re Z II Trust [2015] JRC 196C
Re Duke of Norfolk's Settlement Trusts [1982] 1 Ch 62
Geneva Trust Company (GTC) SA v Tchenguiz [2025] JRC 197
Gestmin SGPS SA v Credit Suisse (UK) Limited [2013] EWHC 3650 (Comm)
Equity Trust (Jersey) Ltd v Halabi [2023] AC 877
Virani v Guernsey International Trustees Limited 2000-02 GLR 472
Pullan v Wilson [2014] EWHC 126 (Ch)

Introduction

1. This judgment addresses issues raised in a cross-application made by Geneva Trust Company (GTC) S.A. (to which I will refer as “GTC”) dated 4 February 2025. That cross-application was a response to the application made by the Respondent, Orbitus Trustees (Guernsey) Limited (to which I will refer as “Orbitus”). The remainder of that application, relating to the delivery-up of materials, had been heard by me on 8 October 2025, and I delivered an *ex tempore* judgment the previous afternoon because it was apparent that the outcome needed to be addressed before this cross-application could proceed. In the event, the Advocates argued the cross-application at a high level, seeking some indications of principle, rather than it being determined in finer detail as to what GTC is entitled to be paid. I have approached the issues raised on that basis.
2. At the very start of the hearing, Advocate Davidson on behalf of GTC sought leave to amend the cross-application. On its face, it referred to section 68 and/or 69 of the Trusts (Guernsey) Law, 2007 (as well as also relying on the inherent jurisdiction of the court). There was no reference to section 35 of the 2007 Law. This was the first amendment sought, which was not opposed by Advocate Paul Richardson on behalf of Orbitus, resulting in the reference to section 68 being substituted with a reference to section 35. The second amendment sought was in respect of the amount pleaded in para. 2, which began: “*That GTC as former trustee of the TS is due the sum of SFR475,380 ...*”. In the Second Affidavit of Rodney Hodges, a director of GTC, which had been provided unsworn in February 2025, but which was finally sworn by him on 30 September 2025, he set out that the amount being claimed was in fact SFR612,232 (para. 7). Although Advocate Richardson suggested that some better explanation was needed, in the end he also did not oppose the amendment sought to para. 2. As I explained when granting leave to amend, I took the view that this figure represented the greatest amount that GTC could claim.
3. As I will explain later, the hearing took a slightly different course in that an application was made in private to be able to refer to a decision of the Court of Appeal that had been heard in private. Although Advocate Davidson sought permission to refer to that judgment in public, I was persuaded that it could only be referred to in private, so submissions were made on it in private. However, the remainder of the hearing was in public.
4. At the conclusion of the hearing on 9 October 2025, I reserved judgment. This judgment now sets out the high level considerations on which the finer detail of the cross-application will need to be resolved, whether by agreement or at another hearing.

Background

5. GTC was the trustee of the Tchenguiz Settlement (“the TS”) from April 2010 until its removal in August 2019. However, its removal was initially stayed by this Court and that stay was extended by the Court of Appeal until further order of the Court. In the event, agreement on a replacement trustee of the TS was not forthcoming, which led to a decision on the papers by which I chose Albecq Trust Company Limited from the list that had been presented to me shortly before Christmas 2020. By a Consent Order dated 1 October 2021, the identity of the replacement trustee for the TS was changed to Albecq Trustees Limited (“Albecq”). On 22 July 2024, Jupiter Trustees Limited replaced Albecq as trustee of the TS and its name was changed to Orbitus Trustees (Guernsey) Limited on 19 September 2024. There is no dispute between the parties about this sequence of events.

6. Paragraph 2 of the cross-application seeks payment to GTC from the assets of the TS of an amount of money in Swiss francs. (The amount is not to be determined at this stage.) As Advocate Davidson explained at the hearing, there are three periods that fall to be considered. The first is prior to GTC's removal as trustee of the TS. The second is when the stay operated prior to the appointment of Albecq. The third relates to the time after the appointment of Albecq and when GTC continued to be the custodian of trust assets, for which its stewardship of those assets should result in some remuneration.
7. In respect of the cross-application, I have had the benefit of two recent Skeleton Arguments. On behalf of GTC, Advocate Davidson prepared his written submissions on 23 September 2025. He developed them orally at the hearing. On behalf of Orbitus, Advocate Richardson also filed a document dated 23 September 2025, which is described as a Consolidated Skeleton Argument. It invites the Court to consider the insolvency of the TS and how that affects GTC's claims for remuneration and expenses under the indemnity, as well as having regard to some decisions on costs of Lieutenant Bailiff Talbot in respect of the *TDI* proceedings. Rather oddly, his Skeleton Argument suggested that "*referral of any residual billing issues to the Greffier*" should follow but, as I pointed out during the hearing, this is not Jersey, where that operates, whereas here we refer any dispute about costs in a different way. However, given that issues about quantum are now agreed to be relevant to a later stage, I have concentrated instead on what are described as "*threshold determinations*".
8. The evidence in support of the cross-application and in opposition to it is found within the significant number of Affidavits included in the bundle before the Court. The more relevant ones include the three Affidavits of Mr Hodges and an Affidavit of Sébastien Docet, which he swore on 30 September 2025. On behalf of Orbitus, Advocate Richardson draws attention to two Affidavits of Nicole Martin and the many Affidavits of Stephen Le Ray, including his Second and Fourth to Seventh Affidavits. To the extent that I need to do so, I will refer to relevant parts of this material, although I can confirm that I have considered all the materials to which the Advocates have referred me.

