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Case No: HC10C00554

**IN THE HIGH COURT OF JUSTICE**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 20 May 2011

BEFORE:

**HIS HONOUR JUDGE HODGE QC**  
sitting as a Judge of the High Court

BETWEEN:

**EQUITY TRUST (SINGAPORE) LTD**

Claimant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS**

Defendant

Miss HUI LING McCARTHY (instructed by Squire Sanders & Dempsey (UK) LLP)  
appeared on behalf of the Claimant

Miss ELIZABETH WILSON (instructed by HMRC Solicitor's Office) appeared on behalf of  
the Defendant

**Judgment**

1. JUDGE HODGE QC: This is my extemporaneous judgment in the case of Equity Trust (Singapore) Ltd as claimant and The Commissioners for Her Majesty's Revenue & Customs as defendants, case number HC10C00554. This judgment is divided into seven sections as follows: (1) Background; (2) The applicable legislation; (3) The proceedings; (4) The hearing; (5) The Condition B question; (6) The Primary condition 1 question; and (7) Conclusion. Whilst this case is immediately concerned with a pension scheme established in the Republic of Singapore, it has potentially wider implications for pension schemes established in other countries as well.

#### I: Background

2. The claimant is a company incorporated in and under the laws of Singapore. It is the trustee of a pension scheme described as the Recognised Overseas Self Invested International Pensions Retirement Trust (Singapore) to which I shall refer as "ROSIIP". That trust was constituted by a trust deed dated 5 March 2007, and its terms were varied by a deed dated 2 April 2008. ROSIIP is essentially a personal pension scheme rather than an occupational (or employers') pension scheme. Overseas pension schemes are regulated by the Pension Schemes (Categories of Country and Requirements for Overseas Pension Schemes and Recognised Overseas Pension Schemes) Regulations 2006, Statutory Instrument 2006 No. 206 ("the Overseas Pension Schemes Regulations"). Those regulations are made under section 150 (7) and (8) within Part 4 of the Finance Act 2004.
3. The Revenue granted ROSIIP qualifying recognised overseas pension scheme status on 16 November 2006, before the formal constitution of the scheme; but this recognition was withdrawn on 14 January 2008. It is that withdrawal which has led to these

proceedings. At the outset of these proceedings, it was thought that the question raised in them would be determinative of whether ROSIIP is, and always had been, a Qualifying Recognised Overseas Pension Scheme (or “QROPS”). However, because of a change in position adopted by the Revenue in or about September 2010, that is no longer necessarily the case. An additional issue has been raised which engages, at least in part, public law issues as to the way in which the Revenue has exercised its powers to administer the QROPS scheme in the United Kingdom. That matter clearly falls outside the jurisdiction both of the Chancery Division and the Part 8 procedure under the Civil Procedure Rules. However, the parties have apparently postponed any further consideration of this aspect of the matter pending the conclusion of the current proceedings.

## II: The Applicable Legislation

4. For the purposes of Part 4 of the Finance Act 2004, the definition of a “pension scheme” is set out in section 150(1). It is a very wide definition. It means:

“...a scheme or other arrangements, comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of persons: (a) on retirement, (b) on death, (c) on having reached a particular age, (d) on the onset of serious ill-health or incapacity, or (e) in similar circumstances.”

5. There are a number of varieties, or subsets, of pension schemes, of which “occupational pension schemes”, which are defined in section 150(5), are one. An “occupational pension scheme” is defined in terms of:

“...a pension scheme established by an employer or employers and having or capable of having effect so as to provide benefits to or in respect of any or all of the employees of: (a) that employer or those

employers, or (b) any other employer (whether or not it also has or is capable of having effect so as to provide benefits to or in respect of other persons).”

6. Whilst there is presently no separate definition of “personal pension scheme” in the Finance Act 2004, prior to 6 April 2006 a “personal pension scheme” was defined in section 630(1) of the Income and Corporation Taxes Act 1988 as “a scheme whose sole purpose is the provision of annuities, income withdrawals or lump sums under arrangements made by individuals in accordance with the scheme”. That provides a working definition of the concept of a “personal pension scheme”.

7. An “overseas pension scheme” is defined in section 150(7) of the Finance Act 2004 as meaning:

“...a pension scheme (other than a registered pension scheme) which: (a) is established in a country or territory outside the United Kingdom, and (b) satisfies any requirements prescribed for the purposes of this subsection by regulations made by the Board of Inland Revenue.”

8. The reference to “regulations made by the Board of Inland Revenue” is to the Overseas Pension Schemes Regulations, to which I have already referred. Regulation 2 of those regulations sets out the requirements of an “overseas pension scheme”, and thus what is required for ROSIIP to qualify as such. Regulation 2(1) determines which subparagraphs are relevant to the pension scheme in question. Regulation 2(2) concerns pension regulation in another country or territory and may be referred to as “the regulation requirement”. Although not directly engaged in the present case, it is necessary for me to set out regulation 2(2). That paragraph (“the regulation requirement”) is satisfied if:

“(a) the scheme is an occupational pension scheme and there is, in the country or territory in which it is established, a body: (i) which regulates occupational pension schemes; and (ii) which regulates the scheme in question;

(b) the scheme is not an occupational pension scheme and there is in the country or territory in which it is established, a body: (i) which regulates pension schemes other than occupational pension schemes; and (ii) which regulates the scheme in question.”

Sub-paragraph 2(c) addresses the situation where:

“... neither sub-paragraph (a) or (b) is satisfied by reason only that no such regulatory body exists in the country or territory.”

9. Regulation 2(3) sets out what is required for an occupational pension scheme to be recognised for tax purposes. It is the “tax recognition requirement”:

“A scheme is ‘recognised for tax purposes’ under the tax legislation of a country or territory in which it is established if it meets the primary conditions and also meets one of Conditions A and B.

Primary condition 1.

The scheme is open to persons resident in the country or territory in which it is established.

Primary condition 2.

The scheme is established in a country or territory where there is a system of taxation of personal income under which tax relief is available in respect of pensions and:

(a) tax relief is not available to the member on contributions made to the scheme by the individual or, if the individual is an employee, by their employer, in respect of earnings to which benefits under the scheme relate; or (b) all or most of the benefits paid by the scheme to members who are not in serious ill health are subject to taxation.

For the purposes of this condition ‘tax relief’ includes the grant of an exemption from tax.

