In The Supreme Court of Bermuda

CIVIL JURISDICTION

2026 No 81

IN THE MATTER OF THE BENEFICIAL OWNERSHIP ACT 2025

AND

IN THE MATTER OF THE COMPANIES ACT 1981

BETWEEN: **HARMS HOLDING CO. LIMITED** **PLAINTIFF**

AND

PHOENIX CAPITAL PARTNERS LTD **DEFENDANT**

Application to lift, modify and/or grant in respect of a Decision Notice issued by the defendant under section 17 (2) of the Beneficial Ownership Act 2025

Date of Hearing: **21 August 2026**

Date of Judgment: **3 November 2026**

Appearances

Henry Tucker of Harneys Bermuda Limited for the plaintiff

Keith Robinson and *Mathew Summers* of Carey Olsen Bermuda Limited for the defendant

Martin J

JUDGMENT

Introduction

1. This is the judgment of the court following a short trial of an action begun by Originating Summons dated 10 March 2026 by a Cyprus company called Harms Holding Co. Limited

("HHC") seeking relief under section 17 (9) of the Beneficial Ownership Act 2005 ("the BOA") in relation to a Decision Notice issued by in Phoenix Capital Partners Ltd ("the Company") dated 20 October 2025 in relation to the shares held in the Company by HHC.

2. These proceedings concern the responsibility of legal persons (defined broadly as companies and partnerships registered in Bermuda) to obtain appropriately detailed information to verify the identity of the ultimate beneficial owners of the shares in the companies or in the interests in a partnership under the BOA. In this case, the Company sought information from a number of registrable persons to explain the nature and extent of their ultimate beneficial ownership and was not satisfied with the answers it received. The Company issued a Warning Notice under the BOA stating that unless the information requested was received within 28 days, the Company would issue a Decision Notice under the BOA which would impose restrictions on the relevant interests until the information requested was received.

3. The information requested was not received within the 28 period and a Decision Notice was issued by the Company which imposed restrictions on the transfer of the relevant shares, the exercise of voting rights in relation to those shares, as well as a restriction on the Company issuing new shares or the distribution on any payments to the holders of the shares pending provision of the relevant information.

4. HHC objected to the imposition of the restrictions on the relevant shares and applied to the court to set aside or modify the restrictions on the grounds that the scope of the information requested was too broad and related to matters outside what was necessary for the Company to enter the minimum information required for entry on the beneficial ownership register.

Summary and Disposition

5. For the reasons explained in the judgment below, the court has declined to set aside or vary the Decision Notice and has ordered the continuation of the restrictions until the registrable persons have complied with the provision of the information set out in the appendix to the draft Order submitted by the defendant.

6. The primary reasons for the court's orders are summarised below. In brief, in the court's judgment, the BOA establishes a regime under which every legal person is given certain rights to assist in the performance of their responsibilities under the BOA. The principal provisions of the BOA are explained in more detail below, but the essential rights are as follows.

    (i) The Company has a *prima facie* unqualified right to know who the ultimate beneficial owners of its shares are and who ultimately has the ability to control the company by the exercise of voting rights or other means (within the terms defined in the BOA).

    (ii) The Company has a broad right to seek information that it considers relevant to enable it to fulfil its duties to maintain the beneficial ownership register of the Company up to date with accurate information which has been appropriately verified after taking what it considers to be adequate measures to enable it to fulfil its duties under the BOA. This includes to right to seek information that goes beyond the minimum information required by the BOA to be entered in the beneficial ownership register and extends to historic information where appropriate.

    (iii) The Company's bye laws permit the Company to issue a Warning Notice to registrable persons (as defined) requiring the provision of information relevant to the beneficial

ownership register in respect of a registrable person's beneficial ownership in any shares in the Company.

(iv) The Company's bye laws permit the Company to issue a Decision Notice imposing restrictions on the relevant shares until the Company has received sufficient information to enable it to comply with its duties under the BOA.

7. The imposition of restrictions on the relevant shares to require a registrable person to provide information relating to the acquisition of their beneficial interest in the shares to enable the Company to comply with its duties under the BOA is, in the court's judgment, a proper purpose.

8. On the facts of the present case, the court concluded that it is clearly appropriate and proportionate for the Company to impose restrictions to prevent (a) the transfer of the Class A Shares and (b) the exercise of voting rights attached to the Class A Shares pending provision of information which the Company considers is necessary to enable it to comply with its duties under the BOA. There is no imminent intention to issue new shares or to distribute any payments, and there is no evidence to support the claim that these restrictions unfairly affect the interests of third parties. The court therefore did not consider it appropriate to modify those restrictions until proper grounds are shown that these restrictions unjustifiably or unfairly interfere with the exercise of relevant rights by either HHC or third parties. No such grounds have been shown.

9. The court has accepted the terms of the draft Order submitted by the Company. However, the court would not make an order for the payment of costs on the indemnity scale without hearing argument. If the Company wishes to seek indemnity costs, then the draft Order should be adjusted to reflect that the court will hear the parties as to costs. Such application should be made within 14 days of the date of the judgment. If no such application is to be made, then the court is satisfied that the costs should follow the event. If no application for indemnity costs is to be made it follows that costs should be taxed on the standard scale if not agree.

Background facts

10. The Company was incorporated in Bermuda as an exempted company on 21 April 2005 as an investment holding company. The Company's local corporate administration was provided by Coson Corporate Services Limited ("CCS"). The Company's initial capital structure comprised a single Convertible Preference Share ("the Preference Share") which was issued to a Belize company called Daventree Resources Limited ("Daventree") in exchange for certain Azerbaijan privatisation options and vouchers pursuant to a purchase agreement between Daventree and the Company dated 10 April 2005.

11. On 5 June 2009 CCS entered into a Nominee and Indemnity Agreement with HHC ("the Nominee Agreement"). The recitals to the Nominee Agreement record that "*effective as of 14 July 2005*", Daventree assigned the Preference Share to HHC. The Nominee Agreement set out the terms on which CCS were to hold the Preference Share on HHC's behalf and to provide the Company with directors and officers in exchange for a comprehensive indemnity against any liabilities, costs and expenses the directors and officers may incur in acting as directors and officers and nominees of the Company for HHC.

12. On 9 June 2009, the single Preference Share was converted into 36,000 non-voting Class A Common Shares of US$0.33 each ("the Class A Shares") which were then held by CCS as nominee for HHC. HHC is in turn (now) owned by a Czech entity called Harvardsky

prumysolvy holding a.s ("HPH"). HPH is ultimately (now) owned and controlled by Mr Vlastimil Jirik (as to at least 47.93%).

13. On 5 March 2025, CCS resigned and terminated its corporate services agreement due to an inability to confirm the beneficial ownership of the Class A Shares. The reasons given by CCS for the termination were that the information provided to CCS by HHC's New York attorneys did not disclose (i) a structure chart showing all the current and past legal entities and interests held by third parties in HHC (ii) certified share registers of HHC and HPH (iii) a clear explanation as to the dates of changes made to the Company's ownership structure (iv) the ownership relationship between HPH and HHC (v) a satisfactory explanation of various inconsistencies in the ownership register of HPH.

14. The Company instructed independent attorneys. They wrote to Daventree Trustees Limited (the legal owner of Daventree), HHC, HPH, Mr Jirik and a company called Tass Invest s.a. ("Tass Invest") on 12 May 2025 requesting beneficial ownership information under the procedure set out in sections 98G and 98I of the Companies Act 1981 and seeking various categories of information set out in sections 98H, 98I, 98J of the Companies Act 1981. These letters were referred to as the "statutory notices".

15. On 9 June 2025, Daventree Trustees Limited and Tass Invest both responded saying that it does not fall into the category (as defined) of beneficial owner in the relevant provisions of the Companies Act 1981.

16. On 13 June 2025 HPH responded through their Bermuda attorneys providing a structure chart of ownership and supporting certified documents that HPH claimed were sufficient to show the ownership chain of beneficial ownership up to Mr Jirik. HHC responded directly also on 13 June 2025 saying that it had at all material times provided all the information requested by CCS in a transparent manner and complaining that CCS was attempting to frustrate HHC from exercising its lawful rights in relation to the shares. In summary, HHC provided the documents that were requested and explained that the ownership structure is as follows:

    (i) Mr Jirik holds 22.34% of the voting rights of HPH directly
    (ii) A Mr Burda holds 10.17% of the voting rights of HPH
    (iii) Mr Jirik also holds other interests through other companies which total 47.93% of the voting shares of HPH (i.e. indirect holdings of 25.59%).
    (iv) No other individual or entity qualifies as a beneficial owner of the Company.

17. On 11 August 2025 HHC's attorneys instructed CCS to execute a share transfer of the Class A Shares in favour of HHC, but CCS refused until compliance with all the regulatory requirements had been met to their satisfaction.

18. On 18 August 2025, the Company's attorneys issued a Warning Notice[1] to Mr Jirik because he had not responded personally to the statutory notice and warned him that in the event he did not respond, the Company would issue a Decision Notice which would have the effect of imposing restrictions on the Class A Shares until such time as compliance with the requests for the provision of information had been complied with. The Company's attorneys explained that Mr Jirik had to provide the relevant information in his personal capacity, and confirm the information that had been provided to the Company by HHC and HPH.

[1] HB 176-182.

19. In particular, the Company's attorneys asked for an explanation as to how he had acquired his beneficial interest in HHC. This is the central issue in the matter and requires some detailed explanation.

20. This question arose because the Company's records reflected that the ultimate beneficial owners of the Shares were the intended beneficiaries of a Caymanian Trust (referred to as "Trust 2") which had been settled by Daventree Trustees Limited as Trustee of a trust for 240,000 persons and entities who were shareholders of HPH in 2003. These beneficiaries were also the ultimate victims of certain criminal acts committed by Mr Viktor Kozeny against HPH for which Mr Kozeny and a Mr Boris Vostry were convicted in 2012 in the Czech Republic. The Company's records reflected that Mr Jirik was also one of the beneficiaries of Trust 2.