Contentions and legal principles

9. Advocate Davidson relies first on section 35 of the 2007 Law, the first two subsections of which provide:

“(1) *Unless authorised by –*

(a) *the terms of the trust,*

(b) *the consent in writing of every beneficiary, or*

(c) *an order of the Royal Court,*

a trustee is not entitled to remuneration for his services.

“(2) *A trustee may pay from the trust property, and may reimburse himself from the trust property for, all expenses and liabilities properly incurred in connection with the trust.*”

He has drawn particular attention to subsection (1)(c), although in his Skeleton Argument he also states that GTC had the consent in writing of the beneficiaries, but that was not actively pursued.

10. In support of the ability of the Court to approve remuneration of a trustee, he relies on *In re H. Sossen 1969 Settlement* (unreported, 28 May 2004; 2003-04 GLR Note 18). Whilst that

decision related to section 30 of the Trusts (Guernsey) Law, 1989, that provision has been re-enacted as section 35 in the 2007 Law. He also relies on *In re Tchenguiz Discretionary Trust* 2017 GLR 13. I will return to both of these decisions later in this judgment.

11. Advocate Davidson accepts that GTC did not publish its terms and conditions for trust business, meaning that clause 18.1 of the TS trust instrument had not been complied with. The sub-clause provides:

“The said Guinness Mahon Trust Corporation (Guernsey) Limited and any Trustee for the time being hereof who shall be a Company authorised to undertake trust business shall be entitled in addition to reimbursement of its proper expenses to remuneration for its services in accordance with such Company’s published terms and conditions for trust business in force from time to time”.

If only GTC had done so, much of this dispute about its remuneration would have not been required.

12. Advocate Davidson also refers to the approach set out towards the end of the decision of the Court of Appeal extending the stay that I had initially granted (especially paragraphs 19 and 20), the end of which states that GTC “*should be remunerated from the assets of the [TS] as if it continued in office as trustee*”. From this it can properly be inferred that the express reference to remuneration applies as if it were an order made under section 35 of the 2007 Law.
13. Once Albecq was appointed, Advocate Davidson accepts that GTC’s entitlement to remuneration ceased. However, the principles from the judgments of Lieutenant Bailiff Talbot in the *TDT* decisions should be considered as entitling it to the expenses incurred in, for example, keeping the companies the shares of which were trust property in good standing. This arises because any professional trustee should not be expected to provide services for free. For present purposes, it is whether any principle applies rather than the quantum of any fees claimed by GTC that matters.
14. In his Skeleton Argument, Advocate Davidson addresses the way in which Orbitus would approach the question of the solvency of the TS, suggesting that this is an artifice designed to avoid or frustrate the legitimate claims of GTC. In particular, no trustee of the TS, including Orbitus, had sought any directions from the Court pursuant to section 68 of the 2007 Law, as was now expected. The burden lay on Orbitus to demonstrate that the TS was in a “*precarious state*”.
15. Advocate Richardson’s Skeleton Argument raises as a central issue whether the trustee which has been removed from office was entitled to recover substantial fees and expenses from a trust that is either insolvent or functionally insolvent, in circumstances where that trustee has materially contributed to the financial deterioration of the trust (para. 5). Alongside that legal issue, it would be necessary to consider factually whether those fees had been reasonably incurred.
16. In particular, Advocate Richardson submits that the threshold issues raised need determination, the first of which is whether the TS was, and remains, insolvent and, if so, the date from which it became insolvent and, in any event, whether the principles set out by Lieutenant Bailiff Talbot operate to warrant some reduction or even total disallowance of the post-removal charges. In doing so, as well as the second decision, to which I have already referred, reliance is also placed on an earlier decision relating to remuneration, *In re Tchenguiz Discretionary Trust* (unreported, 18 December 2015). I will also deal with these principles later in this judgment.
17. In respect of the insolvency of the TS, reference is made to Mr Le Ray’s Fourth Affidavit, which exhibits the financial statements of the TS for the year ended 31 May 2020. These had been

signed on behalf of GTC on 3 February 2021. On the balance sheet, they show net liabilities of nearly £9 million. Notes 2 and 3 cover loan receivables and provisions on loan receivables. Accordingly, whilst it was owed monies by Mabrookah Limited, Dunain Holdings Limited and Valleytown Holdings Limited, in respect of the first and last the comment in Note 2 is that the company was in a net liability position, meaning that full provision was made in respect of those amounts, whereas for Dunain Holdings Limited the net asset value at the relevant date was used instead. In relation to Apadana S.A., Mr Le Ray also exhibits unsigned financial statements of that entity for the year ended 31 May 2023 which shows a positive balance of just over £2 million on its balance sheet, but which Advocate Richardson suggests is “*most likely insolvent when properly analysed*”. This appears to result from what Mr Le Ray described in para. 29 of that Affidavit, where he refers to the Waterside Point apartment, held by the company, being empty and having no maintenance carried out since the appointment of receivers in November 2024, further liabilities being incurred since 31 May 2023, the suspense account referred to in Note 6 and him being told by Ms Martin (and he also exhibits some e-mails from 2016) that this relates to litigation fees incurred by the TS, the requirement to pay a small amount of interest on the facility amount with Credit Suisse and that the shareholder loan, which is unsecured, interest free and repayable on demand would only be recoverable in the event the TS is able to make payment due to Apadana, which he does not believe to be the case.