Condition A.

The scheme is approved or recognised by, or registered with, the relevant tax authorities as a pension scheme in the country or territory in which it is established.

Condition B.

If no system exists for the approval or recognition by, or registration with, relevant tax authorities of pension schemes in the country or territory in which it is established: (a) it must be resident

there; and (b) its rules must provide that: (i) at least 70% of a member's UK tax-relieved scheme funds will be designated by the scheme manager for the purpose of providing the member with an income for life, and (ii) the pension benefits payable to the member under the scheme (and any lump sum associated with those benefits) must be payable no earlier than they would be if pension rule 1 in section 165 applied."

It is unnecessary for me to go on to refer to paragraphs (4) and (5). No issue arises in the present case as to regulation 3.

10. The two questions before the court go to the question of whether ROSIIP is a "qualifying recognised overseas pension scheme" for the purposes of the Finance Act 2004 and turn essentially upon whether Primary condition 1 and Condition B of regulation 2(3) are satisfied. ROSIIP's status as a QROPS is important because it determines the tax treatment of transfers that have been made to it by UK resident pension schemes on behalf of individual contributors. If (as the claimant contends) ROSIIP is, and always has been, a QROPS, such transfers can be made to it without financial penalty arising on the transferor pension scheme or the contributor. If, on the other hand (and as the Revenue contend), ROSIIP is not a QROPS, such transfers will have been "unauthorised" under the Finance Act 2004, with the result that (1) the transferor pension schemes may be subject to scheme sanction charges and (2) the contributors may be subject to unauthorised payment charges and surcharges. In either case, no financial penalty arises to ROSIIP or to the claimant; but the claimant nevertheless has a real interest in the outcome of this litigation.
11. It is necessary also for me to refer to one relevant statutory provision in Singapore. Section 5 of the Singapore Income Tax Act 1948 ("SITA") provides as follows:

“The Comptroller [and that is a reference to the Comptroller of Income Tax, who acts as the Inland Revenue Authority of Singapore] may, subject to such conditions as he may think fit to impose, approve any pension or provident fund or society for the purposes of this Act and may (without prejudice to the exercise of any power in that behalf conferred on him by any condition so imposed) at any time withdraw any approval previously given in respect of any such fund or society.”

12. According to the expert evidence, the term “pension...fund” in section 5 of SITA does not mean the same as “pension scheme” in section 150(1) of the Finance Act 2004. In effect, “pension fund”, when referred to in section 5 of SITA, refers to what is understood for the purposes of UK tax legislation as being an “occupational pension scheme”; in other words, a distinct subset of the types of schemes or arrangements recognised as pension schemes in the UK. ROSIIP is not an occupational pension scheme but is rather akin to a “personal pension scheme”. It is common ground between the parties that no mechanism for the approval or recognition by, or registration with, the Inland Revenue Authority of Singapore exists outside section 5 of SITA.

### III: The Proceedings

13. These proceedings were initiated by a Part 8 claim form dated 18 February 2010. As issued, the claim form raised a single question, namely does section 5 of the Singapore Income Tax Act 1948 provide “a system for the approval or recognition by, or registration with, the Inland Revenue Authority of Singapore of pension schemes in Singapore” for the purposes of Condition B of regulation 2(3) of the Overseas Pension Schemes Regulations. The Revenue applied to strike out the claim as an abuse of process, and on the footing that there were no reasonable grounds for bringing it. That application fell to be determined by Mr John Jarvis QC, sitting as a Deputy Judge of

the Chancery Division, on 27 July 2010. His judgment bears the neutral citation number [2010] EWHC 2996 (Ch).

14. In summary, the Deputy Judge considered that there was not a true decision of the Revenue which was being sought to be overturned, but rather the claimant was seeking the declaration of a court as to the relevant law. He considered the case to be a plain one where there was an issue of law in which a party, namely the claimant, had a real interest in the court's decision, and it could therefore be dealt with by the Chancery Division of the High Court: see paragraphs 32 and 41 of his decision. In those circumstances, he declined to strike out the claim, and he dismissed the Revenue's application. He refused the Revenue permission to appeal to the Court of Appeal; and he gave the Revenue permission to file and serve evidence in defence of the claim by 15 September 2010.
  
15. At the time the matter was before Mr Jarvis, the only evidence that was before the court was a witness statement from Mr Peter Stephen Vaines dated 17 February 2010, together with exhibits PV1 through to PV15. Mr Vaines is a chartered accountant and barrister responsible for all tax advisory work undertaken by the London offices of the claimant's solicitors, Squire Sanders & Dempsey (UK) LLP. In addition, there was a witness statement from Mr Bethell Codrington (which was undated), together with exhibits BC1 through to BC22. He is the managing director of Panthera International Pensions Solutions Limited which was responsible for developing ROSIIP.
  
16. Following on from Mr Jarvis's decision, the Revenue filed evidence in the form of a witness statement from Ms Jane Elizabeth Truelove dated 15 September 2010, together

with exhibit JET1. She is an officer of the Revenue who acts as lead technical advisor in the Revenue's pension team. Part of her evidence seemed to raise a second issue, in addition to that under Condition B, which was relevant to the question whether Primary condition 1 had been satisfied, namely whether ROSIIP was "open to persons resident in Singapore". That issue was first flagged up in paragraphs 38 and following of Ms Truelove's witness statement. She explained that in the course of preparing her witness statement, she had reviewed all the correspondence in the case, including the information provided in an Equity Trust bundle from Singapore solicitors, which had provided further background to the tax regime in Singapore as it applied to ROSIIP. That review had led Ms Truelove to conclude that ROSIIP failed the requirements to be recognised as an overseas pension scheme on other grounds, besides the Condition B point that was the subject of the claim. She explained that the analysis supplied by the Singapore solicitors, the WongPartnership, advised that the tax treatment that ROSIIP was able to avail itself of in Singapore arose from its meeting the conditions to be treated as a "foreign trust", as opposed to a "pension scheme". She referred to the applicable provision of the Singapore regulations, according to which a trust should be regarded as a "foreign trust" for the purpose of the regulations if it was a trust created in writing and every settlor and every beneficiary thereof were individuals who were neither citizens of Singapore nor resident in Singapore.