21. The Company's attorneys stated that the Company's records reflected that in 2009 HHC was owned by Trust 2 as to 99.94% and 0.06% was owned by a Mr Tomas Sevcik and that Trust 2 held its interest in HHC through two Slovak companies, Tass Invest and Tass Holding s.a ("Tass Holding"). However, the Company's attorneys stated that in 2024, the Company was informed that HHC was never owned by Trust 2 but had been owned by Mr Sevcik since 2005 and that Mr Sevcik may have used his position as the holder of a power of attorney for Daventree Trustees Limited to obtain the shares for US$1.00. The Company's attorneys stated that the Company's records reflected that Mr Sevcik had continuously represented to the Company that the Class A Shares were held for Trust 2 through HHC from 2005 until 2023.

22. The Company's attorneys then sought Mr Jirik's explanation as to how he came to acquire a beneficial interest in HHC, stating that there were three possible alternatives:

    (i) HPH acquired the shares from Tass Invest in June 2023;
    (ii) HPH acquired Tass Invest prior to March 2023;
    (iii) HPH acquired the shares following HPH's acquisition of Daventree Trustees Limited followed by an acquisition of Tass Holding (Tass Invest's parent entity) and a subsequent transaction that vested the shares beneficially in HHC.

23. The Company's attorneys also sought an explanation from Mr Jirik explaining how he had acquired his interest in the shares of the Company, and asked for an explanation of who the other relevant shareholders of HHC are and how their shareholdings relate to Mr Jirik's holdings, and in particular to explain Mr Jirik's intermediate holdings in HPH through XODAK a.s (18.92%) WWW.KOTVA .CZ a.s (4.33%) Cesks pujcovna a.s. (1.57%) and REDASH a.a. (0.76%) and what the extent of Kristian Jirik holds shares in HPH.

24. The Company's attorneys also asked Mr Jirik to provide an explanation to the background of certain legal proceedings pending in the Czech Republic in relation to the validity of certain shareholdings in HPH held by Mr Kozeny's mother (Mrs Chvatik) through a group of Cyprus companies, as well as certain proceedings in the Czech Republic relating to shares issued to Mr Jirik in HPH.

25. The Company's attorneys stated that the Company has information to the effect that the 2012 Criminal judgement against Mr Kozeny remained unsatisfied, and that the Trustee claims that this judgment is the basis on which HPH acquired the shares in HHC.

26. The Company's attorneys also asked Mr Jirik to provide an explanation as to the background to certain proceedings pending in the Bahamas commenced by Mrs Chvatik (through the Kozeny Cyprus companies) and a company called Husky Trading Co. Ltd against 29

defendants including HPH, Daventree Trustees Limited, Mr Jirik and Mr Sevcik involving an allegation that HPH, Mr Jirik, Mr Sevcik, Daventree Trustees Limited and others have conspired to misappropriate assets from certain trusts (including Trust 2) assets worth over US$1 billion[2]. The Company's attorneys stated that the Bahamas litigation involves allegations that the shares of HHC were misappropriated by Mr Jirik in 2002, which led to the shares being held by Tass Invest and ultimately HPH.

27. The Company's attorneys stated that the Bahamas litigation alleges that Trust 2 is entitled to any compensation received for certain Azerbaijani voucher books and options which were held by the Transferor as nominee for Trust 2. The Company's attorneys stated that in 2005, the Transferor provided those assets to the Company as consideration for the Preference Share which was later converted into the Class A Shares. The Company's attorneys also stated that the outcome of that litigation may affect the beneficial ownership of the Class A Shares.

28. In addition, the Company's attorneys stated that it is alleged in the Bahamas litigation that HPH improperly repurchased 9.9% of its own share capital for nominal value, which was held by HHC but was beneficially owned by Mrs Chvatik, and that 14% f the shares in HPH are owned by Mrs Chvatik (through the Kozeny Cyprus companies) which have been unfairly diluted by HPH from 43%, which resulted in Mr Jirik's current shareholding in HPH. The Company's attorneys also stated that the Bahamas litigation also alleges that in 2002 Mr Jirik improperly invalidated Husky Trading Co Ltd's shares in HPH and that the Czech proceedings improperly sought to invalidate the shares held in HPH by the Kozeny Cyprus companies.

29. The Company's attorneys also referred to litigation in Cyprus in which there appears to be a claim by the Kozeny Cyprus companies that they are entitled to 45% of the assets of Trust 2 as well as another trust referred to as "Trust 1" which raise issues as to the beneficial ownership of Tass Holdings as well as the ownership of HHC and the Class A Common Shares of the Company.

30. The Company's attorneys also referred to litigation in the Cayman Islands in which it appears that there is a similar claim to that described above in the Bahamas in which the Kozeny Cyprus companies are contesting efforts by Mr Jirik, HPH and Daventree Trustees Limited to unfreeze the assets of Trust 1 and Trust 2.

31. The Company's attorneys then requested a full explanation from Mr Jirik of the various issues set out in their letter by 17 September 2025, in default of which the Company would proceed to issue a Decision Notice which would have the effect of restricting any transfer of the Class A Common Shares and the exercise of any rights in relation to the Shares or any distributions in relation to them.

32. On the same date, the Company's attorneys sent Warning Notices to HHC, and HPH's attorneys in Bermuda requesting the same information (adapted for each recipient as appropriate)[3]. In the Warning Notice addressed to HPH's Bermuda attorneys, information was also requested regarding Mr Jirik, a Mr Martin Burda, Mr Kozeny, Mrs Chvatik and a Mr David Konz and their relative holdings in the ownership structure. The same deadline and a warning was given to the effect that, in default of a full explanation, the Company would issue a Decision Notice to similar effect.

[2] HB 453-4.
[3] HB 158-166 and HB 167-175.

33. The references to what the Company's attorneys 'stated' in their Warning Notices is to emphasise that the information in the Warning Notices was based on what the Company's records contained or referred to, and so the statements were not made as statements of fact, but were intended to show the basis of the Company's concerns over the completeness and accuracy of their records and information, and to elicit clarification and confirmation before the Company decided what action to take.

34. On 17 September 2025, HHC responded to the Company's attorneys[4] denying that the information that been provided was insufficient to meet the requirements of the Companies Act as to beneficial ownership and that the Warning Notices overreached the statutory jurisdiction provided for in section 98H of the Companies Act 1981, which sets out the minimum information required to meet the standards for disclosure. HHC maintained that the information provided as to the beneficial ownership within the meaning of the Companies Act 1981 was true, accurate and supported by appropriately validated and certified documentation from official sources. HHC stated that the information provided shows the present ownership of HHC and refused to respond to the requests for information concerning the litigation, which HHC said was speculative and irrelevant, and outside the scope of the statutory powers contained in section 98H of the Companies Act 1981. HHC concluded by stating that if the Company proceeded to issue a Decision Notice when HHC had complied with he Warning Notice, HHC reserved the right to challenge the Decision Notice as being ultra vires, and in breach of fiduciary duty and an abuse, and HHC reserved the right to invoke the court's jurisdiction to grant injunctive relief.

35. At this point, Mr Jirik also responded[5], having overlooked the need to do so because the information provided by HHC (which he had provided on its behalf) was the same information that he would have provided. Mr Jirik said he had complied with the request using all good faith efforts and repeated the objections made by HHC about the extent of the obligation to provide information.

36. On 24 November 2025 MQ Services Ltd became the corporate service provider for the Company. This engagement was undertaken on the basis that the Company needed to have a registered corporate service provider in order to remain in compliance with Bermuda's registration requirements. MQ Services Ltd agreed to provide the relevant services on condition that the beneficial ownership issue was addressed by the Company, and there was no regulatory objection to its so acting for these purposes from the Bermuda Monetary Authority.

37. On 20 October 2025 the Company passed resolutions recording the background summarised above and concluding that insufficient information had been provided by Mr Jirik, HHC and HPH to determine the beneficial ownership of the Company. The Company evaluated the position of the Company under the Companies Act 1981, the impact a Decision Notice imposing restrictions of the shares would have on the persons who may be beneficially entitled to an interest in the Class A Shares, and the potential impact on third parties and resolved to impose restrictions on the Class A Shares to take effect 30 days after the receipt of the Decision Notice by the intended recipients[6].

[4] HB 427-431.
[5] HB 437-442.
[6] HB 493-6.

38. The restrictions imposed by the Decision Notices[7] included a restriction on the Class A Shares prohibiting any transfer, exercise of voting rights or issue of new shares, or any distributions by way of capital or otherwise. The Decision Notices were sent to CCS, HHC, HPH's Bermuda attorneys and Mr Jirik. The Decision Notices required Mr Jirik, HHC and HPH to provide the information required before 21 November 2025 in default of which the Decision Notices would take effect. Nothing further was provided and so the Decision Notices duly took effect.

The Originating Summons

39. On 10 March 2026 HHC issued the present proceedings seeking an Order setting aside the Decision Notice addressed to HHC dated 20 October 2025 and lifting the restrictions imposed thereunder with effect from 21 November 2025[8]. Although Decision Notices were also issued by the Company to Mr Jirik and HPH, those Decision Notices were not challenged in these proceedings. The court is therefore only concerned with the Decision Notice issued to HHC.

Mr Jirik's evidence

40. The Originating Summons was supported by an affidavit by Mr Jirik sworn on 9 March 2026 briefly reciting the background facts to the Statutory Notice, the Warning Notice and the Decision Notice. The essential grounds relied upon in the affidavit are that HHC, HPH and Mr Jirik have complied with the requirements of disclosure of the beneficial ownership set out in the Companies Act 1981 (which had by then been replaced by equivalent provisions in the BOA which came into force on 3 November 2025). Mr Jirik says that the Company has exceeded the power conferred by the BOA and that the legislation expressly instructs a legal person not to record changes where a *bona fide* legal dispute is being adjudicated and does not require the legal person to enquire into the merits of ongoing litigation as to ownership. Mr Jirik maintains that the restrictions operate as detriment to HHC as beneficial owner and has an unfair impact on HHC's protected rights under section 17 (9) of the BOA[9]. Mr Jirik exhibited the materials he says are the required materials that show HHC's ownership and produced copies of the relevant correspondence with the Company.

Mr Stone's evidence

41. The Company's evidence was provided by Mr Ian Stone. Mr Stone is a director of MQ Services Ltd. In his affidavit[10]. Mr Stone explained the history of the matter, which does not need to be repeated here. However, Mr Stone explained the sources from which the Company derives its information and understanding which is important to set out briefly.

