



In The Supreme Court of Bermuda

CIVIL JURISDICTION
2026 No 48

In the matter of RST Trusts

Applications for blessing of the exercise of the Trustees' powers to enter into a transaction as a momentous decision; applications for blessing of the giving of consent by the Protectors to the Trustees' decision in the exercise of the court's jurisdiction under Public Trustee v Cooper (category 2)

Martin J

In chambers

***Ex tempore* judgment**

2 March 2026

Appearances

Nicholas Le Poidevin KC of New Square Chambers and *Ben Adamson* of Conyers Dill & Pearman Limited for the Trustees

Henry Legge KC of 5 Stone Buildings and *Keith Robinson* and *Jonathan Marion* of Carey Olsen Bermuda Limited for the Protectors

Lilla Zuill of Collas Crill Bermuda Limited for the 3, 5, 9-14, 19 and 21st defendants

David Kessaram of Cox Hallett Wilkinson for the 4 and 22-25th defendants

Rod Attride-Stirling of ASW Law Limited for the 6th defendant.

Claire van Overdijk KC of Appleby (Bermuda) Limited for the 7th defendant

8, 15 – 18th and 20th defendants unrepresented

Introduction

1. This is an application by the Trustees of a large group of related family trusts (the Bermuda Trusts) to bless a momentous decision falling within category 2 of the court's jurisdiction explained in **Public Trustee v Cooper**¹. At the same time, the Protectors of the Bermuda Trusts have sought a blessing of the exercise of their fiduciary powers to consent to the Trustees' decisions under the terms of each respective trust.
2. The court made the Orders in the terms sought at the hearing and, in light of the need for expedition, indicated that brief reasons would be circulated to support the decisions the court has made. These are those brief reasons.

The Transaction

3. The Trustees of each of the Bermuda Trusts concerned have the power to sell or deal in the assets of the respective Trusts. The Trustees have decided to sell or dispose of all the shares held by the Bermuda Trusts in a substantial international company in which the Bermuda Trusts have collectively held a major holding over a long period of time. Under the terms of the Bermuda Trusts, the Trustees' power to deal with the shares is subject to the consent of the Protector being given in each case. This represents a "momentous" decision in the life of each of the Bermuda Trusts both on account of the scale of the proposed dispositions and their effect on each of the Bermuda Trusts.
4. The Trustees also seek the court's blessing of the Trustees' earlier decision to enter into an irrevocable undertakings to vote the shares held (directly and indirectly) by the Bermuda Trusts in favour of the process by which the acquisition will be accomplished by the proposed purchaser and to give effect to the various other matters covered by the irrevocable undertakings that were given. Those irrevocable undertakings were required by the bidder as a condition precedent to making an offer for the company's shares, but were subject to the Trustees' ability to cancel their obligations under it if they did not obtain the court's blessing.

Jurisdiction

5. The Trustees of all the trusts involved in this application are resident in Bermuda and so this court has jurisdiction over the Trustees pursuant to section 9 of the Trusts (Special Provisions) Act 1989, recognising that many of the Bermuda Trusts are governed by a foreign law². It is also right to mention that there is an equivalent application being made in another jurisdiction in respect of a

¹ [2001] WTLR 901.

² Section 9 confers jurisdiction upon the Bermuda court in respect of trusts governed by Bermuda law and (inter alia) where all or part of the administration of the trust is conducted in Bermuda or a trustee is incorporated or resident in Bermuda. In this case each of the Trustees is a private trustee company incorporated in Bermuda and each carries on all or part of the administration of the Bermuda Trusts in or from Bermuda as described in the Trustees' affidavit in support of the application. For present purposes I have therefore referred to the Trusts as the "Bermuda Trusts" to distinguish them from the other trusts which are not subject to the Bermuda court's jurisdiction. For present purposes, the court considers that Bermuda is the 'natural forum' for these applications and that it is appropriate to assume jurisdiction in relation to the Bermuda Trusts even where the relevant instrument may contain a foreign choice of law provision.

small number of related family trusts because the trustees of those trusts are not amenable to the jurisdiction of this court.