17. Ms Truelove explained that the Singapore regulations set out some criteria under which a member of a "foreign trust" who subsequently moved to Singapore might not affect its qualification; but she said that the criteria that the scheme needed to fulfil in order to be considered a "foreign trust" under Singapore's legislation were contrary to the scheme being able to meet the requirement of Primary condition 1 of the UK's

regulations, which required the scheme to be open to persons resident in the country in which it was established, in the instant case Singapore. She said that the regulations operated by identifying pension schemes that were recognised for tax purposes in the country in which they were established. Primary condition 2 opened with the words:

“The scheme is established in a country ... where there is a system of taxation of personal income under which tax relief is available in respect of pensions...”

It was clear from the information provided by the Wong Partnership that any tax privilege that was available to ROSIIP in Singapore did not derive from its being a “pension scheme” but from its qualification as a “foreign trust”. Therefore the Revenue did not consider that Primary condition 2 could be met either. Ms Truelove observed that there seemed to be a contradiction between the Condition B requirement that the scheme should be resident in the state in which it was established and ROSIIP’s evidence that it was considered a “foreign trust” in Singapore.

18. That evidence led to an application by the claimant which resulted in a further hearing before Kitchin J on 22 March 2011. He ordered that the claimant should be granted permission to amend its claim so as to raise, in addition to the existing question, the further question whether ROSIIP was “open to persons resident in Singapore” for the purposes of Primary condition 1 of the Overseas Pension Schemes Regulations. He prescribed a timetable for further evidence in the case. By paragraph 2, the Revenue was to have permission to rely at trial on the evidence of an expert in Singaporean law in relation only to the issue of whether, as a matter of Singaporean law, ROSIIP was open to persons resident in Singapore. Such evidence was to be filed and served on or before 19 April 2011. It should be noted that that evidence was limited to (1) whether

ROSIIP was open to persons resident in Singapore and (2) evidence of an expert in Singaporean law. Paragraph 3 provided that the claimant was to have permission to rely at trial on evidence in reply to the issue of whether, as a matter of Singaporean law, ROSIIP was open to persons resident in Singapore, such evidence to be filed and served on or before 3 May 2011. It should be noted that that provision was *not* restricted to expert evidence of Singapore law. It should also be noted that, given the four bank holidays in the period intervening between 19 April and 3 May, in the event the claimant had a very limited time within which to file evidence in reply. I was told by counsel appearing for the claimant that she had not appreciated that when the timetable was prescribed.

19. In the event, no evidence was served by the Revenue on or before 19 April. Instead, on 19 April the Revenue wrote a letter to the claimant's solicitors referring to the additional point added to the declaration sought in these proceedings on 22 March 2011, namely that relating to Primary condition 1. It seemed to the Revenue that time and costs might be saved if certain matters could be agreed. Conversely, they did not think that the court could presently meaningfully determine the issue without, as a minimum, the further information requested below. The Revenue therefore asked for certain further information. First, they asked for confirmation of whether at any time since it was established ROSIIP had had any members who, while members, had become residents of Singapore and, if so, details were to be provided. Secondly, the Revenue asked whether at all material times since it was established ROSIIP had retained its status as a foreign trust for the purposes of Singaporean law. Thirdly, the Revenue asked whether ROSIIP, or the claimant, or any person acting on behalf of both, or either of them, had made any declarations or given any formal notices to the

Singaporean Revenue to the effect that ROSIIP was, or was not, a “foreign trust” and, if so, copies were to be provided. They also requested certain further information. The letter concluded by pointing out that the Revenue had made further inquiries of the Singaporean authorities in relation to the issue, but that they could not require those authorities to work to the court’s timetable, and the Revenue did not know when they would respond. If they did respond before the final hearing, the Revenue declared their intention to put any relevant material before the court, and for it to decide whether to admit such material.

20. On 11 May 2011 the claimant issued an application notice, to be heard at the start of the substantive hearing, to amend the details of its claim. So far as material, the amendment sought to withdraw the assertion that personal pension schemes such as ROSIIP were recognised as foreign trusts under SITA 1948, section 13G. That application was accompanied by a short, and third, supplemental witness statement of Mr Bethell Codrington dated 11 May 2011. (I should mention that Mr Bethell Codrington had already expanded his original evidence by way of two supplementary witness statements.) Mr Codrington’s third supplementary witness statement disclosed that he had recently been advised by the trustees of ROSIIP that, contrary to his previous knowledge and belief, ROSIIP in fact had six Singaporean resident members. They had been accepted to ROSIIP between 29 November 2007 and 16 April 2008.

#### IV: The hearing

21. The hearing of the substantive claim was listed before me at 12.00 noon yesterday, Thursday 19 May 2011. Shortly before the hearing, the Revenue served a witness statement of Mr Dean Anthony Rowland, a solicitor employed in the Revenue

Solicitor's office, dated 18 May 2011, exhibiting various further documents. The Revenue also indicated that they wished to rely on a further document which had been produced by the claimant, namely the ROSIIP Operations Manual. No formal application notice was issued seeking such relief; but the Revenue have undertaken to issue a formal application notice and, more importantly, to pay the appropriate court fee. On the day of the hearing, 19 May 2011, the claimant filed a second application notice, dated the previous day, seeking to rely upon a fourth supplementary witness statement of Mr Bethell Codrington dated 18 May 2011. I dealt with these three preliminary applications at the start of the hearing.

22. At the end of that preliminary hearing, I indicated that I would allow the proposed amendment to the brief details of claim since it seemed to me to be in accordance with the interests of justice to enable the claimant to advance its true case, and that this would cause no material prejudice to the Revenue. I also indicated that I would allow both parties to rely upon the additional evidence which they had sought to adduce. I indicated that I would give my full reasons in this, my substantive, judgment.
23. In determining whether to admit the additional evidence I, of course, had regard to the overriding objective, set out in CPR 1, of enabling the court to deal with cases justly. That includes, so far as is practicable, ensuring that parties are on an equal footing, saving expense, dealing with the case in ways which are proportionate, ensuring that it is dealt with expeditiously and fairly, and allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases. Prior to the receipt of the evidence from Ms Truelove of the Revenue, the satisfaction of Primary condition 1 had not been raised as an issue. When it became a live issue in

the proceedings, as a result of Kitchin J's order, the Revenue did not comply with his direction as to the service of evidence. I consider that some criticism can attach to the Revenue for not having done so, or for not having done more to do so; but I am satisfied that there was no deliberate breach of Kitchin J's order, and that the Revenue were not seeking to secure any tactical advantage in the litigation.