42. Mr Stone refers to the information to him by a Ms Hagler who is a New York attorney who has served as the Company's attorney for a long period of time. Ms Hagler informed Mr Stone that for over 20 years Mr Sevcik was the primary contact with respect to the (purported) holders of the beneficial interests in the original Preference Share. Ms Hagler says Mr Sevcik provided documents to the Company indicating that Daventree Trustees Ltd had been dissolved in July 2005, but before its dissolution the Preference Share had been transferred to HHC under Trust 2 and exhibited a copy of the dissolution certificate and a purchase/assignment agreement dated 14 July 2005 which records the acquisition of the Preference Share by HHC for US$1.00[11].

[7] HB 112-130.
[8] HB 1.
[9] HB 7 -14.
[10] HB 87-101
[11] HB 209-11.

43. Mr Stone also produced a copy of the "HPH Distribution Settlement No 2" dated 6 February 2003 executed by HPH Cayman Limited as Settlor, Daventree Trustees Limited as Trustee and a Mr Juray Siroky as Protector. (This is what has been referred to as Trust 2.)

44. The purpose of the trust was stated to be "*to effect the distribution of money when cash will be available from time-to-time comprised in the Trust Fund as soon as possible after the Settlement to all (or as many as reasonably possible) of the Beneficiaries in an orderly and fair manner*". The Beneficiaries are defined as "*each natural or legal person registered in the Security centre in the Czech Republic as a shareholder of HPH on the date of the Settlement*".[12]

45. Ms Hagler explained to Mr Stone that Mr Sevcik had difficulty in obtaining the beneficial ownership information for the Bermuda Monetary Authority (which then had direct supervision of incorporation of Bermuda companies under its powers in the Foreign Exchange Control Regulations) to authorise the transfer of the Preference Share directly to HHC. The solution that was adopted was that CCS would act as nominee for HHC on the basis that HHC would provide documentation to show that HHC was (virtually) owned 100% by Trust 2[13].

46. In August 2009, Ms Hagler explained to Mr Stone that Mr Sevcik provided documentation which purported to show that Trust 2 owned 100% of the shares in HHC because (i) Trust 2 indirectly held 99.97% of the shares in Tass Holding (b) Tass Holding held 99.97% of Tass Invest (c) Tass Invest held 100% of HHC. Mr Sevcik (purportedly) owned 0.03% in Tass Invest as a director.

47. Mr Stone says that Ms Hagler informed him that Mr Sevcik notified the Company that the Beneficiaries could not be identified because of Czech privacy laws and certain ongoing litigation. This litigation had been ongoing since 2003 and involved a claim in the Cyprus courts by Mr Kozeny to a beneficial entitlement to the assets of Trust 1 and Trust 2. The Cyprus court appointed a receiver of Trusts 1 and 2[14]. This apparently prevented Daventree Trustees from identifying and qualifying the Beneficiaries. The receiver was apparently removed in 2022[15].

48. Mr Stone says that Ms Hagler informed him that in 2019 the Company requested updated information about the beneficial owners and received no response until 2023 when Mr Sevcik informed Ms Hagler that HPH had acquired HHC. In response to the Warning Notice, HPH provided documents to show that HPH had 238,951 shareholders as at 31 January 2025, and only one person was an ultimate beneficial owner under Czech law.

49. Mr Stone refers to an extract from the Cyprus Department of Companies which shows that Mr Jirik became the sole director of HHC in 2022[16]. Mr Stone refers to a Mr Michal Dolezal who introduced himself (presumably to Ms Hagler or the Company) as HHC's Czech legal counsel in 2023, and produced a letter signed by Mr Jirik signed in his capacity as a director of Daventree Trustees Limited confirming that Daventree "*has no objection and accepts that the shares of Harms Holdings Co Ltd Reg Number HE 76653…were transferred to the ownership of Harvard Industrial Holding a.s."* and that *"The transfer was carried out on the basis of a criminal judgment of the High Court of Prague No 6 To 52/2011*".[17]

[12] HB 190-1.
[13] Paragraphs 16-18 Stone 1 HB 90.
[14] HB 235-8.
[15] Paragraphs 20-22 Stone 1 HB 91.
[16] HB 239-243.
[17] HB 244.

50. The criminal judgment referred to a public judgment of the Municipal Court of Prague in the Czech Republic on 17 October 2012 against Mr Kozeny and Mr Boris Vostry in absentia in relation to their dealings with HPH and other entities in relation to shares in the mid-1990s causing losses to various investors which totalled at least CZK8,288,950,584 in the case of Mr Kozeny and CZK 2,213,580,730.80 in the case of Mr Vostry. They were sentenced to 10 and 9 years in prison respectively and ordered to pay damages and interest on the sums awarded. The judgment was affirmed on appeal on 14 January 2013[18]. The US dollar equivalent of the sums awarded is estimated to be in excess of 400 million[19].

51. Mr Stone says that Ms Hagler informed him that Mr Dolezal had said to her that HHC had never been owned by Trust 2 but that Mr Sevcik had used his control of HHC, Tass Holdings and Tass Invest to structure their ownership so that these entities were owned by Mr Sevcik personally.

52. Mr Stone then went on to identify a number of unresolved factual issues in the information provided to the Company which give rise to legal uncertainty as to the ultimate beneficial ownership of the Class A Shares. These issues include (a) how HHC acquired its beneficial interest in the Class A Shares (b) how and when HPH became the owner of the shares in HHC (c) which individuals are beneficially interested in the Class A Shares (Mr Jirik, Mr Burda, Mr Kozeny, and Mrs Chvatik) (d) what effect do the legal proceedings in the Czech Republic, the Bahamas, Cyprus, and the Cayman Islands have on the claims to beneficial ownership asserted by Mr Jirik.

53. In addition, Mr Stone says there is no explanation of how the assets which were settled under Trust 2 for the benefit of the victims of the frauds perpetrated by Mr Kozeny and Mr Vostry were acquired by HPH through its acquisition of the shares in HHC.

Mr Jirik's evidence in reply

54. Mr Jirik responded by stating that HPH is the sole beneficial owner of HHC and that he is the ultimate beneficial owner of HPH under Czech law. He then set out the present position that is reflected in the relevant registers[20]. He went on to state the argument that the restrictions were a disproportionate response to the gaps in the information, and that the requests for historic information exceed the BOA regime[21], and suggested that the risk appetite of a corporate service provider is not a proper purpose justifying the imposition of restrictions[22]. Finally, Mr Jirik complained that the effect of the restrictions is unfair to HHC (and notably it is not suggested that the restrictions were unfair to HPH or himself as other ultimate beneficial owners)[23].

The legislative framework

55. When the correspondence was sent by the Company's attorneys to Mr Jirik, HHC, HPH and Tass Invest in the summer of 2025, the relevant provisions were contained in sections 98C to 98U of the Companies Act 1981. However, those provisions were repealed and replaced by a new regime created under the BOA which came into effect on 3 November 2025. For the most part, the BOA replicated the provisions of the Companies Act 1981 which applied to the

[18] HB 245-301.
[19] Company's skeleton argument at paragraph 25.
[20] Paragraphs 12-15 Jirik 2 HB 512-3
[21] Paragraphs 19-24 Jirik 2 HB 514-5.
[22] Paragraphs 25-30 and 34-5 Jirik 2 HB 515-6.
[23] Paragraphs 36-39 Jirik 2 HB 517.

Company at the relevant time. Therefore, it is appropriate to set out the relevant provisions under the BOA for the purposes of this judgment, and not the predecessor provisions in the Companies Act 1981 which were the provisions referred to and relied upon in the correspondence between the Company's attorneys and the relevant entities and Mr Jirik.

56. Since the hearing, it happens that the BOA has recently been updated by the Beneficial Ownership Amendment Act 2026 ("the BOAA 2026") which has amended and added provisions to the BOA. The provisions of the 2026 amendment Act came into effect immediately[24], and so they apply to the facts of the present case and the court must give effect to them, even though the amendments were not operative at the relevant time. However, on review of the operative provisions that were in effect in 2025, it appeared clear to the court that the changes introduced by the 2026 Amendment Act (and related regulations made thereunder) do not affect the outcome of the case on its facts, and therefore additional submissions as to the effect of the new provisions were not solicited from the parties[25].

57. Before considering the details of the provisions themselves, it is worth pausing to set the provisions in their historical context. In the early days of Bermuda's development as an international financial centre, the function of screening the identity of the beneficial ownership of companies was carried out by the Bermuda Monetary Authority under the Foreign Exchange Control ("FEC") Regulations 1969 which governed the issue of securities by entities registered in Bermuda and included the issue or transfer of shares to non-Bermudians. These regulations applied to all exempted companies and permit companies which were registered in Bermuda and extended to limited partnerships and collective investment schemes. This supervisory structure put the burden on the Bermuda Monetary Authority to monitor and control registrations and transfers of shares between non-Bermudian shareholders by a process of 'vetting' which necessarily required considerable effort and dedication of significant resources, especially as Bermuda's registry grew and expanded in the 1990s and early 2000s. These vetting procedures were subject to general exceptions to the need for approval which were granted to public companies listed on approved foreign stock exchanges.

58. With the advent of international protocols to prevent ant-money laundering regulation, anti-terrorist financing and the introduction of international sanctions regimes[26], the previous method of screening (while highly effective in its time) became impracticable and over-stretched. In addition, the FEC regulations were not adapted to combat modern international money laundering and terrorist financing activities. The result was that the legislature introduced measures that were included in the Companies Act 1981 to require the registered entity to gather and maintain records to identify, authenticate and monitor the ultimate beneficial ownership of legal entities registered in Bermuda with duties of reporting and compliance. The burden was therefore shifted from the Bermuda Monetary Authority under its FEC regulatory mantle to the relevant entity and those responsible for its management (including its directors, officers and service providers) under the Companies Act 1981.

59. These measures are regarded as essential for the purpose of maintaining Bermuda's reputation as a premier offshore financial centre and obtaining recognition and retaining an international 'whitelist' status in OECD country by country reporting which assesses the conduct of

[24] Section 22 BOA Amendment Act 2026.
[25] Both sets of attorneys offered to provide additional submissions or attend a further hearing to address the court on the amendments if the court wished.
[26] Financial Action Task Force ("FATF") International Standards on Combating Money Laundering and Financing of Terrorism and Proliferation: Recommendations 2025 and Organisation for Economic Development ("OECD") Ten Principles.

international business in and from Bermuda. This underpins a large percentage of the gross domestic product contributed to Bermuda's economy by international business activity.