18. Against that background, Advocate Richardson refers to *Re ZII Trust* [2015] JRC 196C, which is the first instance decision, and especially para. 29 thereof, which states “*it is the cash-flow test that should apply, namely the inability of the trustee to meet its debts as they fall due out of the trust property.*” Where this occurs, the trustee’s primary duty shifts away from the beneficiaries to the creditors.
19. Advocate Richardson has also drawn attention to findings made in the Jersey Royal Court about Mr Hodges’ credibility, suggesting that this means that GTC is unable to discharge the burden that rests on it on the basis of such uncorroborated testimony.
20. I take the view that there is no need for me to address the submissions in the Skeleton Argument about the requirement to provide proper particulars of charges made by a trustee arising from *Re Duke of Norfolk’s Settlement Trusts* [1982] 1 Ch 62. These issues go beyond those needed to resolve the threshold matters that fall for determination at this stage.
21. In his oral submissions on *In re H. Sossen 1969 Settlement*, Advocate Richardson suggested it was not very helpful, pointing out that in para. 20 it was acknowledged that “*a careful examination of the facts in a particular case*” is required.
22. In relation to the solvency element, Mr Le Ray’s Sixth Affidavit exhibited the TS financial statements for the year ended 31 May 2013, where the balance sheet showed that from the previous year, where there were funds of more than £13 million, the position had deteriorated to an overall liability of just over £800,000. The primary reason appears to be the way in which the substantial loan to Mabrookah Limited was dealt with by making provision for it in Note 3. Those financial statements were signed on behalf of GTC on 13 December 2019 (as were a number of subsequent years, although those for the year ended 31 May 2018 were signed the day before). He further pointed out that this company is mentioned in Ms Martin’s Second Affidavit.

Discussion

23. The first issue I propose to address is that relating to the question of Mr Hodges’ credibility. This arises from *Geneva Trust Company (GTC) SA v Tchenguiz* [2025] JRC 197. Unlike in the present cross-application, it is apparent from para. 114 of that judgment in Jersey that:

“Mr Hodges was cross-examined in some detail by Advocate James. Much of this was devoted to testing his credibility by reference to incidents and criticisms which had been made of his conduct in judgments by other courts, as outlined in Ms Martin’s thirty-fourth affidavit.”

This resulted in the comment in the following paragraph that:

“We have to say that Mr Hodges was not a very satisfactory witness. He tended to hesitate for long periods before answering even what seemed to be a fairly innocuous question as if he was searching for any hidden traps. When he did respond, his answers were often of such length and complexity that they were very hard to follow.”

24. I have quoted these particular passages because they fall within the paragraphs to which Advocate Richardson referred in his Skeleton Argument. He also refers to para. 168, in which the Court stated it *“has serious reservations about the reliability of the evidence of Mr Hodges, the Defendant and Mr Hillier”*. This in turn led to reference being made to what Leggatt J (as he then was) had stated in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3650 (Comm) about witnesses’ recollections not being relied upon, but instead to concentrate on what can be gleaned from the documents (and which is a passage to which I have been referred in this jurisdiction on previous occasions and so with which I am familiar). As that paragraph also explains, the events took place in 2014.
25. Consequently, I do not consider that it is appropriate for me to draw any comparison between the outcome before the Royal Court of Jersey, which had the benefit of oral evidence from these persons, including Mr Hodges, and the position in respect of this cross-application. If Orbitus had wanted to test the Affidavit evidence given by Mr Hodges on this cross-application then an application could have been made to do so. None was made. Accordingly, all I have to go on are the words on the pages of the three Affidavits sworn by Mr Hodges. There has been no opportunity for any of that evidence to be tested. As such, I have to take it at face value.
26. His First Affidavit explains why the claim for unpaid fees and expenses is being made. It deals with the handover once Albecq had been appointed. It exhibits some documents that largely speak for themselves. In May 2024, the firm of Ogier was acting for Albecq and GTC’s lawyers wrote to it and received a response the next month that payment would be made once the TS had the necessary liquidity. His Second Affidavit does little more than correct the amount being claimed by GTC. His Third Affidavit was sworn on 26 August 2025 and joins issue on the question of the solvency of the TS. It offers a different point of view from that found in Mr Le Ray’s Affidavits. It exhibits some correspondence.
27. Because none of this evidence has been tested, I cannot say whether or not what is deposed to by Mr Hodges is believable or not. Equally, nothing that Mr Le Ray was written in his Affidavits has been tested and I cannot, therefore, say whether I believe what he says or not. He makes comments about Mr Hodges in his Fifth Affidavit, exhibiting a copy of the judgment (see para. 20). The same comment can also apply to all the other deponents of Affidavit evidence. I doubt that I can resolve any factual issues in this judgment anyway. Mr Le Ray has come to the TS after Albecq was appointed and before he moved from Albecq to Jupiter/Orbitus. His knowledge of the TS comes later than the knowledge that Mr Hodges has from when GTC was the trustee of the TS. There is very little overlap, which I suspect is one of the reasons why Ms Martin has sought, particularly in her Second Affidavit, to relay events from when Mr Hodges was involved. However, I do not believe I can resolve any factual differences between what they have to say and have considered what is exhibited in documentary form on a similar basis to the *Gestmin* principle. What this means is that I cannot assume that Mr Hodges’ evidence lacks credibility and I also think it was inappropriate for these comments to be made when the parties to the proceedings in Jersey were different. It strikes me as being an unwarranted attempt to undermine the untested evidence of Mr Hodges,

when the same principle applies to all the other deponents of Affidavits. Accordingly, I do not find that I should reject Mr Hodges' evidence on the basis that it lacks credibility.