24. I am satisfied that there is, and would be, no material prejudice to the claimant if the Revenue were allowed to rely upon its late evidence, provided that the claimant, in its turn, was allowed to rely upon the third and fourth supplementary witness statements of Mr Bethell Codrington and the documents exhibited to them. Equally, I am satisfied that there would be no prejudice to the Revenue if the claimant were to be allowed to rely upon those two witness statements. In accordance with Kitchin J's timetable, the claimant had not been required to serve its evidence before 3 May 2011; and it seemed to me that there would be no material prejudice to the Revenue in being served with the evidence late: in view of the time previously taken to obtain further evidence from Singapore, it seemed to me that there would have been no realistic prospect of obtaining any additional evidence from the Inland Revenue Authority of Singapore even if all the evidence from the claimant had been served on 3 May 2011.
  
25. Moreover, the Revenue is the party which had raised the issue of the non-satisfaction of Primary condition 1. It should have satisfied itself that it had appropriate material available to it before doing so, yet it was still requiring further information as recently as 19 April 2011. It seemed to me that the Revenue could not complain if the claimant undertook further investigations in response to that request and, in the light of such inquiries, has sought to put forward further material before the court disclosing the true

position. Moreover, the Revenue's skeleton argument, served, admittedly in accordance with Kitchin J's order, on Friday 13 May 2011, had raised for the first time an issue as to the effect and implications of clause 8(a)(iii) of the trust deed. (The same considerations apply under the varied clause 8(b).) The claimant was entitled to address those matters in evidence.

26. The Revenue objects that the evidence introduced by Mr Codrington's third and fourth supplemental witness statements changes the whole factual basis of the case in that the pension scheme has always been portrayed to the Inland Revenue Authority of Singapore as a "foreign trust"; but this issue is addressed to some extent, and insofar as it can be, by Mr Rowland's witness statement. The Revenue says that the new evidence is vague, and critical passages within it are unclear and unsubstantiated. I am, however, satisfied that such matters could be, and have been, sufficiently highlighted in the submissions of the parties. It seems to me that it would not be appropriate, in furtherance of the overriding objective, for these matters to be addressed by way of further evidence, which would necessitate a delay to the hearing of this claim.
27. When the matter was before Kitchin J, the first supplementary witness statement of Mr Bethell Codrington had emphasised the need for an early resolution of the issues in this case. It seemed to me that it was implicit in the terms of paragraph 6 of Kitchin J's order, and in particular the provision for the trial of the claim to be listed for the first available date after 17 May 2011 (being only two weeks after the filing and service of the claimant's evidence in reply), and also the express provision that, when listing the trial, limited regard was to be had to counsel's availability, that Kitchin J had accepted that there was some urgency in the matter.

28. As I have indicated, there are likely to be further proceedings of a public character following on from this decision. I was, and remain, satisfied that it is in the interests of justice for the additional evidence of both parties to be received. I am further satisfied that this will cause, and has caused, no material prejudice to either party. It seemed to me that to admit the evidence was consistent with the furtherance of the overriding objective, and specifically with the various matters identified in CPR 1.1(2). Insofar as the Operations Manual was concerned, in the context of a Part 7 claim, which this is not, it seemed to me that it would have been a document disclosable by the claimant. It emanates from the claimant; and I did not consider that there could be any real prejudice to the claimant in allowing the Revenue to place reliance upon it.
  
29. In the course of her oral submissions on the preliminary applications, Miss McCarthy of counsel, who appears for the claimant, had sought to reformulate question 2 as it had been pronounced by Kitchin J. Miss Wilson of counsel, who appears for the Revenue, submitted that that reformulation would not be helpful. I accept that view. It seems to me that the question, as already formulated by Kitchin J, is appropriately directed to, and focused upon, the terms of Primary condition 1, and whether it was satisfied.
  
30. For the hearing, there was a time estimate given to Kitchin J of 1½ days, with an additional half-day for pre-reading. As I have indicated, the matter was listed before me at 12.00 noon yesterday. By the time the matter came on, I had pre-read both parties' helpful skeleton arguments: that prepared by Miss McCarthy for the claimant dated 11 May 2011, and that prepared by Miss Wilson for the Revenue dated 13 May 2011. I had pre-read all of the documents indicated by both counsel in their pre-

reading lists. The first 1½ hours or so of the hearing, interrupted by the luncheon adjournment, was occupied by the three interim applications, two formal from the claimant, and one informal from the Revenue. I then gave a brief preliminary ruling. My reasons are as set out in this substantive judgment. I then prescribed a timetable for the hearing, to which counsel have, to their great credit, largely adhered. Indeed, Miss McCarthy took some 30 minutes less than her allotted 2 hours, which she “banked up”, in the event sensibly, for her reply. Miss Wilson addressed me for about 15 minutes yesterday and then for almost a further 1¾ hours this morning. Miss McCarthy then addressed me for about 15 minutes before lunch, and for a further 35 minutes or so after the short adjournment. Overnight, Miss Wilson had helpfully produced certain further written submissions on the Primary condition 1 issue.

#### V: The Condition B Question

31. This, of course, is whether section 5 of SITA provides a “system for the approval or recognition by, or registration with, the Inland Revenue Authority of Singapore of pension schemes in Singapore” for the purposes of Condition B of regulation 2(3) of the Overseas Pension Schemes Regulations. The claimant submits that the court should decide that the section does not provide such a system. Conversely, the Revenue submits that the answer to this question is in the affirmative because there is a system for approving pension schemes as such in Singapore. As I have already indicated, the claimant relies upon the expert evidence that section 5 of SITA applies only to occupational pension schemes, and thus not to a pension scheme such as ROSIIP. The claimant contends that the purpose of the requirement for overseas pension scheme status in the 2006 regulations is to establish that a particular scheme is a genuine *pension* scheme, as distinct from some other form of investment vehicle

which should not properly enjoy the tax status of a qualifying recognised overseas pension scheme. The claimant contends that section 5 does not fulfil this purpose, and is not a “system for the approval of pension schemes” within Condition B, essentially for three reasons, although one of these was slightly supplemented during the course of Miss McCarthy’s oral submissions.