60. This court had occasion to consider the proper interpretation of the beneficial ownership provisions of the Companies Act 1981 in **Afiniti Ltd v Chishti**[27], which provided a summary of the policy background to the provisions and their interpretation.

> *"123. Section 98N puts into proper context the meaning and purpose of section 98E. It can be readily appreciated that the legislative aim of these provisions is to ensure the Bermuda companies meet modern international standards of transparency and compliance with international money laundering and anti-terrorist financing obligations (i) to demonstrate that those who hold the ultimate beneficial interest in companies registered in Bermuda have been properly screened and those that exercise control over the company have been investigated and their identities disclosed and (ii) to ensure that those who have the ultimate beneficial ownership and/or exercise the control that lies behind the registered ownership are "transparent" to the Registrar of Companies.*
>
> *124. The explanatory statement in the Guidance Notes issued by the Ministry of Finance dated 8 January 2019 explains in the opening paragraphs the purpose of the amendments to the Companies Act that appear in the sections referred to above.*
>
> > *"1.1 FATF recommendations and OECD standards require jurisdictions to maintain beneficial ownership Such information must also be accessible and made available upon request to a requesting jurisdiction, for the administration or enforcement of their domestic laws, be it for tax, anti-money laundering, regulatory commercial or other reasons. Bermuda has committed and strives to continue to meet such international standards. 1.2 To comply with such international standards, the Government of Bermuda has adopted amendments to various provisions of the Acts by the following legislation:*
> >
> > *· the Companies and Limited Liability Company Amendment Act 2016; and*
> > *· the Partnership, Exempted Partnerships and Limited Partnerships (Beneficial Ownership) Amendment Act 2018.*
> >
> > *The legislative framework requires legal entities to keep a BO [Beneficial Ownership] register of individuals or RLEs [Relevant Legal Entities] that own or have control over such entities. The obligation to keep a BO register is in addition to the obligation to keep other information, such as a register of members, register of limited partners and a register of directors or register of managers (as the case may be)."*

61. The relevant provisions of the Companies Act were replicated in a separate regime in the BOA which became effective in November 2025, and which was recently amended by the new provisions introduced in the BOAA 2026. These general policy considerations are therefore relevant to the interpretation and application of the BOA (as amended) to the facts in this case.

The BOA

62. The BOA replicated the provisions of sections 98C to 98U of the Companies Act 1981 in a separate legislative instrument and extended those requirements in several respects. Where appropriate, I will indicate the Companies Act provision that corresponds to the BOA provision, or where there is no equivalent under the Companies Act and indicate where the BOA 2025 provision has been amended by the BOA 2026.

[27][2024] Bda LR 62 [123-124].

63. For ease and clarity of explanation, I will take the provisions in a logical progression of the relevant obligations rather than in the order in which they appear in the BOA. The starting point is the duty in section 7 that imposed on all "legal persons" to whom the BOA applies to take reasonable steps to identify the beneficial owners of the legal person and to record the steps taken to do so[28].

64. A "legal person" is defined in section 1 as including a company, a limited liability company, exempted partnership, limited partnership, exempted limited partnership and overseas partnership and "individual" is defined as a natural person. A "relevant legal entity" means any legal entity that is incorporated or registered in Bermuda or elsewhere, including any legal arrangement (such as a trust), which would be a beneficial owner of the legal person if it were an individual.

65. Section 8 imposes on every legal person the obligation to seek the relevant information from any person who appears to the legal person to be a registrable person (i.e. an individual who holds an interest in the legal person of 25% or more or otherwise exercises control over it) to provide the minimum information required within 30 days.

66. It is provided in section 9 that the legal person shall take reasonable measures to verify the identity of the beneficial owner(s) by means of documents, data or information obtained from a reliable and independent source prior to entering that information into the beneficial ownership register, and to keep and maintain records of the measures used for any verification and the documents used to verify the accuracy of the minimum required information. This is a new obligation which does not have a corresponding provision under the Companies Act 1981.

67. Section 6 defines the meaning of beneficial owner whose identity is to be ascertained and verified as being (a) any individual(s) who directly or indirectly ultimately own or control 25% or more of the shares or interest, voting rights or partnership interests in a legal person whether through direct or indirect ownership thereof (b) any individual(s) who otherwise exercise ultimate effective control of the legal person or (c) any individual(s) who exercise control of a legal person by other means. Provision is also made for the person who is in the position of senior manager of the legal person if there is no one who fits within the categories of ultimate beneficial owner described in (a) (b) or (c) and in the case of a trust, the trustee. This provision replicates section 98E of the Companies Act 1981 but omits the definitions of "control by other means" and "senior manager" and the guidance as to shares and voting rights as being an indication of ownership.

68. Section 10 is the main provision that requires every legal person to keep a beneficial ownership register and makes provision for what is the minimum information required to be kept and maintained on the beneficial ownership register. This is the principal provision on which HHC relies to justify its refusal to provide additional information, so it is worth setting out in full.

> *"**Duty to keep beneficial ownership register***
>
> *10* *(1) Every legal person to which this Act applies shall establish and maintain in accordance with this Act a beneficial ownership register and shall enter in its beneficial ownership register the minimum required information referred to in subsection (2) in respect of every registrable person.*
>
> *(2) The minimum required information referred to in subsection (1) that the legal person shall enter in its beneficial ownership register is as follows—*

[28] This was formerly the obligation contained in section 98F of the Companies Act 1981.

(a) the registrable person's full name including, if applicable, any secondary or other name;

(b) where the registrable person is an individual—

(i) his residential address and, if different from his residential address, an address for service;

(ii) his nationality or, where the registrable person has more than one, nationalities;

(iii) his date of birth;

(iv) details from a valid government-issued document which includes the identification number, date of issue, country of issue and date of expiry;

[(v) if he is a nominee, his status as a nominee and the identity of the person for whom he acts as nominee.][29]

(c) where the registrable person is a relevant legal entity—

(i) the registered or corporate name of the person;

(ii) the law by which the person is governed;

(iii) the register in which the person is entered including details of the country and its registration number in that register;

(iv) the address of the person's registered office or principal office;

(v) the date and jurisdiction of registration or incorporation or establishment;

(vi) the form of legal entity;

(vii) where applicable, the name of the stock exchange and the jurisdiction on which it is listed;

[(viii) where the person is a nominee, its status as a nominee;][30]

(d) the effective date on which each person was entered into the register as a registrable person of the legal person;

(e) a statement of the nature and extent of the interest held by each such registrable person;

(f) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficial owners;

(g) where applicable, the date on which each person who has ceased to be a registrable person in respect of it ceased to be such an owner; and

(h) where the registrable person is a trust, in addition to the applicable information required by sub-paragraphs (a) to (g) in respect of the trustees, the name of the trust.

(3) The minimum required information referred to in subsection (2) that the legal person shall enter in its beneficial ownership register shall be adequate, accurate and current.

[29] Inserted by the BOAA 2026.
[30] Inserted by the BOAA 2026.

(4) The beneficial ownership register shall be kept at the registered office of the legal person or after giving written notice to the Registrar at such other place in Bermuda convenient for inspection by the Registrar.

(5) Where the beneficial ownership register is not made available for inspection, or where any other information required to be provided to the Registrar under this Act is not provided upon request within the time specified by the Registrar, the Registrar may exercise the powers conferred on him by Parts 2 and 3 of the Registrar of Companies (Compliance Measures) Act 2017 in respect of the legal person[31]*.*

(6) The relevant legal person shall be responsible for ensuring that any contact person identified in respect of such legal person provides the Registrar promptly on request—

(a) with the minimum required information regarding its registrable persons under section 15(1); and

(b) where applicable, with any other beneficial ownership information required to be obtained and maintained in respect of a registrable person by or under the Proceeds of Crime Act 1997 or any other statutory provision; and, in relation to a trust, with information required to be obtained and maintained by or under sections 25A or 25B of the Trustee Act 1975."[32]

69. Section 10 of the BOA is the equivalent to section 98H of the Companies Act 1981 which was in force at the relevant time and under which the original requests for information were made by the Company in this case.

70. Section 1 of the BOA defines the key terms that are used in section 10. The relevant definitions that relate to the interpretation of the expressions that fall for consideration in this case are set out below:

" "*accurate" in relation to the minimum required information of the registrable person means information that has been verified to confirm its accuracy in accordance with section 9.*

"adequate" in relation to the minimum required information means information that is sufficient to identify the registrable persons and the means and mechanisms through which beneficial ownership or control is exercised.

"current" in relation to the required information of the registrable person means information which is up to date and as current as possible as required by section 11.

"registrable person" means a beneficial owner or relevant legal entity.

"relevant legal entity" in relation to a legal person means

(a) any legal entity that is incorporated, formed or registered (including by way of continuation) in Bermuda or elsewhere; and
(b) any legal arrangement;

which would be a beneficial owner of the legal person if it were an individual.

[31] Amended by the BOAA 2026.
[32] Inserted by the BOAA 2026.

"ultimate effective control" means ownership or control exercised through a chain of ownership or by means of control other than direct control."

71. Section 11 requires the legal person to keep the beneficial ownership register updated with changes of beneficial ownership as soon as practicable and not later than 14 days of having been notified of a change. This is the equivalent of section 98 I of the Companies Act 1981.

72. Section 12 requires every legal person to keep the records of persons who have ceased to be beneficial owners for a period of five years. There is no equivalent provision under section 98 of the Companies Act 1981.

73. Section 13 instructs the legal person not to update the beneficial ownership register where there is a *bona fide* dispute as to the beneficial owner of any shares or voting rights or partnership interests which is in the process of being adjudicated by a court until the matter is determined, unless the court so orders. This is the equivalent to section 98 J of the Companies Act 1981, but which has been extended to apply to partnership interests under the BOA.

74. Section 17 sets out the power of a legal person to impose restrictions on the shares or interest ultimately held, owned or controlled by a beneficial owner. As this is the central point of the dispute, it is necessary to set out the provision in full. Section 17 was not amended by the BOAA 2026.

"Notice by legal person imposing restrictions

17. (1) This section applies where—

(a) a notice under section 8 or 11 is served by a legal person on a beneficial owner; and

(b) that person fails, without reasonable excuse, to give the legal person the information required by the notice within the time specified in it.