The Trusts

6. It is not necessary to set out the full history of the Bermuda Trusts which is explained in the detailed affidavit in support of these applications that has been filed on behalf of the Trustees. It will suffice for present purposes to record that the assets owned by these related family trusts are of very substantial value and have been divided among the Bermuda Trusts (and a small number of trusts that are subject to the laws of another jurisdiction) over a long period of time.
7. All of the trusts are invested in the shares of the target company which are collectively the subject of the proposed disposition (“the Shares”), along with a group of other diversified assets which are also of very substantial value. The present application relates only to the Trustees’ disposition of the Shares, not any other assets.
8. The court is satisfied that the general powers of investment contained in section 55A of the Trustee Act 1975 (or the equivalent under a foreign law) and/or the general powers of investment conferred by the relevant trust instruments are wide enough to cover the sale or disposition of the Shares.

Independent Corporate Finance Advice on the terms of the proposed sale

9. In response to the approach made to the Trustees about the potential acquisition of the Shares by the proposed purchaser, the Trustees engaged a leading independent corporate finance adviser to advise on the terms of the potential sale and in particular as to whether the price being offered for the Shares could be considered fair and reasonable. That advice resulted in a process of negotiation, the details of which it is not necessary to record, resulting in an improved offer which the Trustees and their financial advisers consider to be the best offer that is realistically possible to achieve with the prospective purchaser. The corporate finance adviser expressed the view that the proposed terms are fair and reasonable as to value, and although the price may not be “compelling” in pure price terms, the offer takes into account strategic long-term considerations and represents a meaningful premium to the volume weighted average share price over relevant periods of comparison.
10. The Trustees also considered the realistic prospect of any alternative proposals, but the advice given by the independent corporate finance adviser was that it was reasonably unlikely for there to be another bid on terms that would be a more attractive cash offer.

Independent Specialist Legal Advice

11. At the same time, the Trustees have taken specialist independent legal advice as to both the terms of the transaction, the manner of the Trustees’ exercise of their powers, and the relevant considerations which the Trustees needed to take into consideration when arriving at their decision to enter into the transaction proposed and give their irrevocable undertaking to vote the Shares in favour of the process by which the acquisition of the Shares will be achieved. It will suffice to say that the Trustees have taken into account the advice given and have acted in accordance with that advice in entering into the irrevocable undertaking (subject to the court’s blessing being subsequently obtained).

Protectors' consent

12. As part of the negotiation process, the Trustees have been mindful that their powers to enter into a binding transaction that has the effect of disposing of the respective Bermuda Trusts' interests in the Shares are subject to the grant of consent by the Protectors in each case. As a result, the Protectors have been kept involved in the development of the proposals and the negotiations and have expressed their consent to the Trustees' decision to enter into the undertakings and to support the sale, subject to the blessing of the court being given both to the transaction and their own exercise of their powers to consent. This will be dealt with further below.

Consultation

13. The proposed transaction has moved at a very fast pace. There is great urgency in obtaining the court's blessing so that the transaction can proceed, the Trustees vote the shares in accordance with the irrevocable undertakings, and the relevant regulatory requirements can be complied with for the implementation of the transaction. Until now the transaction was necessarily kept extremely confidential to avoid the premature disclosure of the potential transaction.
14. Although the Trustees have the relevant powers to enter into the transaction (subject to the consent of the Protectors in each case), the Trustees have also taken into consideration the views of a cross-section of the beneficial interests that will be affected by engaging in a confidential consultation process among many of the adult beneficiaries representing the family branches whose discretionary beneficiary interests will be affected by the decision (some of whom hold shares personally). The Trustees are satisfied that the responses from the representatives of the beneficial classes who were consulted were substantially in favour of the transaction. It is noted that consultation with every single member of each class of beneficiary has not been realistic or possible, and that the response of consensus amongst those participating in the consultation represents a general sounding taken across the wide number of interests involved.
15. The court accepts that the Trustees can properly take into account these broad expression of support for the transaction on behalf of the adult beneficiaries (and any minors and unborns by their respective family members) even though strictly there is no requirement for consent to be obtained from any member of the respective classes before the Trustees can exercise their discretionary powers to vote the shares in favour of the sale or disposition. The court also accepts that the Trustees can properly take a unitary approach to the decision as to the sale of the Shares across all relevant Trusts because (i) the value commanded by the sale of the Shares is partly derived from the sale of the Bermuda Trusts' entire holding and (ii) all members of all classes of beneficiaries benefit from the favourable terms of the sale in exactly the same way, so there is no danger of the beneficiaries of any one Trust being less well treated than any other.
16. These are relevant matters when the court comes to apply the general test for blessing discussed below, namely that the Trustees have undertaken an approach and have reached a view which a reasonable trustee could properly take.