32. First, it is said that it is clear that “pension schemes” in Condition B refers to pension schemes at large, within the broad definition to be found in section 150(1) of the Finance Act 2004; but, Miss McCarthy submits, Singapore tax law does not recognise the same definition. Rather, when section 5 of SITA refers to “any pension...fund or society”, it is referring solely to schemes that would be understood in the United Kingdom as *occupational* pension schemes. Section 5 does not refer to the approval of “pension schemes” as this term is understood in the United Kingdom, with the result, so it is said, that section 5 approval falls outside the statutory requirements of Condition B.
  
33. Secondly, it is said that SITA does not provide “a system”. The claimant contends that “a system” for the purposes of Condition B means some sort of organised arrangement or ordered procedure akin to the legal and procedural requirements for obtaining qualifying recognised overseas pension scheme status. It is said that the Comptroller’s power under section 5 of SITA is merely an arbitrary discretion with unpublished parameters. The scope of that submission was slightly expanded during the course of oral submissions by the further submission that, in fact, and on the evidence, the section 5 approval system is obsolete, and is really no longer “a system” at all but what

Miss McCarthy referred to in her reply as “an anachronistic relic”. She submitted that to be “a system”, the system must be an operable one.

34. Her third submission was that approval under section 5 of SITA is solely “for the purposes of the Singapore Income Tax Act 1948”. It does not confer on the Comptroller power to give official confirmation that the scheme is a pension fund for all purposes, rather than some other type of investment vehicle. Therefore, again, it is not “a system for the approval of pension schemes” within Condition B.
35. In the course of her oral submissions, having taken me through the applicable 2006 regulations, Miss McCarthy submitted that what the court was looking for was really an approval or recognition system which was consistent with that operated in the United Kingdom. In other words, section 5 of SITA must be something consistent with the UK recognition process; but, Miss McCarthy submitted, section 5 is far too narrow. It was not a system for the approval of *all* forms of pension scheme. She also submitted that a system requires one to look to see how the mechanism in question is operated in practice, and if it was practically obsolete then it could not be said to be “a system”. It must be an active, and actively operated, one. The crucial question, Miss McCarthy submitted, was whether the foreign system, in this case under section 5 of SITA, met the requirements of the UK legislation.
36. I was referred during the course of her submissions to the judgment of Lord Hanworth MR in the case of Ryall v The Du Bois Company Ltd (1933) 18 TC 431, in particular at pages 440 to 441, which concerned the meaning of a “share” in the context of a foreign company. That passage was cited in support of the proposition that one must

compare the overseas system with that in the UK and ask whether they were comparable. She also took me to the speech of Lord Pearce in the case of Rae v Lazard Investment Co Ltd (1963) 41 TC 1 at page 31. She submitted that Condition B should be interpreted broadly because the United Kingdom has a broad definition of “pension scheme”. She submitted that Condition B, when it refers to “no system existing for the approval or recognition of pension schemes”, must be postulating pension schemes of *all* forms, and whoever the funder or provider of the pension was. She submitted that really section 5 was nothing to do with the recognition for UK purposes, and for the purposes of Condition B, of pension schemes such as ROSIIP, and that section 5 was not directed to schemes of the present kind. In support of her submission that section 5 did not constitute a system for “the approval of pension schemes” in Singapore, she relied in particular upon the evidence contained in an email of 8 July 2009 (at page 321 of bundle A) to the effect that only three schemes had been approved under section 5 of SITA in the two previous years. In her reply, she contrasted that with the far greater number of pension schemes recognised in the UK, and indeed in the much smaller jurisdiction of Guernsey.

37. For the Revenue, Miss Wilson submitted that the power conferred by section 5 of SITA on the Comptroller of Taxes had led to the creation of a set of rules and procedures to determine whether a pension scheme was eligible for approval. Although they were not officially published in any document or made available on any website, there clearly were requirements operated by the Inland Revenue Authority of Singapore; and, moreover, they were capable of communication, and were, in fact, communicated outside the Inland Revenue Authority. In particular, in that context, Miss Wilson took me to an email dated 22 November 2006 from an officer of the Inland Revenue Office

of Singapore to the claimant's Singapore solicitors, Drew & Napier, which set out in quite some detail the basic requirements for qualifying for section 5 approval, and the procedures to be applied in that connection. She made the point that, on the evidence, the Comptroller's actions, including deciding whether to approve a pension scheme, were subject to challenge by way of judicial review. In other words, he must exercise his powers under section 5 in accordance with the rule of law, and if he did not do so, he could be compelled by the Singapore courts to do so. As against that, it can be said that there is apparently no record of any challenge having been made to an exercise by the Comptroller of his powers under section 5.

38. Miss Wilson submitted that a system did exist for the approval or recognition of pension schemes in Singapore within the meaning of Condition B. The fact that a pension scheme such as ROSIIP could not be approved because it did not satisfy the criteria applied by the Comptroller was not evidence that no system existed for the approval of pension schemes. Rather, she submitted that it was a consequence of there being such a system. That was because not all pensions in Singapore qualified for tax relief as pensions. In summary, she submitted that a system existed for the approval of pension schemes where the territory had an organised method or procedure for approving them as such, albeit that approval might be contingent on the scheme satisfying certain additional criteria, such as who might contribute to the fund, minimum retirement ages, and so forth. She submitted that it did not matter that those criteria might differ radically from those applied in the United Kingdom. On the facts, she submitted that a system did exist in Singapore: there was an organised practice which could be readily set down in writing and applied by Singapore tax professionals with reasonable certainty. The rules were also legitimate. They were authorised by

law and subject to judicial review on the grounds of reasonableness (and, impliedly, legality). There was, in fact, an ordered and knowable system, and it was irrelevant that the rules might not be formally published by the Inland Revenue Authority of Singapore because, as the email to Drew & Napier revealed, they were disclosed to third parties.

39. She further submitted that the system was one for the approval of pension schemes as such. Approval was given to approved schemes as “pension schemes”, as that term was used in United Kingdom regulations, albeit that the approved scheme, to qualify in Singapore, had to satisfy further domestic-tailored criteria. She submitted that the submission by Miss McCarthy that there was no system for approval of pension schemes because not all pension schemes could be approved was misconceived. She submitted that the submission that there was no system because the Comptroller had merely an arbitrary discretion with unpublished parameters was contrary to the evidence of the claimant’s own witnesses; and she submitted that the submission that the Comptroller did not give his approval for all purposes was irrelevant, and, in any event, misconstrued Condition B.
  