(2) Where subsection (1) applies, the legal person may—

(a) if its bye-laws, LLC agreement or partnership agreement so provide, issue a warning notice to a person advising of its intention to impose restrictions on that person's shares or interest;

(b) if its bye-laws, LLC agreement or partnership agreement so provide, issue a decision notice to a person advising of the imposition of restrictions on that person's shares or interests, provided that such decision notice shall not take effect until at least 30 days following the date of receipt of the decision notice; or

(c) apply to the Court for an order directing that the shares or interest in question be subject to restrictions.

(3) In deciding whether, pursuant to a warning notice, to issue a decision notice or apply to the Court under subsection (2)(c), the legal person, after giving the person the opportunity to make representations, shall have regard to the effect of the decision notice or order on the rights of persons in respect of the relevant shares or interest, including—

(a) third parties;

(b) persons with a security interest over the relevant interest;

(c) shareholders or partners; and

(d) other beneficial owners.

(4) If the Court is satisfied that such an order issued pursuant to subsection (2) (c) may unfairly affect the rights of third parties in respect of the shares or interest, the Court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.

(5) On an application under this section the Court may make an interim order and any such order may be made unconditionally or on such terms as the Court thinks fit.

(6) The effect of a decision notice issued by the legal person or an order made by the Court under this section is that the shares or interest in question may be subject to restrictions as follows—

(a) any transfer of the shares or interest is void;

(b) no voting rights are exercisable in respect of the shares or interest;

(c) no further shares or interest may be issued in right of the shares or interest or in pursuance of an offer made to their holder;

(d) no payment may be made of sums due from the legal person on the shares or interest, whether in respect of capital or otherwise.

(7) Where shares or interest are subject to the restriction in subsection (6)(c) or (d), an agreement to transfer any right to be issued with other shares or interest in right of those shares or interest, or to receive any payment on them (otherwise than in a liquidation), is void.

(8) The provisions of this section are subject to any directions for protection of third parties or otherwise given by the Court.

(9) The Court on the application of—

(a) any person aggrieved by any action taken by the legal person pursuant to this section; or

(b) any person aggrieved in so far as protecting the rights of third parties, persons with a security interest over the relevant interest, shareholders or other beneficial owners in respect of the relevant interest in respect of which a decision notice has been issued,

may set aside or affirm a notice in whole or in part and give such directions as the Court thinks fit if the Court is satisfied that the decision notice unfairly affects the protection of the rights of third parties or other persons.

(10) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an application or an appeal to the Court under this section."

75. Section 15 requires every legal person to file the beneficial ownership register for that legal person with the Registrar of Companies and section 18 gives the Registrar power to disclose information on the beneficial ownership register if its disclosure is for the purposes of assisting or enabling the performance of a number of listed statutory functions by other agencies of the Government. The information disclosed on the beneficial ownership register is not available for public inspection.

The BOAA 2026

76. It is necessary to consider what effect if any the amendments to the BOA have on the provisions summarised above to see if these changes need to be taken into account in the court's analysis of the relevant provisions of the BOA set out above.

77. Sections 2 and 3 of the BOAA 2026 amend the definition of legal arrangement and adds some new definitions and exemptions which are not relevant to this case.

78. Section 4 of the BOAA 2026 amends section 6 (1) (a) to reframe the definition of "*beneficial owner*" to "*any individual or individuals who ultimately control, whether through direct or indirect ownership or control, 25% or more of the shares or interests, voting rights or partnership interests in a legal person*". This change is not substantive and does not affect the framework of the duty in a way that is relevant in this case. Further amendments are made with respect to trustees and liquidators which are not relevant to this case.

79. Section 5 of the BOAA 2026 replaces section 7 of the BOA with a revised expression of the duty to obtain information regarding beneficial owners to require a legal person *"(a) to identify any individual who is a beneficial owner of the legal person; and (b) obtain and maintain adequate, accurate and up-to-date information in respect of the beneficial owners of the legal person and all relevant legal entities that exist in relation to the legal person*." This revision does not affect the determination of the issues in this case.

80. Section 6 of the BOAA 2026 makes a minor amendment to section 8 of BOA add "*and verified*" which is not relevant to the present case.

81. Section 7 of the BOAA 2026 amends section 9 of the BOA to make some minor amendments and replaces the requirement to verify the identity of beneficial owners to "*take reasonable measures to verify the identity of its beneficial owners, including verifying the minimum required information*[33] *by means of documents, data or information obtained from a reliable and independent source, and shall do so prior to entering the minimum required information in its beneficial ownership register.*" This adds the duty shaded in grey above and may be relevant to the issues in this case in light of the arguments presented by HHC which will be considered below. Section 9 is also amended to add a duty to co-operate fully with the Registrar, which is not relevant to the issues in this case.

82. Section 8 of the BOAA 2026 amends section 10 of the BOA to add provisions relating to gathering information concerning nominees and trusts and amending the duties to provide information to the Registrar on request. These are shaded in grey in the extract set out in paragraph 59 above. The requirement to state that the beneficial owner is a nominee and to give details as to the person for whom the nominee acts in that capacity is potentially relevant to the matters in dispute in these proceedings.

83. Sections 9 and 10 of the BOAA 2026 amend sections 11 and 15 of the BOA to extend the period of updating the register beneficial ownership register of changes and responding to the Registrar from 14 days to 30 days, which does not affect the issues in this case.

84. The other amendments contained in the BOAA 2026 do not affect the provisions of the BOA which are engaged in these proceedings.

[33] The shaded text was introduced by the BOAA 2026.

The issue in the present case

85. The essential issue in these proceedings is the extent to which the Company as a relevant legal person is (a) required and (b) entitled to seek information from HHC, HPH and Mr Jirik as registrable persons concerning the history of their acquisition of their beneficial interest(s) in the shares or voting rights in respect of the Class A Shares in the Company.

86. HHC, HPH and Mr Jirik take the position that the statutory framework only requires disclosure of the minimum statutory information set out in section 10 of the BOA (as amended) and that this informs the scope of the relevant enquiry to be undertaken by the Company. HHC takes the position that the up-to-date information concerning the present beneficial owners has been provided and has been appropriately verified so that HHC and the other beneficial owners have complied with their duties. In brief, HHC HPH and Mr Jirik say that the Company does not have the obligation or power to require disclosure of historic information as to ownership under section 10 of the BOA and says that the requests that have been made for information beyond the statutory minimum required by section 10 of the BOA is *ultra vires*.

87. The Company takes the position that it cannot determine who is the beneficial owner without knowing how the registered beneficial owner obtained title to the beneficial interest and in circumstances where there is conflicting information, inconsistent records and explanations, the Company has a duty to satisfy itself as to the accuracy of the information in the register by taking all reasonable steps to verify the information supplied by the beneficial owner claiming to hold the ultimate beneficial interest in the Class A Shares.

88. The present application is made by HHC under the jurisdiction conferred on the court by section 17 (9) of the BOA which empowers the court to set aside a Decision Notice issued by the Company in whole or in part and to give such directions as it thinks fit if the court is satisfied that the Decision Notice unfairly affects the protection of the rights of third parties or other persons. This is HHC's application and so independent arguments were not advanced on behalf of HPH or Mr Jirik, but given the ownership structure described above, and the correspondence from HPH and Mr Jirik, those arguments would doubtless be the same.

The main arguments advanced by HHC

89. Mr Tucker advanced three principal arguments in support of the application to set aside the Decision Notice issued to HHC[34].

90. First, Mr Tucker submitted that the scope of the statutory disclosure obligation is limited to the present and up to date statutory minimum information regarding the beneficial owners of the Class A Shares and does not extend to historic information[35].

91. Second, Mr Tucker submitted that under section 13 of the BOA (and its predecessor provision in section 98J of the Companies Act 1981) there is a positive obligation not to update information relating to beneficial ownership of the Class A Shares in relation to a *bona fide* dispute over the beneficial ownership which is the subject of pending litigation. Therefore, until the resolution of the matters in dispute in the litigation described above, there was no duty to disclose that information, or provide an explanation of the merits of the claims and defences to the claims being asserted.

[34] Although Decision Notices were also issued in the same terms to Mr Jirik, HHC and HPH, the only one which is the subject of the present challenge is the one sent to HHC.
[35] Paragraphs 39 to 41 of HHC's written submissions.

92. Third, Mr Tucker submitted that the effect of the restrictions imposed by the Decision Notice operates unfairly to freeze the entirety of the rights enjoyed by HHC which represent almost the entirety of the share capital of the Company. He submitted that this was a disproportionate response to the alleged deficiencies in the information provided by HHC, which he submitted met all the statutory minimum information required by section 10 of the BOA[36].

93. As to the deficiencies alleged, Mr Tucker referred to the fact that the information that was being sought by the Company relates to historic information over 20 years old which concerns ownership information at an ownership level above HHC and does not affect the ownership register of HHC directly. He submitted that section 13 does not create a free-standing obligation to disclose litigation information, and the information requested does not relate directly to HHC's holding of the Class A Shares. Mr Tucker also commented that the discrepancy in HPH's 2022-5 reports which do not list HHC as a subsidiary of HPH may be due to the timing of the restructuring of the treatment of the nominee agreement under Czech generally accepted accounting principles ("gaap").

94. Finally, Mr Tucker raised the question of the propriety of the Decision Notice on the basis of an improper collateral purpose on the footing that the real objective of the Company in seeking the information was to meet the Company's regulatory compliance duties rather than as a targeted and proportionate response to a specific, material deficiency in the beneficial information provided by HHC[37].

95. In relation to this point, Mr Tucker suggested that the missing information was of no substantial importance, related to historic information and resulted in disproportionate restrictions relative to the importance of the information being sought.

The main arguments advanced by the Company

96. Mr Robinson submitted that the Company is entitled to know who the ultimate beneficial owners of the Class A Shares (within the definitions of the BOA) are as a matter of basic compliance with its disclosure obligations under the BOA. In support of this, Mr Robinson relied upon a number of English cases which have considered the equivalent duties under English law, as well as earlier duties under legislation governing disclosure of beneficial shareholdings for the purposes of compliance with takeover rules. He submitted that these principles require the recipient of a disclosure notice to provide sufficient information to understand properly the nature of the interests held in its shares. Applying the judicial guidance from these cases, Mr Robinson submitted that the Company has an unqualified right to confirm the beneficial ownership of the Class A Shares before the restrictions that have been imposed on the shares are lifted[38].