Other relevant considerations

17. The Trustees have set out in their affidavit in support of the application a range of other matters which they have taken into account in reaching the decision that they have. These considerations have included the tax implications of the proposed disposition of the Shares on the Bermuda Trusts. The Trustees have concluded that the ordinary tax implications are reasonable, such that there are no specific concerns which militate against the disposition.
18. The Trustees also engaged separate financial advisers to assess the impact of the disposition of the Shares on the strategic investment position of the Bermuda Trusts for the future and have been advised that the Bermuda Trusts will benefit from diversification of their investments and will be able to manage the investment of the assets of the respective trusts so that those investments will compensate adequately for the loss of dividend income from the shares, and there is the potential for improved financial returns.
19. The Trustees have also taken into account the analysis and advice of the independent corporate finance adviser on the timing and execution risks of alternative strategies which might be pursued by the target company when evaluating the merits of the proposal and have also balanced the long-term nature of the present holding, as well as matters going to the balance of income and long-term growth in making their ultimate decision.

The Trustees' decision

20. Taking all of these considerations into account and weighing the respective risks and unknown factors that are inherent in any long-term investment management decision, the Trustees concluded that it is in the interests of the Bermuda Trusts to enter into the transaction on the terms that have been offered and which formed the basis of the irrevocable undertakings.

Blessing

21. The role of the court in a **Public Trustee v Cooper**(category 2) application is limited. The Trustees do not surrender their discretionary powers but instead they seek the blessing of the court to enter into it on account of the special circumstances surrounding the transaction and the implications for the trust. The scale and value of the sale of the Shares (as defined in paragraph 7 of the Ruling) in this case clearly represents a momentous event in the life of all of the Bermuda Trusts.
22. The court is required to be satisfied that (a) the decision the Trustees have reached is lawful and falls squarely within the powers conferred upon the Trustees by the trust instruments concerned (b) the decision reflects the genuinely held view of the Trustees that the sale is in the interests of the Bermuda Trusts and that their view is one which a reasonable trustee could properly take and (c) the Trustees' decision is not tainted by any conflict of interest. These principles have been accepted and regularly applied by the courts in Bermuda, and the usual reference point for their adoption is **Re A Trusts** [2018] SC Bda 42 Civ by Kawaley CJ, as he then was³.

³ The principles had been endorsed in earlier cases including **Re ABC Trusts** [2014] Bda LR 117.

The court's assessment

23. As already stated, the Trustees have the requisite power (subject to Protector consent) to enter into the transaction. Protector consent has been given (subject to the court's blessing, which will be addressed below). The Trustees have taken the decision to enter into the transaction (subject to the court's blessing).
24. The court is concerned to be satisfied that this decision represents the genuinely held view of the Trustees that the disposition of the Shares on the terms proposed is in the interests of each of the respective Bermuda Trusts and that this view is one that a reasonable trustee could properly take.
25. The court is satisfied that the Trustees' genuinely held view is that the decision is in the interests of each of the Bermuda Trusts, weighing the terms of the transaction and the opportunities that a disposition offers against the risks and challenges that are involved in retaining the Bermuda Trusts' respective investments in the Shares. This view is set out clearly in the affidavit of the Trustees and it is obviously one that is sincerely and genuinely held.
26. The court is also satisfied that this view is one that a reasonable trustee could properly take. This is based on (i) the independent corporate finance advice received by the Trustees as to the terms of the transaction, the negotiation of improved terms and the consideration of the pros and cons and tax and other consequences that have been referred to (ii) the independent specialist legal advice that has been sought and followed at each step of the process, (iii) the consultation with representatives of the beneficial classes affected and which are broadly in support of the transaction⁴ and (iv) the assessment of present and long term investment management considerations.
27. It is of course a matter of fine judgment and measured calculation of risk. The court's task is not to second guess or critically evaluate the exercise of business or investment decisions taken by trustees who have sought and taken into account appropriate of financial and legal advice⁵. The decision falls to the Trustees in the exercise of their powers. It is clear from the summary given above that the Trustees have carefully evaluated all the relevant considerations before making their decision and have relied on independent professional advice in reaching their decision, and so the court is satisfied that their decision is one which a reasonable trustee could take.
28. In making their decision, the Trustees have weighed into account the views of those affected and there is no evidence or indication that their decision has in any way been influenced by any irrelevant considerations. The court is also satisfied that all matters the Trustees have taken into account are relevant matters which a reasonable trustee would take into account in reaching the decision to sell or dispose of the Shares, and that the Trustees have not taken into account any irrelevant matters.