40. In the course of her reply, Miss McCarthy indicated that the real question on this Condition B issue was whether there was a system for recognising pension schemes at large which operated in fact as a living system. If there was only a system for recognising a niche set of pension schemes, Condition B was engaged rather than Condition A, and ROSIIP was entitled to satisfy the requirements of Condition B even though those of Condition A were not satisfied. Moreover, the system must be one that applied, not simply for the purposes of income tax, but more generally, so as to apply,

for example, to capital gains tax; and it must be something more than an anachronistic relic.

41. Those were the submissions. In short, the Revenue say that section 5 is a system; that Condition A is the applicable condition; and that since ROSIIP has not been approved under section 5, Condition A has not been satisfied. The claimant accepts that Condition A has not been met; but it contends that section 5 is not a system for the approval of pension schemes in general; thus Condition A is not engaged; and Condition B applies, and is satisfied on the facts of the present case. I am satisfied that the evidence discloses that section 5 of SITA does not apply to all pension schemes within the meaning of the UK tax legislation, but only to that distinct subset of pension schemes which in the UK would be referred to as occupational pension schemes. What the first part of Miss McCarthy's submission for the claimant therefore seems to me to come down to is whether Condition B of regulation 2(3) postulates a system which extends to *all* forms of pension schemes, or is it engaged if a system exists for the approval of some (but not all) forms of pension scheme?
  
42. In the course of counsel's submissions yesterday, and before the court rose, I drew attention to the difference in language between paragraphs (2) and (3) of regulation 2 of the 2006 regulations. In particular, paragraph 2(2)(a)(ii) and 2(2)(b)(ii) include the phrase, which regulates "the scheme in question". In Condition B the wording is much more general and refers simply to the regulation of "pension schemes". Miss McCarthy sought to address that difference in language in the course of her reply; but it did not seem to me that she was able to do so satisfactorily. The fact is that Condition B does not postulate the non-existence of a scheme for the approval, recognition or

registration of *all* pension schemes, nor does it postulate the non-existence of a system for the approval, recognition or registration of pension schemes of the kind in question; in other words, pension schemes of the ROSIIP kind. It seems to me that the court cannot ignore the terms in which the legislature, through subordinate legislation, has seen fit to express the condition required to be satisfied before Condition B is engaged. Whether it has struck a satisfactory balance is not one for the court. What the regulation says is that Condition B is engaged only if *no* system exists for the approval, recognition or registration of pension schemes, in this case, in Singapore.

43. Subject to Miss McCarthy's other points, it does seem to me that section 5 does provide a system for the approval of at least one form of pension scheme. Condition B does not postulate that there should be a system which exists, and which applies to *all* pension schemes, or even to pension schemes *of the kind* with which the Revenue is immediately concerned. It may be that the reason for the way in which the matter has been expressed is that the legislature wished to accord respect to the autonomy and integrity of an overseas system for the approval, recognition or registration of pension schemes, and did not wish to impinge upon that. But it seems to me that that is the conclusion to which the wording adopted in the regulation leads. Subject to Miss McCarthy's other points, it does seem to me that section 5 does provide a "system for the approval, recognition or registration of pension schemes" within the meaning of Condition B, and therefore that condition is not engaged. It is common ground that Condition A is not satisfied because it cannot be; but that does not mean that there is not a system in existence, subject to Miss McCarthy's other points.

44. So far as Miss McCarthy's second point is concerned, for the reasons given by Miss Wilson, it does seem to me that there is a system in existence, and that such system is still operable and capable of being operated. It is not, on the evidence, and in my judgment, a mere "anachronistic relic". To adapt Miss McCarthy's example of a place being open to people, even if they may not choose to resort to it - although I accept it was put forward in a different context - it does seem to me that there is here, in existence, a scheme for the approval of certain forms of pension scheme, albeit there may not be frequent resort to it. The restaurant at The Ritz is open to persons on state benefits even though, in practice, they may find themselves unable to eat there. That is an analogy that is of relevance also to the Primary condition 1 argument. But, on the evidence, it does seem to me that there is a system; and it also seems to me that there is really no substance in Miss McCarthy's third point. Condition B does not prescribe in any way the purposes for which the system must exist or operate. It is not expressed to apply for any *particular* purpose. The system in Singapore exists for the purpose of the income tax legislation. That seems to me to be a sufficient purpose to satisfy the requirement that no system must exist before Condition B can be engaged. So, for those reasons, and for the other reasons given by Miss Wilson, I would answer the first question in the sense for which the Revenue contends. In other words, Section 5 of SITA does provide a system for the approval or recognition by, or registration with, the Inland Revenue Authority of Singapore of pension schemes in that jurisdiction for the purpose of Condition B of Regulation 2(3).

#### VI: The Primary condition 1 question

45. Here, the question is whether ROSIIP is "open to persons resident in Singapore" for the purpose of Primary condition 1. The claimant says that it is; the Revenue submits that

it is not. The claimant relies heavily upon recital D to the trust deed, which states that the Fund is open to Eligible Persons to participate as a Member, whether they are resident in Singapore or elsewhere. Miss McCarthy submits that recital D is not expressly or impliedly contradicted by any of the later, and operative, parts of the trust deed. She relies upon the opinion of the WongPartnership of 3 May 2011 at paragraph 2.2. The language of recital D is said to be plain and unambiguous. It clearly states that that the fund is open to an eligible person “resident in Singapore”. If the fund was indeed not open to Singapore residents, then the trust deed should have stated that it was “not open to Eligible Persons resident in Singapore”. In the absence of any express wording to the contrary, the fund is said to be necessarily open to an eligible person who is a resident of Singapore.

46. Further reliance is placed upon paragraphs 2.4 and 2.5 of the WongPartnership memorandum of 19 May 2011. Reference is there made to a decision of the High Court of Singapore, in the person of Justice GP Selvam, in the case of AS Nordlandsbanken v Nederkoorn Robin Hoddle [2000] SGHC 272, reported at [2000] 3 SLR(R) 918, where the court held that parties were bound by an agreement evidenced by, and contained in, the recital to a guarantee, there being nothing inconsistent in the operative part of the instrument. Paragraph 2.5 of the WongPartnership memorandum reads:

“In the event that the construction of the trust deed was an issue to be decided by a Singapore court, our view is that it is likely to be construed as open to residents of Singapore given the unequivocal terms of recital D and that there is nothing in the operative part of the instrument that is inconsistent with this recital. Further, it is likely that a Singapore court would consider that clause 8(a)(iii) is not inconsistent with recital D as it does not refer specifically to matters of residence.”