97. Mr Robinson submitted that the threshold test is whether the Company has reasonable cause to believe that the beneficial interest information supplied is false or materially incorrect, but does not require the Company to conduct a full formal enquiry before the directors can impose restrictions on the shares under section 17 of the BOA[39]. In addition, he submitted that the

[36] Paragraphs 41 and 46 of HHC's written submissions.
[37] Paragraphs 47 to 50 of HHC's written submissions.
[38] Paragraphs 81 and 88 of the Company's submissions.
[39] Paragraph 91 of the Company's submissions.

restrictions were imposed for legal compliance purposes in response to the failure and/or refusal of HHC, HPH and Mr Jirik to provide the information requested in the Decision Notices[40].

98. Mr Robinson referred to the various categories of missing, inconsistent and conflicting information that have been provided to the Company by HHC, HPH and Mr Jirik and submitted that the Company cannot confirm the identity of the registrable persons whose details are required to be entered on the beneficial ownership register in respect of the Class A Shares. In support of this Mr Robinson referred to the following unresolved concerns:

    (1) HHC has not provided any documentation to support its interest in the Class A Shares since 2005 when the shares were first held by CCS as nominee. HHC's position is that the Class A Shares were never held by Trust 2 is inconsistent with the documents provided to CCS and the Company at that time[41].

    (2) No documents have been provided to explain when HPH acquired 100% of the shares of HHC[42].

    (3) No documents to support the recent changes to the share register of HPH (as parent of HHC) have been provided. The documents that reflect the entities through which Mr Jirik holds some of his interests in HPH (i.e. REDASH, KOTVA and XODAX) do not match the total amount of the voting interests Mr Jirik claims to have in HPH overall (there is an unexplained discrepancy between 47.93% and 51%). No explanation has been given in respect of how Mr Burda's indirect interests in HPH through Palace Capital a.s. may affect the position[43].

    (4) The description of the claims in the various ongoing litigation in Cyprus, the Bahamas, the Czech Republci and the Cayman Islands raises questions over the legitimacy over HPH's acquisition of HHC. In addition, the explanation but the absence of any explanation as to how the criminal judgment gave rise to HPH's interest, and which is directly inconsistent with the terms of the criminal judgment gives rise to serious concern over the accuracy of the information provided by HPH[44].

    (5) The confusion over when HHC first acquired its interest in the Class A Shares requires a proper explanation supported by documentation[45].

The case law

99. There have been no prior cases decided in relation to the application and meaning of the provisions of the BOA in Bermuda, and the only other case which has considered the general background to the provisions which have been adopted by the BOA has been referred to above in relation to the policy underpinning the legislative initiative[46]. Therefore, both parties have referred to English cases which have applied principles in relation to restrictions imposed on

[40] Paragraph 92 of the Company's submissions.
[41] Paragraphs 96-9 of the Company's written submissions.
[42] Paragraphs 100-2 of the Company's written submissions.
[43] Paragraphs 102-10 of the Company's written submissions.
[44] Paragraphs 111-2 of the Company's written submissions.
[45] Paragraphs 113-5 of the Company's written submissions.
[46] **Afiniti Ltd v Chishti** (supra).

shares in the context of company investigations in connection with take-over bids in respect of listed English public companies[47].

100. **Re Ricardo Group plc (No 3)**[48] involved an application by a bidder for the shares in Ricardo Group plc to set aside a restriction on a block of shares held by IA & N Nominees Ltd which were subject to restrictions under Part XV of the Companies Act 1985 because sufficient information had not been given to Ricardo Group plc as to the identities of the person for whom IA &N Nominees Ltd held those shares.

101. In that context Harman J lifted the restrictions even though the relevant information concerning the identity of the beneficial interest holders had not been disclosed to the company. Harman J held that it is clear law that there is a *prima facie* unqualified right in any company to know who are the real owners of the shares held in it, and that the courts require take over bids to be conducted with "all cards on the table" so that everybody knows with whom they are dealing. However, Harman J said that the court is vested with a discretion which required the court to weigh the competing interests in any particular case. Given that the block of shares in question might be pivotal to the success or failure of the bid, and if they remained frozen, the result might be that the bid would fail; if so, the price of the shares would likely drop, to the prejudice of the shareholders who had wished to accept the offer. In those circumstances, Harman J exercised his discretion to lift the restriction so that the shares could be voted.

102. Both sides relied on this case for different propositions. Mr Tucker relied upon it for the proposition that the lifting of restrictions must be a discretionary matter that depends upon the court weighing all the facts and making a decision which is proportionate and fair. He urged the court to weigh the complaints made by the company as being insubstantial and submitted that it was disproportionate to the overall assessment of the missing information to impose a blanket restriction on the shares, which represented the most extreme measure the Company could impose, and which he said was not justified by the alleged failures to comply with the Decision Notices.

103. By contrast, Mr Robinson relied upon the same case for the proposition that the Company has an unqualified right to know who the beneficial owners of its Class A Shares are, and the absence in this case of any particular exigency (such as the take-over bid) to balance against that right, there was no evidential justification for setting aside the Decision Notice in this case.

104. Mr Tucker also relied upon **Re FH Lloyd Holdings plc**[49] for the proposition that the court should not rubber stamp the Decision Notice issued by the Company, but should exercise careful scrutiny and assess the validity of the reasons for which the Decision Notice has been issued. He submitted that the Company has issued the Decision Notice in furtherance of meeting its own compliance requirements, not because there is any real doubt as to the identity of the ultimate beneficial owners.

105. Mr Tucker and Mr Robinson also relied upon **Geers Gross plc**[50] for different purposes. Mr Tucker said the case demonstrated that the court should take into account the prejudice to the party whose shares have been made subject to restrictions. In that case, a Swiss bank had

[47] Under sections 202 and 212 of the English Companies Act 1985 and sections 790B and 793 of the Companies Act 2006.
[48] [1989] BCLC 771.
[49] [1985] BCLC 293.
[50] [1988] BCLC 140.

declined to provide details as to the names of its clients who had purchased shares in the name of the bank as nominee because Swiss banking law prevented them from doing so. In that case the learned judge at first instance had refused to lift the restrictions in the exercise of his discretion even though they were to be sold. Mr Robinson relied on the case because the court refused to lift the restrictions in part because the bank could end the restrictions by providing the information. The Court of Appeal upheld the trial judge's decision refusing to lift the restrictions, noting the judge's observation that, if the restrictions were lifted, the company would be left with "*no real lever with which to prize open the casket in which the relevant facts about the shares were hidden*".

106. Mr Robinson relied upon **TR Technology Investment Trust plc**[51] for the proposition that where it was shown that sufficient information had not been provided, a company was entitled to a restriction order and that there is no need to show that damages would not be an adequate remedy or that the company would suffer loss if the information was not provided. In addition, he submitted that the case showed that a company was entitled to ask for whatever information it thinks fit, provided that it relates to the relevant interest.

107. Mr Robinson referred the court to **Eclairs Group Ltd v JKX Oil and Gas plc**[52] for the endorsement given by the English Supreme Court to the principles set out in **Re Ricardo Group plc (No 3)** and **TR Technology Investment Trust plc**. However, Mr Tucker also relied upon the case for the Supreme Court's limitation of the power to impose a restriction for a proper purpose[53].

108. In addition, in **Re Lonrho plc (No 4)**[54] the court held that it will take into account the interests of innocent third parties affected by the restrictions when considering whether to lift or vary the restrictions.

The court's summary of the principles

109. From the cases discussed above, a number of general principles can be derived. These are: (i) a company has a *prima facie* unqualified right to know who its shareholders are (ii) a company has an unrestricted right to seek disclosure of information which it considers necessary to determine that question (iii) a company has the right to impose restrictions on shares when the registrable person fails to provide sufficient information to the company to be able to determine that question (iv) there is no evidential burden on the company to show potential harm or loss to the company to justify the imposition of restrictions (v) the court will take into account the interests of the innocent third parties when considering the extent of appropriate restrictions (vi) the company must exercise the power to impose restrictions only for a proper purpose and (vii) the court will scrutinise the reasons given by the company for imposing restrictions and will not act merely as a rubber stamp.

110. Although there are no direct correlations between the purpose of the disclosure rules in the English cases decided under sections 216 and 794B of the English Companies Acts 1985 and 2006, I am satisfied that it is appropriate to apply the same principles to a company's right to require a beneficial owner to disclose their identity to the company under the BOA, at least as the starting point for the analysis. In contrast to the purpose of the English provisions, which are designed to protect the private interests of investors and shareholders, the Bermuda

[51] [1988] BCLC 256 at 274f per Hoffman J.
[52] [2016] BCC 79.
[53] Per Lord Sumption at [33].
[54] [1990] BCLC 161.

provisions are designed to enable a company to meet regulatory standards to comply with international standards to further the public interest in maintaining Bermuda's standing as an international financial centre.

111. The Guidance Notes (2019 version)[55] published by the Registrar of Companies in relation to the BOA state that:

> *"FATF and OECD standards require jurisdictions to maintain beneficial ownership. Such information must also be accessible and made available upon request to a requesting jurisdiction, for the administration or enforcement of their domestic laws, be it for tax, anti-money laundering, regulatory, commercial or other reasons. Bermuda has committed and continues to strive to meet such international standards."*

112. This expression of public policy must, in my judgment, be kept firmly in mind when approaching the application of those general principles to cases falling under the BOA regime.

The court's analysis of the present case

Principle (i) The right to know

113. In the context of the BOA, the principle that a company has a *prima facie* unqualified right to know who its shareholders are must be interpreted to mean that a company has an unqualified *prima facie* right to know who are the registrable persons (i.e. the individuals) who hold the ultimate beneficial ownership in the company, whether by voting control or other means, and who hold the ultimate economic interest in the company's shares or ultimately exercises effective control over the company (as defined in section 6 of the BOA).

114. If it is relevant or necessary for the Company to ascertain who controls the company by other means, then the Company has the right to know which shareholders exercise that control and to make appropriate enquiries to establish the relevant facts. The scope of this enquiry may include persons who hold less than 25% but who appear to the Company to be in a position to exercise control over the company's affairs. In this case, for example, the Company is entitled to understand what shares Mr Burda holds in HPH held directly or indirectly in order to ascertain whether he has the ability to control HPH or (indirectly) HHC.