28. Before I turn to the principles advanced by Advocate Davidson in support of the cross-application, I think it will be appropriate to address what is said about the possible insolvency of the TS. In doing so, I will focus first on the time when GTC was in office as trustee before its removal, and secondly on the time when it acted in a "caretaker" capacity prior to the appointment of Albecq.
29. That latter period arises because of the order made by the Court of Appeal, as set out towards the end of the judgment delivered by Crow JA (to which both sides have referred in their Skeleton Arguments):

"19. *It would, of course, be undesirable for the TS to be left in a position where its interests remained wholly unprotected by the absence of any duly appointed trustee. In that connection, we should record the fact that, although GTC's removal as trustee has already taken effect, it remains vested with trust assets, and Advocate Williams (who appeared before us for GTC) accepted that it continues to owe fiduciary duties in relation to those assets (as appears from Virani v. Guernsey International Trustees Limited (Guernsey Court of Appeal, 2 December 2002, at paragraph 23)). He also indicated that GTC would be willing to discharge those duties by continuing to protect the interests of the trust pro tem.*

20. *In our judgment, the duties which GTC continues to owe extend to taking reasonable steps to preserve trust assets and, in the particular circumstances of this case, include taking such steps in the proceedings referred to above as are reasonably necessary to protect the interests of the TS in connection with the TS- TDT debt claim. For these reasons, after hearing oral argument on 24 September 2019, we indicated that the stay of F&B's removal would be continued until further Order of the Court, and we also gave the following ruling:*

"[GTC] should continue to exercise such powers as a trustee would have to preserve the assets of the [TS] including, in particular, the conduct of the proceedings concerning the claim against the [TDT]. If GTC considers its needs directions from the Court, it is entitled to apply to the Royal Court and we wish to give an indication that the Company should be remunerated from the assets of the [TS] as if it continued in office as trustee."

(I will need to return to this ruling and how it fits into what precedes it in due course.)

30. During the course of the hearing, I questioned why Advocate Richardson was referring to the first instance decision in the Jersey Royal Court for support about the approach to take to insolvency. The matter proceeded to the Judicial Committee of the Privy Council in what was a joined hearing (Equity Trust (Jersey) Ltd v Halabi [2023] AC 877). There was also an appeal from a decision in the Guernsey Court of Appeal in which I participated. However, as set out in para. 5 of the judgment of Lord Richards JSC and Sir Nicholas Patten, "*no issues of Guernsey law arise*". This was because the two cases were governed by Jersey law. One consequence of this is that, even in the proceedings in this Court and on appeal to the Court of Appeal, these matters were governed by Jersey law, so whether what Commissioner Clyde-Smith set out as a matter of Jersey law in Re Z II Trust has not, as far as I am aware, been tested as a matter of Guernsey law. All that can be said is that, if an application for directions were to be made by a trustee under section 68 of the 2007 Law, because the approach relates to the law of Jersey,

consideration would have to be given to whether this is the most appropriate test of insolvency for Guernsey law. However, for the purposes of this case, I will assume that it would apply.

31. I have reminded myself that, when ordering GTC's removal as trustee of the TS, I formed the view that the TS was solvent. Whilst I am not bound to reach the same conclusion again, I have considered carefully the evidence on which Orbitus relies to consider afresh whether, on the balance of probabilities, I think that the TS was insolvent for the two periods in question. If the issue of solvency was only clarified once Albecq became the trustee of the TS, this cannot, in my opinion, be something for which GTC should have any responsibility.
32. I have already commented on the evidence that Advocate Richardson says indicates that the TS was insolvent when GTC was the trustee. However, the financial statements were only signed by GTC after it had been removed by the order I made in August 2019. At the time of GTC's removal, I understand that it was common ground that the TS had interests in the three companies to which I have already referred: Valleytown Holdings Ltd and Mabrookah Ltd, both of which are registered in the British Virgin Islands, and Apadana S.A., which is registered in Panama. In each case, the TS held 100% of the shares. The financial statements before the Court then were in draft and in respect of the year ended 31 May 2018 (as exhibited to Mr Hodges' Second Affidavit, which he had sworn on 23 July 2019). The view I took then was that the net liability position of Valleytown Holdings Ltd and Mabrookah Ltd meant that there was no value in either company. In simple terms, the shareholding in each company was of no value to the TS. However, the balance sheet of Apadana S.A. showed total net assets of almost £5 million.
33. At that time, the valuation of the apartment at Waterside Point was higher than as shown in what appear to be a draft of the financial statements of Apadana S.A. for the year ended 31 May 2023. However, the amount of £1.6 million is recorded in both, although it refers expressly to Stephenson Harwood in 2018 rather than referring to a suspense account in 2023. I have, therefore, considered carefully what Mr Le Ray sets out in para. 29 of his Fourth Affidavit, to which I have referred above.
34. The first comment he makes in that paragraph post-dates Albecq's appointment. Whilst the shares in Apadana S.A. had not been transferred at the time of the appointment of the receivers, as I have already explained, GTC was not the trustee, even in a caretaker role, and so would not have been able to approach the Court for any directions. Similarly, the second point he raises is also of no direct concern to GTC because it relates to the time after 31 May 2023, which also post-dates Albecq's appointment.
35. In relation to what has become the suspense account, but which referred in 2018 to Stephenson Harwood, even if I were to accept what Mr Le Ray says, it reduces the amount on the balance sheet from just over £2 million to just under £450,000. The effect of this means that there is still potentially value in Apadana S.A. Moreover, given that Note 6 refers to this "*suspense account pertains to transactions with Stephenson Harwood on 1 August 2016*", one wonders why there has not been some resolution as to what should happen in relation to this amount. In 2018, there was no note in respect to this amount.
36. In relation to the fourth point raised in para. 29, whilst some interest is payable, as Mr Le Ray explains by reference to Note 9, this is already accounted for as being on the liability side of the balance sheet. As such, I do not consider that there is anything in this point as it affects solvency, whether or Apadana S.A. of the TS.
37. The final issue is whether the shareholder loan can be repaid to the TS. I suspect that this ultimately turns on what happens to the apartment at Waterside Point. Because its value appears on the balance sheet, even at a lower amount than in 2018, I have not been persuaded that the conclusion reached by Mr Le Ray in para. 30 of that Affidavit that "*if Apadana is unable to*