That view is said to be based on the view taken by Justice GP Selvam in the case cited. Particular reference is made to paragraphs 33 onwards; but reference should also be made to the law on recitals at paragraph 27.

47. In her oral submissions, Miss McCarthy submitted that this issue all depended upon whether ROSIIP was accessible to Singapore residents. It mattered not whether there was anyone resident in Singapore who had actually been admitted to ROSIIP. The question of whether the fund was open to Singapore residents had to be tested as at the time of admission; and the question was whether it was open for admission to Singapore residents. Miss McCarthy submitted that there was no evidence that the trustees had ever resolved, under the discretionary powers conferred upon them, to exclude Singapore residents from membership. Indeed, she questioned whether the powers under clause 8(a)(iii) in respect of employer-nominated applicants, which are reproduced by virtue of the Deed of Variation in Clauses 8(b)(i) and (ii) in relation to self-nominated applicants, were capable of being used so as to exclude residents of Singapore, or to prevent applications from such persons.
  
48. Miss Wilson, for the Revenue, submitted that the test was a practical one. Access must be real. It was not enough just to say that ROSIIP was open to Singapore residents if in practice, and in fact, it was not. The question was whether the power to exclude applicants, which resided in the trustees, had been exercised, impliedly or expressly, to exclude residents of Singapore from admission as members. If it had, the scheme was not open to residents of Singapore. She submitted that it was irrelevant for the trustee inadvertently to admit a resident of Singapore merely because he had made mistake.

She relied in her further written submissions on certain facts which she said evidenced a practice on the part of the claimant, as trustee of ROSIIP, expressly or impliedly taking the decision not to admit Singapore residents as members of ROSIIP.

49. Further, or alternatively, she said that the claimant had been party to an effective decision to filter applications from Singapore residents. She submitted that the facts upon which she relied were either clear, or obvious inferences from the agreed documents, or from the claimant's own evidence, produced by it for the purposes of its own claim. Even if, she says, the claimant had resiled from those just before the hearing, when the claimant perceived how it had undermined its own case, she submitted that, before the date of execution of the trust deed on 5 March 2007, the claimant had decided that, for its marketing purposes, ROSIIP would be promoted as not subject to tax in Singapore. She referred to the fact that Panthera, which had developed the scheme, had issued a marketing brochure inviting applications and stating that:

“...to maximise potential tax efficiency, your ROSIIP fund will be based in Singapore. ROSIIP is not subject to either Capital Gains Tax or Income Tax in this jurisdiction.”

50. She also relied on the fact that in October 2006, Panthera had issued a brochure, which was still on its website in March 2007, saying that ROSIIP was “not subject to tax in Singapore”. That is all true; but, in my judgment, it has also to be viewed in the context of the marketing brochure which came into the hands of Miss Truelove, and which is to be found at page 152 of bundle B. Describing a pension solution for those leaving the UK, it is said that ROSIIP provides appropriate transfer out and transfer in

powers. Individuals who leave the UK and become a member of ROSIIP are said to be able to request a transfer of their UK benefits. That is on the footing that ROSIIP is registered with HMRC as a qualifying recognised overseas pension scheme for this purpose. The draftsman of that document, it is fair to say, must have appreciated that a primary condition of such qualification was satisfaction of Primary condition 1, requiring ROSIIP to be open to Singapore residents. There is, therefore, a tension between the marketing literature directed to the UK tax authorities, and the position directed to those in Singapore.

51. But Miss Wilson goes on to refer to events after the constitution of the trust, after 5 March 2007. She makes the point that, to obtain and commission evidence that it was eligible for exemption from Singapore tax as a trust with no Singapore resident beneficiaries unless they subsequently became residents, the claimant had commissioned an independent report from Drew & Napier to provide confirmation to third parties that ROSIIP was eligible for the tax exemption under the Income Tax (Exemption of Income of Foreign Trusts) Regulations. That independent report, issued on 24 July 2007, assumed that all members were not citizens of Singapore, and were not resident in Singapore for tax purposes; and, on that assumption, confirmed that ROSIIP was eligible for a declaration for tax exemption on income of eligible holding companies and foreign trusts for the 2007 year of assessment. That was confirmed and repeated in a letter of 28 December 2007 to the Comptroller, and in a letter to the Revenue of 12 February 2008; and further declarations in the same terms were made for 2008, 2009 and 2010. Throughout, the claimant had represented ROSIIP as a pension scheme amounting to a “foreign trust” for the purposes of Singapore tax law. Miss Wilson submits that the discretion vested in the trustee, described by Mr

Codrington as a very wide one, was capable of being used to exclude Singapore residents from admission to the Trust.

52. Miss Wilson also relies upon the Operations Manual. At page 322 of bundle B, reference is made to a checklist, which appears at page 332. That checklist requires a box to be ticked against the requirement “non-Singapore residence”. It is to be noted that the tick is not against a box simply saying “residence”, as indicating that proof of residence had been obtained. What was required to be ticked was “*non-Singapore* residence”. Miss Wilson also relies upon the fact that, until recently, the whole focus of the claimant’s evidence was directed to the fact that ROSIIP had no members resident in Singapore, and it was therefore treated in Singapore as a “foreign trust”. Reliance can also be placed upon the fact that Mr Codrington indicated, in his third supplementary witness statement dated 11 May, that he had only recently been advised that, contrary to his previous knowledge and belief, ROSIIP in fact had six Singaporean resident members. Miss Wilson submits that, for the claimant fundamentally to change its evidence about whether this trust was supposed to be a foreign trust, but not to give any explanation at all to this court of what mistake was made in relation to whether the trust was intended to be a foreign trust, and instead let its marketing director give hearsay evidence on such matters, really raises serious questions. She refers to the fact that documents have been produced by Mr Codrington in his fourth supplementary witness statement indicating that there are six Singapore individuals who are members of the trust, but she says that that may merely indicate that they have a Singapore correspondence address. She draws attention to the absence of any reference to the checklists, and whether the persons administering ROSIIP may have been misled as to Singapore non-residence, and, if they were not so misled, she

points to the absence of any explanation as to how, notwithstanding the terms of the checklist, they were approved as members.