115. It is obviously not enough for a registrable person to provide details of the immediate holders of the shares, or to say, as HHC does, that the discrepancies in the ownership register disclosed in respect of Mr Jirik's holdings in HPH are not pertinent to the Company's enquiries about HHC for the purpose of entering details in the beneficial ownership register. These details are plainly relevant to the extent of Mr Jirik's control of HPH, which in turn controls the right to appoint the board of HHC and thereby exercise legal or effective control over HHC.

116. Mr Jirik says he owns or controls 51% of the voting rights of HPH, which would give him overall control over HPH (subject to any restrictions contained in any shareholder agreement that applies). The fact that the records show that he controls 47.93% is a discrepancy that the Company is entitled to be satisfied which percentage holding is correct. The duty under the BOA is on the Company to ensure that the information in the beneficial ownership register is up to date, accurate, and properly verified. If the records produced by HPH do not match what Mr Jirik says, the Company has an obligation to find out why and to satisfy itself that the

[55] The draft Guidance Notes (2026) reiterate the same policy in amended terms.

information recorded in the beneficial ownership register is correct: an approximation will not suffice.

117. The Company is entitled to know how HPH acquired its holdings in HHC from Daventree Trustees Ltd, or from whom and on what basis the fiduciary relationship of trust was changed to private ownership in the hands of HPH and indirectly Mr Jirik (at least as to 47.93% or 51%). This is plainly relevant to understanding the legitimacy of HPH's and Mr Jirik's beneficial ownership of the Class A Shares in HHC. This point is also relevant to the application of the next principle.

Principle (ii) The right to ask broad questions

118. The Company has the right to make enquiries that go beyond the details required to answer the minimum details listed in section 10 of the BOA. It should not be necessary to point out that these are the *minimum* details required. The Company must be able to make broader enquiries to understand and evaluate the information supplied, if that is necessary to be satisfied that the information is complete and transparent.

119. This necessarily requires the Company to make enquiries beyond the minimum information that is to be kept on the beneficial ownership register. The FATF Recommendations (2025), which the Bermuda Government has committed to implement and apply, state that the Registrar of Companies (as the relevant competent authority) should be able to obtain, or have access to in a timely fashion, adequate, accurate and up to date information on the beneficial ownership and control of companies and other legal persons (in respect of beneficial ownership) as well as those who present money laundering or terrorist financing risks[56].

120. In this case, HHC has sought to limit the Company's questions to those that elicit the minimum information required to be kept on the beneficial ownership register. There is no warrant to limit the scope of the enquiry in this way in the words of the BOA either in section 10 or in section 17. The caselaw explains that the scope of the enquiry by a company as to the identity of its shareholders may extend to any matter which is reasonably required to satisfy that requirement. In this case, the change of beneficial ownership from the objects of Trust 2 to the shareholders of HPH is entirely unexplained. There is (for example) no documentary support for the transfer of the beneficial ownership by way of a resolution of the trustees of Trust 2 to distribute the assets to a member of the beneficial class, or to sell or transfer the interest in the shares for value. There are no documentary records at all.

121. The verbal explanation offered to Ms Hagler by Mr Sevcik in 2009 was (apparently) that the Class A Shares were held through Tass Holding and Tass Invest for the benefit of Trust 2. The nominee arrangement was put in place to address the requirement of the BMA to have a registered holder as a result of the practical difficulty in supplying accurate information as to the class of potential beneficial owners under Trust 2. This appears to have a logical basis.

122. In 2023, Mr Sevcik's explanation to Ms Hagler was (apparently) that HPH had acquired HHC. At about the same time, Mr Dolezal (apparently acting on behalf of HHC) produced a letter from Daventree Trustees Limited signed by Mr Jirik to the effect that Daventree accepts that the Class A Shares had been transferred to HPH. Separately, at about the same time, Mr Dolezal suggested to Ms Hagler that the Class A Shares had always been beneficially owned by Mr Sevcik and not by the Trust. These two explanations cannot stand side by side. It is at present

[56] FATF Recommendations (October 2025) Interpretative note to recommendation 24 in relation to transparency and beneficial ownership of legal persons registered in Bermuda.

at the very least inconsistent for the Trustee to claim that it transferred the shares in HHC to HPH and for HHC to claim (through its apparent agent) that Mr Sevcik always owned the shares. If that is the case, then Mr Sevcik's original explanation in 2009 was far less than satisfactory. In addition, how Mr Dolezal claimed to have authority to represent HHC in 2023 remains unexplained.

123. The reference to the criminal judgment does not explain the nature of the beneficial ownership in HHC or how it moved from the Trust to HPH. On the contrary, it rather confirms that any interest in HHC reflects the potential recovery of assets for the victims of the criminal activities of Mr Kozeny and Mr Vostry which were the basis of their respective convictions.

124. If a change in ownership occurred behind the scenes at some level above the company sometime in or after 2009, the different explanations that have been offered are incomplete, confusing and contradictory. It is impossible to determine who the true beneficial owners of HHC are from the information that has been supplied, and the mere verification of the current ownership of HPH does nothing to address that question. Unless the gap in the chain of ownership is properly filled with an explanation (backed by appropriate documentation which is verified and consistent) as to how the beneficial interest in the Class A Shares moved from the Trust, there is no firm basis on which the Company can maintain the beneficial ownership accurate, adequate and up to date information.

125. It is therefore obvious in the court's view that where a legal person (in this case the Company) reasonably requests the provision of historic information concerning the acquisition of the registrable person's interest(s) in shares or partnership interests in the legal person, then that request is one which falls squarely within the scope of the BOA regime. In this case, in light of the conflicting information which has been provided by HHC, Mr Dolezal, Mr Jirik and the statements that have been recorded as having been made in the past by Mr Sevcik, the requests for additional information are not only reasonable, but necessary.

126. The fact that there is litigation between several of the parties named in the background history over the true ownership gives rise to additional concern as to the unanswered questions and missing information and justifies the Company in requiring a proper explanation. The Company is not required to take any view as to the merits of the allegations raised in any of the proceedings, but it is in the court's judgment certainly entitled to seek information on which to base any decisions with respect to the accuracy and reliability of the explanations offered by HPH and Mr Jirik.

127. The court is not now deciding any question as to the true ownership of the Class A Shares and is not expressing any view of the merits of any of the allegations in pending litigation elsewhere that have been described above, nor is the court assessing the credibility of any of the answers that have been provided to the Company thus far. It is also noted that the information which has been provided to the Company by Ms Hagler is (at least) second hand and is necessarily untested and may be based on information which may be incomplete or inaccurate. The court is however assessing whether the Company has a legitimate interest in seeking the information in the exercise of its powers under the BOA.

128. The court is fully satisfied that the Company has every justification in asking for the information in order to fulfil its statutory duties, and that the Company's enquiries do not exceed the legitimate scope of the power provided under the BOA. The Company is entitled to know how Mr Jirik and HPH acquired their respective ultimate beneficial ownership interests in the Class A Shares to which they claim to be entitled. Without that information, the Company

cannot complete the beneficial ownership register with adequate and accurate information that explains the present beneficial ownership structure (i.e. that is up to date and accurate).

Principle (iii): The imposition of restrictions on the Class A Shares

129. For the reasons already explained, the information so far supplied by the registrable persons (in particular Mr Jirik and HPH) is insufficient to enable the Company to comply with its duty to keep the beneficial ownership register up to date with accurate and adequate information to describe the nature and extent of their beneficial and/or voting control interests in HHC.

130. The BOA gives the legal persons three tools to assist it in obtaining information from its shareholders or partnership interest holders about the ultimate beneficial ownership of the shares held in its capital structure. If the bye laws or articles of partnership of the legal person permit, (a) the service of a formal Warning Notice requiring disclosure of the relevant information and (b) in default of a satisfactory response to the Warning Notice, the issue of a Decision Notice imposing restrictions on the shares; or (c) if the bye laws or articles of partnership do not permit, the legal person may apply to the court to impose restrictions on the relevant shares or partnership interest. In this case the Company's bye laws permit the Company to issue a Warning Notice and a Decision Notice[57].

131. The restrictions can be as to (i) the transfer of shares or partnership interests (ii) the exercise of voting rights (iii) the issue of new shares or partnership interests or (iv) the payment of capital or distribution of dividends or any other payment that is due to the shareholder or partner in right of the shareholding or partnership interests that is restricted.

132. What restrictions will be appropriate in any given case will depend on the relevant circumstances. In this case, the Company has applied all the categories of restriction listed above. HHC complains that the imposition of all the restrictions is unnecessary and unreasonable and represents an unjustified interference in the exercise of HHC's rights as shareholder.

133. The scope and extent of the restrictions will be considered in more detail below. However, in considering what courses were open to the Company, the court cannot see that the Company had any practical choice but to issue the Warning Notice, and in light of the responses that were received, which plainly did not address the central question of HPH and Mr Jirik's acquisition of the ultimate beneficial ownership in the Class A Shares, it was plainly appropriate to impose restrictions on the Class A Shares.

Principle (iv): No burden on the Company to show harm or loss to justify the imposition of restrictions

134. This principle can be taken shortly: there is no requirement to show harm or loss to the Company as a prerequisite to imposing restrictions. There is no *lis inter partes* to be determined, and the Company is not seeking relief from the court. The Company has the statutory power to impose the restrictions once the Warning Notice and Decision Notice procedure has been followed. Having done so, the Company was within its rights to impose restrictions on the Class A Shares.

Principle (v): the interests of third parties must be taken into account

135. In deciding what restrictions to impose, the Company is required by section 17 (3) of the BOA to have regard to the effect that the proposed restrictions will have upon third parties, persons

[57] Bye law 36.2 is recited in the Company's Board Resolutions at HB 493.

who hold security over the relevant shares (or partnership interest), other shareholders and other beneficial interest holders.

136. Obviously, shareholders who have complied with the disclosure requests made by the company and have provided all the necessary information to the company to enable the beneficial ownership register to be completed should be unaffected by any restrictions imposed on others who have not responded appropriately. There are none in this case.

137. Similarly, a third-party chargee holding a security interest over the shares in respect of a *bona fide* loan or other financing transaction should remain unaffected by any restrictions on shares that have been imposed due to the absence of adequate, accurate and up to date beneficial ownership information. There are none in this case.

138. It is not asserted by HHC (or anybody else) that any third parties will be or have been affected by the restrictions in this case or that third party rights are in need of protection..