recover against the shareholder loan or the suspense account it is insolvent” affects the overall position.

38. This is a matter that Albecq inherited when it was appointed. It is now something for Orbitus to address. If it takes the view that there is material indicating that the TS is insolvent, it can seek directions under section 68 of the 2007 Law. However, the purpose of the present exercise is to determine whether, when GTC was the trustee of the TS, including when it had a caretaker role prior to Albecq’s appointment, there is evidence to point to the TS being insolvent. I am not satisfied on a balance of probabilities that this has been demonstrated. Even having regard to the 2023 financial statements for Apadana S.A, which relate to a time after Albecq was appointed, but when Apadana S.A. was still under the control of GTC entities, on the face of the material I have considered, I take the view that there was a positive balance in Apadana S.A. both when GTC was the trustee of the TS and when it was performing the caretaker role.
39. I have considered the financial statements for the TS exhibited by Mr Le Ray to his Sixth Affidavit, running through each year by year. Even those for the year ended 31 May 2009 were only signed off by GTC in December 2019, which was after its removal as trustee. As Advocate Richardson pointed out at the hearing, the first of these to show a net liability position is the year ended 31 May 2013, which then grew by the following year end to over £8 million. By the time of the financial statements for the year ended 31 May 2019, these were only signed by GTC on 3 February 2021. This was after Albecq’s appointment, unless nothing happened until after the Consent Order in October 2021. (An identical comment can be made about the final set of financial statements the following year.) However, I remain of the view that I expressed when removing GTC at the hearing in August 2019 that the liability position of Valleytown Holdings Ltd and Mabrookah Ltd render those shareholdings valueless, but the position in relation to Apadana S.A. each time showed a positive balance. As a result, I continue to hold the view that I expressed when removing GTC that the financial position of the TS has not been shown to my satisfaction to have been an insolvent trust. This applies to the time before GTC was removed as the trustee of the TS in August 2019. Seeing the financial statements that have since been supplied does not change my view in respect of that period.
40. In relation to the time that GTC acted in a caretaker role as trustee in accordance with the stays that were granted, most significantly by the Court of Appeal decision, the closest that Orbitus gets to showing that the TS was insolvent is the explanation given by Mr Le Ray at para. 29 of his Fourth Affidavit. However, even accepting that the suspense account position needs to be redressed, any insolvency depends on the ability to repay the shareholder loan as it existed by the end of the caretaker period. As I have already pointed out, this depends on what value would be achieved if the apartment at Waterside Point were to be sold. The impression I have formed is that this is not going to happen, certainly not imminently. This means that, until that happens, it remains an unknown as to whether Apadana S.A. will have sufficient funds to pay any of the shareholder loan. On a balance of probabilities, I cannot find that the TS was insolvent when Albecq was appointed.
41. I have also considered what was said in private about the Court of Appeal’s decision on the substantive appeal in January 2020, which did not oppose the removal of GTC and which subsequently led to the process later that year under which I chose Albecq from the list of possible new trustees of the TS. I have considered the terms of the whole of the judgment, and have focused on the paragraphs to which Advocate Davidson directed my attention. In the end, I am not persuaded that there is anything that can properly indicate one way or the other whether the TS was insolvent at any point. In other words, despite considering everything that was said therein, there is nothing that I have spotted pointing towards the possible insolvency of the TS before GTC’s removal or even during the time it was the caretaker trustee before Albecq was appointed. Equally, I do not think that what is said therein lends any support to the view that the TS was not insolvent. Both possibilities depended on the view taken about the loan positions. Accordingly, I do not need to refer further to that judgment.