⁴ It is noted that some beneficiaries take a 'neutral' position as to the court giving approval, but none has made any objection (and all participating beneficiaries were supportive of the Trustees entering into the irrevocable undertakings).

⁵ See **Cotton and Anor v Earl of Cardigan** [2014] EWCA Civ 1312 at paragraph 72 per Vos LJ (as he then was)

29. The Trustees are private trust companies which provide trust administration services to the Bermuda Trusts exclusively, and the directors of the Trustees have individually declared that they are not subject to any conflict of interest, so the court is satisfied that the Trustees themselves and the decision they have made is not tainted by any conflict of interest.
30. Therefore, applying the various elements of the test in **Public Trustee v Cooper** the court grants the blessing to the Trustees' decision as sought in the terms presented in the draft Orders.
31. The court is also satisfied that the Trustees' earlier decision to enter into the irrevocable undertaking (implementation of which was subject to the court's subsequent blessing) was also properly made and the court gives its retrospective blessing to that decision and the actions taken by the Trustees in furtherance thereof (if it be needed). The court does so on the basis that (i) the decision to enter into the transaction was properly taken in the exercise of the Trustees' powers to dispose of the Shares and (ii) it necessarily follows that the decision to enter into the irrevocable undertaking to give effect to the transaction was also properly taken, and for all the reasons I have given above, which it is not necessary to repeat.
32. In addition, the Trustees have not delayed in making the application for retrospective blessing in relation to the giving of the irrevocable undertaking (which was expressly given subject to the grant of a subsequent blessing for its implementation). The court notes that it would not have been practicable for the Trustees to have made an application for blessing to enter into the irrevocable undertaking before doing so for obvious reasons, and the court should not refuse to extend the court's blessing to those steps which were necessarily undertaken to achieve the transaction to which the court has given its blessing.
33. The court is also satisfied that the giving of the irrevocable undertaking does not represent a wrongful fetter on the exercise of the Trustees' powers because the undertaking was a necessary incident of the decision to enter into the transaction⁶, and the failure to give that undertaking would have had the effect of preventing the Trustees from making the decision because the transaction would not have been able to proceed.

The Protectors' consent

34. The Protectors of the Bermuda Trusts have given their consent to the Trustees entering into the transaction.
35. The court is satisfied that it is able to bless the exercise of the giving of consent of the Protectors to the Trustees' decision to enter into the transaction because the giving of that consent is the exercise of a fiduciary power on their part. The Protectors are each foreign corporate entities, but I am satisfied that the court's jurisdiction must also extend to blessing the exercise of their fiduciary powers to consent to a decision made by the Trustees of the Bermuda Trusts over which the court has undoubted jurisdiction.

⁶ See by analogy **Dowell v Dew** (1842) 1 Y & C.Ch 345.

36. The question of what the Protectors' powers to consent involve remains open. In **Re X Trusts**⁷ the Bermuda Court of Appeal concluded that in light of the supervisory nature of a protector, and subject to the specific terms of the applicable trust instruments, the scope of review of the exercise of those powers was limited to a narrow review role.
37. This narrow review role requires the Protectors to satisfy themselves that that the proposed exercise of the Trustees' powers of disposition was an exercise which a reasonable body of properly informed trustees was entitled to undertake and if so satisfied, to consent, being satisfied also as to the process by which the Trustees went about exercising the decision.
38. In this case, the court has already explained that the Trustees undertook a process and arrived at a decision which would enable the Protectors to be satisfied that the Trustees' decision was an exercise of a power which a reasonable body of properly informed trustees was entitled to undertake. Therefore, the court would also be satisfied that the exercise of the Protectors' powers of consent is or has been likewise properly and lawfully exercised, and to give the court's blessing to it. The court accordingly does so.
39. However, the decision of the Bermuda Court of Appeal is subject to an outstanding appeal to the Privy Council on the basis that the exercise of protectors' powers to consent to trustees' decisions must be tested to a different standard. The court has been invited to consider the exercise of the Protectors' power to consent in this case also on the basis of the 'wider role' test (unsuccessfully) contended for in the **X Trusts** case.
40. Recognising that the court is always reticent to decide matters on a 'hypothetical' nature, in this case I am satisfied that it is necessary to give the Protectors the comfort that their exercise of their powers of consent are not subject to the risk of future challenge in case the Privy Council disapproves of the Court of Appeal's analysis and upholds the wider role. This issue is not hypothetical in the sense that the facts are real, and the question relates to the application of an alternative legal standard.
41. The wider role of review required by a protector in deciding whether or not to give consent to the exercise of a trustee's power is said to extend to the exercise of a normal fiduciary discretion, which includes the following features:
- (i) Whether the trustee's decision is rational, including assessing whether there is an appropriate correlation between the decision and the reasons for that decision.
 - (ii) Whether the matters which the trustee has taken into account are matters which the trustee can properly take into account.
 - (iii) Whether there are matters which the trustee has not taken into account but which the trustee ought to have taken into account.