139. There is one class of shares held by one shareholder. Since all the Class A shares are held by HHC, any restrictions naturally have to apply to all the shares. Mr Jirik (speaking as a director of HHC) has intimated that the restrictions unfairly affect HHC. He does not assert that the restrictions unfairly affect his own interest as a beneficial owner of the Class A Shares through his indirect ownership of HPH (or any other shareholders of HPH). However, as noted above, due to the ownership structure any arguments as to unfair impact would likely be the same. This suggestion is addressed below under Principle (vii).

Principle (vi): the company must only impose the restrictions for a proper purpose

140. This principle originally derives from the context of contested take-over bids, where the court will not allow the incumbent board to misuse the power to obtain information for a collateral purpose of defeating or resisting a take-over bid. In the present context, Mr Jirik suggested that the Company was misusing the power to impose restrictions on the Class A Shares to further the board's fulfilment of their compliance duties rather than the completion of the beneficial ownership register, presumably he means by filling in gaps in the historic record which do not relate to describing the present beneficial ownership position.

141. In order to make an accurate entry in the beneficial ownership register, the Company must be satisfied on adequate grounds that both Mr Jirik and HPH are beneficially interested in the Class A Shares. The initial Preference Share was originally beneficially held under Trust 2, according to the documents that were produced at the time. The Preference Share was converted into the Class A Shares which must also have been held subject to the same terms of the Trust. If the beneficial interest in those shares was later transferred to a third party, there must be some evidence to show to whom and on what terms that interest was transferred. The evidence produced by Daventree in the form of the letter confirming the transfer is unsatisfactory and inadequate to explain what interest was transferred, under what power the transfer was exercised, by whom, when, and on what terms. The exercise of a transfer of an interest held by a trust which is not made in accordance with the terms of the trust is not a valid or effectual transfer as a matter of general principles of the law of trusts. Without that information, no interest can be validly transferred and cannot be reflected accurately on the beneficial ownership register.

142. The purpose of the BOA (and the provisions that preceded it under the Companies Act) is to enable the Company to provide the Registrar (and any other Government agency) with sufficient information to be able to perform their statutory functions, including the disclosure of relevant information to government agencies in other jurisdictions, and in particular to ensure the transparency of ownership of entities registered in Bermuda. This includes historic information. The argument advanced by Mr Jirik that the Company only has a right to seek verification of current information is unsustainable. It would defeat the purpose of the legislation and undermine the policy objectives of the BOA, and the court has no hesitation in rejecting that approach to the interpretation of the BOA.

143. The court is therefore satisfied that the Company has sought the information requested for the proper purpose of complying with its statutory duties under the BOA and the argument that the Company has sought the information for a collateral or improper purpose is rejected.

Principle (vii): the court will scrutinize the reasons for the restrictions and not act as a rubber stamp

144. The Company reached an impasse with Mr Jirik and HPH, as evidenced in the correspondence summarized above. HHC is the sole applicant and says that the restrictions unfairly affect HHC's rights. Strictly speaking, HHC falls within the category of aggrieved person under section 17 (9) (a). It is to be noted that the court's intervention under section 17 (9) is expressed to be for the purpose of protecting the rights of third parties or other beneficial owners of the shares that are subject to the restriction. For the purposes of this judgment, I have treated the complaint by HHC as including the other ultimate beneficial owners of the Class A Shares including Mr Jirik and HPH.

145. For the reasons given below, Mr Jirik has not explained how the restrictions unfairly affect the enjoyment of HHC's rights as a shareholder in the Company. As to the impact on the wider beneficial interests higher in the ownership chain, Mr Jirik has not attempted to grasp the nettle.

146. The essence of the problem is that the Company has insufficient information to explain how Mr Jirik and HPH acquired their beneficial interests in HHC from Trust 2. If (for any reason) they did not acquire their interests in a manner that Bermuda law recognises, then they are not properly entitled to a beneficial interest in the Class A Shares (as to which the court expresses no view one way or the other). This is a threshold issue because until they can demonstrate to the Company (or the court) how their beneficial interests were acquired, they cannot complain that their ultimate interests have been unfairly affected or restricted.

147. For the reasons already explained, without the information that explains the acquisition of the beneficial interests in HHC by Mr Jirik and HPH that corresponds with contemporaneous documentation which can be verified independently, the Company was in my view fully justified in issuing the Warning Notices. In addition, when it was met with what was in effect a stone-wall response, the Company was also fully justified in issuing the Decision Notices. I now turn to address the scope of each category of restrictions imposed to assess their impact on HHC itself.

<u>No transfer</u>

148. In answer to the Company's initial requests for additional information, HHC wrote asking for the Company to transfer the shares in the Company to HHC[58] and thereby put HHC in a position

[58] Although the letter refers to shares held under the Nominee Agreement and a share transfer form relation executed in blank, the share transfer form relates to the Preference Share not the Class A Shares, but it appears that the intention was to effect a transfer of the Class A Shares to HHC: see HB 28 and HB 24.

to appoint the directors of the Company[59]. This would obviously put the Company under the ultimate control of Mr Jirik and/or other beneficial owners of HPH. Until the questions raised by the Company in relation to the acquisition of the beneficial interest in the Class A Shares has been resolved, it is clearly appropriate to impose restrictions on the transfer of those shares. Although the restriction affects HHC's registration as owner of the Class A Shares in its own name, the restriction is not unfair. It is obviously a necessary and appropriate restriction.

No voting

149. In my view, and for the same reasons, it is plain that until the issue as to the historic acquisition of the beneficial interest in HHC has been resolved to the Company's satisfaction, there should be no change in the present position so far as the exercise of voting rights attaching to the Class A Shares. I say 'to the Company's satisfaction' because that is where the burden of the statutory duty lies under the BOA. Therefore, the restrictions on the transfer and exercise of voting rights in respect of the Class A Shares contained in the decision Notice are fully justified and the court upholds those restrictions.

No issue of new shares

150. There has been no proposed issue of new shares. In light of the restrictions on the transfer of shares and the exercise of voting rights attaching to the Class A Shares, it is at first blush difficult to see that the restrictions prohibiting these corporate actions are necessary, because they would require the approval of the board, which is not under the control of HHC. Therefore, it is arguable that these restrictions go beyond what is necessary to protect the Company from any potential concerns over who actually controls any new shares or the terms on which they might be issued.

No distribution of dividends, return of capital or other payments

151. There is also no proposed distribution of a dividend, return of capital or other payment to shareholders, and for the same reasons it is therefore arguable that there is no need for this restriction, because there is no present risk of an ultimate distribution to a person whose status as a beneficial owner has not yet been ascertained by the Company.

152. However, there being no present proposals for an issue of new shares or payment of a dividend (or other payment), it can hardly be said that these restrictions impose any unfair or improper restriction on the enjoyment of the rights attaching to the Class A Shares by HHC (or any other beneficial owners further up the ownership hierarchy), contrary to the argument advanced by Mr Jirik in his second affidavit[60]. These restrictions do not in reality make any present difference to Mr Jirik, HPH or HHC.

153. On balance, the court does not see any particular merit in removing the restrictions on the issue of new shares or making distributions or payments until it is satisfied that there is a good reason to do so.

154. In this respect the burden falls on the person who claims to be affected by the restrictions to show that the restriction unfairly affects the protection of third parties or other persons (presumably including themselves).

[59] HB 28-9.
[60] HB 517 at paragraphs 36-8.

155. In this case, there is in fact no actual or imminent interference with the enjoyment of any right by HHC (or anyone else) in respect of an issue of new shares or a distribution to shareholders. There is therefore nothing in the evidence to support the application for variation of the restrictions that the Company, on whom the duties under the BOA fall to be carried out, has considered it necessary to impose. Moreover, the imposition of a blanket restriction on the exercise of all rights relating to the Class A Shares reinforces the importance of full compliance with the Company's requests for information and demonstrates rigorous implementation of the legislative policy behind the BOA.

156. Mr Jirik and HPH claim that they acquired their beneficial interest in the Class A Shares following the changes to the corporate structure sometime after 2009, so the production of the relevant information to explain how, when and on what terms that was achieved lies within their own respective powers to provide. The restrictions on transfer and distributions cannot fairly be characterised as an unreasonable interference with their rights as ultimate beneficial owners: they hold the remedy to remove those restrictions in their own hands. By contrast, the Company has no other tools at its disposal with which to secure compliance with the statutory obligation to keep the beneficial ownership register accurate and up to date. As Vinelott J observed at first instance in **Geers Gross plc**, if the restrictions were lifted, the Company would be left with "*no real lever with which to prize open the casket in which the relevant facts about the shares [are] hidden*".

157. The prompt fulfilment of the statutory duty must be regarded as the paramount consideration in the evaluation of the circumstances of this case. In my view, a restriction on all rights attaching to the Class A Shares has the greatest chance of obtaining disclosure of the necessary information in as timely a manner as possible, particularly in light of the rebarbative responses received by the Company from Mr Jirik, HHC and HPH to date. In my judgment the restrictions imposed by the Company on the Class A Shares are fully justified until substantial compliance is made with the Company's requests for information as to how, when, on what terms and in what circumstances Mr Jirik and HPH acquired their respective beneficial interests in the Class A Shares, duly supported by adequate and independently authenticated documentary records.

158. In addition, the court considers that disclosure of information relating to the litigation in other jurisdictions which could have an effect upon claims to beneficial ownership are reasonable and proportionate. Even though the Company is not required to make any assessment of the merits of the claims made in the litigation, nor include any details of the pending litigation in the beneficial ownership register itself, the Company has a clear and legitimate interest in understanding the background to those proceedings and to assess for themselves what (if any) impact it has on their duties under the BOA.

Conclusion

159. The court is satisfied that the Decision Notice and the restrictions contained therein are reasonable, proportionate and appropriate, and the court declines to set the Decision Notice, dismisses the present application by HHC and makes the orders in the terms proposed by the Company appended to their written submissions[61], save that the court would not be prepared to make an order for indemnity costs without a hearing.

[61] Company's Authorities bundle at tab 26.

Costs

160. If the Company wishes to seek indemnity costs, then the draft Order should be adjusted to reflect that the court will hear the parties as to costs. Such application should be made within 14 days of the date of the judgment. If no such application is to be made, then the court is satisfied that the costs should follow the event. If no application for indemnity costs is to be made, it follows that costs should be taxed on the standard scale if not agreed.

Dated this 3rd day of November 2026



THE HON. MR. JUSTICE ANDREW MARTIN

PUISNE JUDGE OF THE SUPREME COURT