42. For these reasons, the view I expressed when removing GTC remains unchanged despite having more material to consider now. Even if I were to be wrong about the financial position of Apadana S.A. and it should at some point when GTC was trustee be regarded as also in a net liability position, it would also be valueless. The consequence of such a conclusion would be that the TS would have been unable to pay GTC remuneration and its expenses. To that extent, the TS would have become insolvent but, because the remuneration and expenses have not yet been determined until the cross-application is resolved I cannot say from which date the TS might have been rendered insolvent. This is why I have concluded that I cannot say that there was an insolvency within the TS on the basis of the materials I have reviewed.
43. This leads me on to consider next the basis of GTC's claim, after which I will consider the second threshold issue raised by Orbitus relating to the TDT decisions.
44. The first thing to note about the decisions to which I have been referred is that they are decisions of this Court and so do not bind me. However, I am satisfied that the principles set out in In re H. Sossen 1969 Settlement are helpful, particularly because section 35 repeats what was set out in section 30 of the 1989 Law. It is apparent that the Court focused on remuneration being by order of the Court (see para. 12) and that this can extend to "past remuneration" (as explained in para. 25). To that extent, I am satisfied that it is open to the Court to determine the cross-application. Because of the terms of each Law, there might be no need to rely on the inherent jurisdiction but, to the extent that it is necessary to do so by reference to what was set out therein taken from the judgment of Fox LJ in Re Duke of Norfolk's Settlement Trusts, this is a route available but it depends on a proper consideration of the facts.
45. Those facts include what is set out in the Second Affidavit of Ms Martin. She explains at the end of para. 5 that she "approved payment of the fees GTC were seeking and the amount required was dealt with by way of a loan from R20 Advisory to the TS." The time when this approach was made to her is said to be "about 2016". However, I am able to infer from the level of her involvement then in matters relating to the TS that adequate arrangements were made in 2016 to settle outstanding fees of GTC as trustee of the TS
46. There are various consequences of this. Although GTC had not published its terms and conditions for charging for remuneration in compliance with clause 18.1 of the trust instrument, this is an example of where GTC's remuneration was settled by way of the loan Ms Martin described. Although there is nothing specific said in this paragraph about the level of remuneration (and possibly also expenses) being charged by GTC, in the absence of any detail, I think I can properly infer that it was at the standard rate to which Mr Hodges has subsequently referred in his evidence. In his First Affidavit, some of the invoices he exhibits date back to 2016. What remains unclear, but does not need to be determined at this point, is whether what Ms Martin refers to means that any of these invoices have already been settled, or whether the period covered pre-dates the first of these invoices exhibited by Mr Hodges. However, what matters is the principle that GTC's remuneration was being settled in its capacity as the trustee of the TS. I take the view that this is supportive of the entitlement of GTC to remuneration when it was in office as the trustee of the TS. Further, in accordance with section 35(2), anything being claimed that is not remuneration but rather reimbursement from the trust property under that provision in the 2007 Law is subject only to question as to whether it was properly incurred. If this becomes an issue, then application for what is known as an Alhamrani assessment can be made.
47. In GTC's caretaker role as trustee of the TS, in the ruling of the Court of Appeal to which I have already referred, there is express reference to GTC being entitled to be remunerated from the assets of the TS as if it had continued in office. However, I consider that this also needs to be placed into context with what is also stated in para. 20 of the judgment of the Court delivered by Crow JA: "the duties which GTC continues to owe extend to taking reasonable steps to

preserve trust assets". This was not, in my view, an open-ended opportunity for GTC to continue acting in precisely the same way as it would have before it was removed from office. That reference to taking reasonable steps to preserve the assets of the TS necessarily has to be viewed against the duty specified in section 23 of the 2007 Law relating to preserving assets. Although it was not stated as such, I expect that it was also intended, consistent with the duty found in section 22(1), that GTC would act en bon père de famille. However, this express reference to preserving the assets of the TS may mean that everything that is being claimed by GTC, when it comes down to looking at the fine detail, relates to remuneration for acting so as to preserve the assets. This will be something for further consideration once the principles have been established.

48. This means that the starting point for considering remuneration, having regard to the facts of the position, is that when in office as trustee of the TS there is a form of presumption that the same approach as had been taken in the early years of that trusteeship would continue until GTC was removed from office by my order in August 2019. Therefore, there ought to be a heightened degree of scrutiny about whether what GTC claims in relation to its caretaker role prior to Albecq's appointment may fall outside what I consider the Court of Appeal had in mind. In para. 19 there was an acknowledgement that fiduciary duties arose because the trust assets were still vested in GTC. This was a reference to para. 23 of *Virani v Guernsey International Trustees Limited* 2000-02 GLR 472, in which it was said that:

"Once the Protector had exercised her powers to remove the Respondents as trustees, they had not further right to act as trustees, they were no longer entitled to charge the fees provided for by the trust instruments and they were under a duty to transfer the assets as soon as reasonably possible, subject to their rights under section 39. Until they did so, they continued to owe fiduciary duties as though they were the trustees in relation to their dealings with the trust property."

49. I consider that this supports, rather than detracts from, the principle that GTC, as caretaker trustee of the TS, had a limited function until Albecq was appointed. The fiduciary duties being owed by GTC under the terms dictated by the Court of Appeal might mean that everything it is claiming needs to be looked at carefully. However, it is apparent that the Court of Appeal envisaged some remuneration being payable to GTC in respect of its ongoing role and section 35(2) will also be engaged so far as it is relevant.
50. As Advocate Davidson has acknowledged, once Albecq was appointed, GTC's role changed again. It cannot claim remuneration, but it can, provided it establishes that what it did arose because trust assets were still vested in it, claim what it has properly incurred in relation to those assets. As a matter of principle, there should be some entitlement for this last period to payment, the precise scope of which will need to be resolved by agreement or at a further hearing.
51. All of this is subject to what Lieutenant Bailiff Talbot has explained in the *TDT* decisions, to which I turn next. Although the TDT was a Jersey law trust, I am approaching the issues described therein as if they were equally applicable under the law of Guernsey.
52. In the first of those decisions, being the unreported judgment handed down on 18 December 2015, there was consideration of *In re H. Sossen 1969 Settlement* and the other decisions mentioned in para. 12. The conclusion was that remuneration could not be claimed once a trustee was out of office (para. 19) but that *"there is, in my judgment, no block on the Former Trustees now making a claim for recovery of any expenses which they have reasonably incurred in the period after their removal"* (para. 15). Instead of *"reasonably incurred"*, I would substitute the language used in section 35(2) and refer to *"properly incurred"* here, but the principle remains sound and will operate in relation to the third of the periods referred to by Advocate Davidson.