⁷ [2023] CA Bda 4 Civ per Gloster JA.

- (iv) Whether the trustee's decision is one which a reasonable trustee with the information available to the trustee could have reached.
- (v) Whether the protector should exercise an independent discretion to give their consent to the trustee's decision.

42. The court will not here discuss the elements of the wider role but will simply test the Protectors' decision to give their consent to the Trustees' decisions in relation to each respective trust against those elements as if the wider test applied to the giving of their consent.

The court's assessment of the Protectors' giving of consent

43. For the reasons already given, the court is satisfied that the Trustees' decision in this case is rational and based on a proper evaluation of all the relevant matters that went into making the decision.

44. The evidence shows that Protectors have been involved in the process at most (but not all) of the meetings which led to the decision and were kept informed of matters in which they were not directly involved. The Protectors have seen all of the relevant materials which were relied upon by the Trustees and the evidence shows that there was nothing which the Trustees had seen which the Protectors had not seen. The Protectors were also involved in the consultation with the beneficiaries.

45. Although the timescale for the progression of negotiations and obtaining relevant financial and legal advice was necessarily compressed and matters proceeded at a fast pace, the Protectors had a proper opportunity to ponder and reflect on the advice before reaching a conclusion. The Protectors obtained their own legal advice and relied upon that advice. The independent corporate finance adviser was instructed jointly by the Trustees and the Protectors, so the Protectors received the same advice as the Trustees and at the same time.

46. Accordingly, the Protectors had the ability to take their own independent view on whether the decision to enter the transaction was appropriate and in the interests of the each of the respective trusts. These factors included the advice of the independent corporate finance adviser to the effect that the price was fair and reasonable, and that there was unlikely to be a more attractive cash offer available. These factors also included the assessment of the future investment strategy, the tax considerations and the other matters which the Trustees took into account, all of which have been briefly considered above.

47. Accordingly, the court is satisfied that the Protectors' decisions to give their consent on the basis of the wider role to the Trustees' decisions to enter into the transaction on the terms negotiated were rational, based on relevant materials, and were clearly decisions which a protector in the position of these Protectors could reasonably take. The court is also satisfied that the Protectors have not failed to take into account any matter which they should have taken into account, nor have they taken into account any matters which they should not.

48. It follows that if the court were required to test the giving of the Protectors' consent to the Trustees' decision against the wider role of review described in **X Trusts**, the court would be fully satisfied

that the Protectors' have satisfied that test as well as the narrower test. For the avoidance of doubt and completeness, the court would and does hereby grant the court's blessing to the giving of consent by the Protectors according to the 'wider role' set out above, if it turns out that the Privy Council disapproves the Bermuda Court of Appeal's decision.

49. Similarly, to the extent that the grant of the court's blessing to the giving of consent by the Protectors on both standards of review, narrow and wide, requires any retrospective effect, and for the same reasons as I have explained above, the court hereby gives that retrospective blessing to the giving of the Protectors' consent and any consequential actions the Protectors have taken in furtherance thereof.

Conclusion

50. The court has therefore made Orders in the terms of the applications and in the form submitted by counsel. The Orders include a prayer for costs to be paid out of the trust assets on a proportionate share basis.

Confidentiality

51. The terms of the court's previous Orders for confidentiality remain in effect, subject to certain modifications to enable the Trustees to disclose relevant information to any parties to whom disclosure is reasonably required. These amendments are to allow disclosure to enable the Trustees to give effect to the transaction or facilitate compliance with any regulatory or other requirements which the Trustees consider expedient, including disclosure to any parties or advisers of parties to proceedings in any other jurisdiction.

Dated this 2nd day of March 2026



THE HON. JUSTICE MR. ANDREW MARTIN

PUISNE JUDGE