53. In para. 16, the Lieutenant Bailiff noted that:

“Amongst the assets of the TDT, there are, I believe, many investments by the trustees in companies. As I see it, it is obviously essential to keep filings in relation to such companies up to date so as to avoid any statutory or regulatory consequences, whether or not such companies included, as the Joint Liquidators suggest, companies which were either inactive or holding companies where little work was required. If it be the case that the Former Trustees have done so at their own expense, they are, in my judgment, clearly entitled to be indemnified for such expenditure under their equitable right of indemnity under Jersey law.”

I see no reason why this principle should not also apply as a matter of Guernsey law. The only qualification would be whether or not the expenses have been properly incurred.

54. There is then a section of the judgment dealing with the claim of GTC, as the current trustee of the TDT, for remuneration. However, this was adjourned to permit further evidence to be adduced (para. 37), with some paragraphs from *Pullan v Wilson* [2014] EWHC 126 (Ch) being referred to (which concerned “*the reasonableness of the remuneration charged*” (para. 1)).

55. This leads nicely into the second of the *TDT* decisions (2017 GLR 13). A central question was posed and answered by the Lieutenant Bailiff in para. 18:

“Does it, therefore, follow that, when a trust is possibly insolvent, a professional corporate trustee seeking to establish that its claim for remuneration is reasonable must expect to receive a lower level of remuneration than would have been reasonable in the case of a clearly solvent trust? In my judgment, it is necessary in a case like the present case, where there was from the date of appointment of the current trustee as sole trustee of the TDT a possibility, but not, in my view, a certainty, that the trust was insolvent, for the court to take that possibility into account as part of the material facts and circumstances when assessing whether the level of remuneration claimed by the current trustee for its administration of the trust during a period of possible insolvency is reasonable. Further, I consider that this factor might come into play even when, as I accept with regard to the current trustee’s work as trustee of the TDT, the professional trustee has carried out its multiple tasks in administering the trust in question with the application, caution and prudence expected of a professional corporate trustee.”

56. I also consider the paragraph following to be helpful to cite in full:

*“In my judgment, it is fundamental that I should also take into account the financial and commercial reality of the situation. It appears to me that it is likely that it would, at the least, be difficult for a professional trustee which would be willing to take up appointment as trustee of a trust which was possibly insolvent unless any claims to remuneration in the future, whether under the trust deed in question or under the inherent jurisdiction of the court, were likely to be met at a reasonable level. In the present case, though, it is also to be noted that the current trustee did not ask the Royal Court either in *Guernsey 2* or in a separate application to determine its level of remuneration immediately after its appointment, but waited until very much later to seek such a determination within *Guernsey 2* after it had performed a very considerable amount of its work as trustee of the TDT.”*

57. Pausing at this juncture, I take the view that the same criticism can be levelled against GTC on the present cross-application. It was open to GTC to seek confirmation as to its rates of remuneration whilst in office as trustee of the TS, including following the caretaker role envisaged by the Court of Appeal. Indeed, the ruling of the Court of Appeal found in para. 20 explicitly offers the opportunity to seek directions. That opportunity was not taken by GTC,

despite the consequences that arose in the *TDT* decision. Moreover, it is really quite astonishing that, following these two decisions in the *TDT* matter, GTC chose not to publish terms and conditions that would then operate in accordance with clause 18.1 for its benefit. I find these omissions on the part of GTC, leaving any claim for remuneration until quite a long time after it had been replaced by Albecq, as quite astonishing. Whilst payment may have been raised in correspondence, the absence of any formal claim or other action on behalf of GTC is why I describe its position in that manner.

58. The consequence in that judgment of the Lieutenant Bailiff is found at the end of para. 26:

“I therefore conclude that the current trustee’s claim under that sub-clause [12.1(ii) of the trust deed] is not made out and its claim can only be considered as a claim for reasonable remuneration under the inherent jurisdiction of either the Royal Court of Jersey or of this court. As will be seen, I consider that there is no difference between the nature and scope of the inherent jurisdiction of either court to supervise the administration of trusts, and, in suitable cases, to allow a reasonable sum for the remuneration of trustees.”

Further, at the end of para. 31 of that judgment, the comment made by the Royal Court of Jersey in *Landau v Anburn Trustees Ltd* 2007 JLR 250 that “*There is no reason to consider the supervisory jurisdiction of this court to be any narrower than that possessed by the Chancery Division of the English High Court*” (para. 19) was approved. I share that conclusion in relation to the supervisory jurisdiction enjoyed by this Court.

59. It follows that a similar approach can be taken as a matter of Guernsey law to the Jersey law considerations in the *TDT* decisions. It is apparent that guidance was provided by what has been said in *Pullan v Wilson*, which was a comparatively recent analysis of general principles about remuneration where it was necessary “*to have regard to the reasonableness, and the propriety, of the remuneration claimed*” (para. 57) entailing an “*evaluative judgment*” (para. 60). In that instance in *TDT*, 65% of the sums claimed by GTC up to the time of the appointment of the joint receivers was allowed (para. 39). Thereafter, just 20% of the amount claimed was allowed (para. 40).

60. The way the TDT was described in para. 39 could “*best be described as the precarious state*” of it “*and of its assets*”. In light of this comment, I consider that I need to have regard to the way in which GTC approached its role as trustee of the TS. Mr Le Ray exhibits to his Seventh Affidavit a letter dated 29 January 2021 sent by Mr Hodges to him at Albecq. The penultimate paragraph of that letter, under the heading “*Conclusion*”, states:

“We are keen to assist, but at the same time we must also extricate ourselves in totality. This letter is here to initiate that process. One issue that needs to be addressed is the lack of liquidity in this trust, and whether its inability to pay its creditors as and when they fall due, gives rise to questions as to the trust’s solvency. Under the existing rules in Re ZII Trust, which as indicated above is being appealed in the Privy Council, creditors have clear priorities and that impacts on the liquidity and assets in the trust.”

61. As a contemporaneous assessment, I take the view that this is a more realistic analysis of the position than what is found in Mr Hodges’ Third Affidavit, where he is keen to explain that “*the TS was not insolvent during GTC’s tenure as trustee*”. However, in this letter sent by him to Albecq shortly after it was appointed as trustee of the TS, I do not consider that Mr Hodges is conceding that the TS was insolvent, but offering a warning to Albecq that it needed to keep an eye on the position because of the illiquid nature of the assets. Indeed, in that same Affidavit, Mr Hodges drew attention to Apadana S.A., pointing out that it “*was not impaired and retained value throughout the relevant period*”. As I have already commented, it is because of the net asset position of Apadana S.A. that I have taken the view that it has not been shown to my

satisfaction that the TS was insolvent. Accordingly, although the precarious state of affairs of the TS may have been highlighted by Mr Hodges, I remain of the view that the best that can be said about the TS is that GTC's belated claim for remuneration and expenses may result in the TS being insolvent, but that rather depends on the state of Apadana S.A.

62. In relation to the second threshold issue raised by Orbitus, I am prepared to follow a similar approach to that set out by the Lieutenant Bailiff in the two *TDT* judgments. Although those decisions were taken under Jersey law, I am satisfied that the approach can apply equally as a matter of Guernsey law. The inherent jurisdiction was mentioned in *In re H. Sossen 1969 Settlement* as an alternative basis to the statute on which to pay remuneration to a trustee. There is a consistency of approach to follow these routes.
63. Whether the statutory route is adopted, or whether remuneration falls to be determined under the Court's inherent jurisdiction, the key question is going to be whether there should be any reduction from what GTC claims so that the amount is reasonable. I cannot determine whether there should be any reduction to the claims for the three periods involved in this judgment, but leave each of those periods open.
64. However, from the analysis that I have undertaken on the material presented to me, I am more inclined to think that prior to GTC's removal by me in August 2019 the TS was not insolvent for the reasons I have already given. I think this means that there is a presumption that the remuneration sought by GTC should be paid to it because, even though there were no published rates applicable for the purposes of clause 18.1 of the trust instrument, there had been a pattern of conduct of paying GTC's remuneration, as well as its properly incurred expenses, in the early years that it was the trustee of the TS. That course of conduct may be sufficient to entitle GTC to continue whilst it stayed in office being remunerated on the same basis. However, if Orbitus wishes to do so, it can seek to point to the earlier precarious nature of the trust property with a view to seeking to persuade the Court that there should be some reduction, as in the second *TDT* judgment.
65. In respect of the second period, when GTC was in the caretaker role following its removal but prior to the appointment of Albecq, there is a balance to be struck in respect of what the Court of Appeal's ruling meant. There is, in my view, greater scope for Orbitus to argue that there should be a reduction in what GTC claims for this period if it relates to the preservation of the assets and what needed to be done in order to fulfil its fiduciary duties. However, there is also the express reference in the ruling to remuneration, which implies that there would be some entitlement for GTC, as caretaker trustee, to be paid something by way of remuneration. There will also be some entitlement to properly incurred expenses.
66. Finally, after the appointment of Albecq, there would be no entitlement to remuneration, but there will be the ability to claim the expenses that resulted in the three companies being maintained in good standing in their respective jurisdictions.
67. I offer that brief summary as a means of assisting the parties. They may be able to come to some agreement as to what is payable from the assets of the TS to GTC. However, if they fail to do so, the matter will need to return to the Court for determination, whether that is through a line-by-line approach to the invoices or whether it is more akin to the broadbrush approach to considering reductions by way of percentages from what is claimed.
68. In relation to the threshold issues raised by Orbitus, I will expressly leave open whether or not there is any scope to say that the TS was in such a precarious state that there needed to be some assessment, at whatever point was appropriate, by GTC as to whether it should continue to charge at the rates it had been accustomed to charge. I have indicated that I rather doubt this will work for when GTC was in office before its removal, but it would be wrong for me to reach a final decision if this is something Orbitus wishes to renew.

Conclusion

69. For all the reasons I have set out within this judgment, I have taken the staged, or high level, approach that I was invited to by the Advocates. As a matter of principle, I am satisfied that GTC has some entitlement to remuneration and properly incurred expenses. The precise amount can only be resolved by the parties reaching agreement as to what falls to be paid or by returning the matter to the Court. (If it transpires that the amount will make the TS insolvent, then the focus will switch to creditors, of which GTC will be one, and away from the beneficiaries.) There is likely to be greater scope for Orbitus to argue in favour of some reduction for the time when GTC was in a caretaker role, and once Albecq was appointed the expenses it can recover are most likely to focus on what was paid to keep the companies in good standing and any other properly incurred monies, because no remuneration will be payable.
70. Because the cross-application is effectively part-heard, the simplest solution seems to be to reserve the costs for now. If the parties were to reach agreement on what is to be paid to GTC, I hope they will also agree the appropriate costs order. If they are unable to reach any agreement, costs can be determined on the cross-application after it has been returned to the Court.