53. Miss McCarthy took me to the decision of the Court of Appeal in the case of Wood v Holden [2006] EWCA Civ 26, reported at [2006] 1 WLR 1393, (2006) 78 TC 1, and in particular, the judgment of Chadwick LJ at paragraphs 30 through to 34. She did so to draw the court's attention to the extent of the burden of proof which might lie upon a taxpayer, and the shifting of the evidential burden from a taxpayer to the Revenue. In particular, at paragraph 33, Chadwick LJ noted that:

“It is a feature of tax litigation ... that, in the first instance, the facts are likely to be known only to the taxpayer and his advisers. The revenue will not have been party to the transaction; and will know only those facts which have been disclosed by the taxpayer or others; following, perhaps, the exercise of the revenue's investigatory powers.”

But once the material facts have been disclosed, the burden may shift to the Revenue; and it was for that reason that Miss McCarthy took me to that authority.

54. Miss McCarthy, in reply, encapsulated the Revenue's argument in these terms: She said that the Revenue was inviting the court to look behind the recital in the trust deed. She submitted that it was not any contradiction for the court to conclude that ROSIIP was open to Singapore residents, even if it had no Singapore residents as members. But she relied upon the fact that there is now evidence that there are, in fact, six Singapore residents who are members. She drew my attention to the fact that, in relation to at least two of those individuals, the letters of 31 July 2008 at page 302 and of 24 July 2008 at page 305 would clearly indicate that the claimant appreciated that

they had not simply correspondence, but also residential, addresses in Singapore. She also emphasised that the court did not know what documents and processes had been in place at the time, and that there was no evidence of what instructions had been given by the claimant with regard to the operation of, and compliance with, the Operations Manual. She submitted that I could simply not disregard the expert evidence of Singapore law that had been put before the court as to the effect of the trust deed.

55. In my judgment, this is not a case in which there is any question of disregarding the expert evidence of Singapore lawyers. So far as the Singapore authority cited is concerned, I would be very surprised if an English court had reached a result different from that at which Justice GP Selvam had arrived. Indeed, I would have expected an English court to follow the same process of reasoning. But that decision is very different from the present case. That authority concerned a guarantee given in respect of charterers to the owners of the two tankers in question. Essentially, the issue was whether a guarantee, unlimited in time so far as the operative part of the contract was concerned, was subject to a temporal limitation, because there was a recital that the guarantor had agreed to guarantee the due performance of the charter party for a period of 24 months from the date of delivery of the vessel. That was a case in which the court had to construe a two-party contract. Here, one is concerned with a recital in a trust deed entered into between the trust company and the original employer, which was to nominate applicants for pension entitlement.

56. The advice of the Singapore lawyers does not address the context in which any litigation might fall to be decided. I am not in any way seeking to substitute my own view for that of the experts in Singapore law. It does not seem to me that their opinion

is really addressing the question in issue between the parties. The question before the court is whether ROSIIP is open to Singapore residents. There is no expert evidence of Singapore law to the effect that the trustees could not properly exercise their discretion so as to refuse to admit persons resident in Singapore to ROSIIP. Miss McCarthy acknowledged that when I put it to her. Her response was to say that the claimant was not denying the width of the power, but rather the Revenue must demonstrate that the power to exclude persons resident in Singapore from admission to ROSIIP had, in fact, been exercised. That is, in my judgment, correct. The mere existence of clause 8(a)(iii), and the new clause 8(b)(i) and (ii), does not automatically disqualify a pension scheme from the grant of qualifying recognised overseas pension scheme status. The question is whether, on the evidence, the court is satisfied that ROSIIP is indeed open, as a practical matter, to Singapore residents.

57. The evidence on that is limited. The claimant can indeed point to the existence of the recital; but it cannot be the case that Primary condition 1 is satisfied wherever, and necessarily because, the relevant scheme documentation simply contains a recital in terms corresponding to recital D, even if, in practice, the trustees exercise their power so as not to admit persons resident in the relevant overseas territory. It must be permissible, as the Revenue submit, for the court to be able to go behind the terms of the trust deed. I acknowledge that, as I have indicated, the restaurant at The Ritz may be said to be open to persons on state benefits even though, in practice, they are unable to eat there. I acknowledge also that the draftsman of ROSIIP must have been aware of the need to comply with Primary condition 1. I acknowledge also that there is evidence that there are six Singapore residents who may have been admitted to the scheme, and that in two such cases, at least, it would seem that the claimant was aware that they

were, or may have been, resident in Singapore. But it is also the case, as Miss McCarthy acknowledged, that the court does not know what documentation and processes were in place, and operated, at any relevant time; and it was the claimant that was in a position to put such material before the court. The marketing literature appears to proceed on the footing that Singapore residents will not be admitted to ROSIIP. Miss McCarthy submits that the marketing literature does not in terms say that; but, nevertheless, that is the whole thrust of the marketing literature identified by Miss Wilson.

58. I do not find the matter an easy one, because of the lack of available evidence; but, on the evidence before me, I have to ask whether the claimant has discharged the burden of proving that ROSIIP is indeed “open to Singapore residents”. The whole basis upon which the trust was presented to the Singapore tax authorities is that it was a “foreign trust”. The inference that I draw is that, whilst the draftsman appreciated that in order to qualify as a qualifying recognised overseas pension scheme, Primary condition 1 had to be satisfied, once the Revenue had, on 16 November 2006, granted ROSIIP qualifying recognised overseas pension scheme status, the whole focus shifted to persuading the Singapore Revenue authorities that the trust qualified for the fiscal advantages available to a foreign trust in Singapore. It may be that one or two Singapore residents may have slipped through the net; but, on the limited evidence before the court, it does seem to me that the court is justified in drawing the inference that that was by oversight or mistake. As Miss Wilson said, the claimant is a trust company; and it owed duties to protect the financial interests of the members of ROSIIP; and it would appear that it was detrimental to those financial interests for

Singapore residents to be admitted. Indeed, Miss McCarthy has said that the whole Singapore tax position is now being looked at.

59. I do not find the matter easy because of the limited evidence; but, on a balance of probabilities, I am not satisfied that ROSIIP was indeed “open to Singapore residents”; and therefore I am not satisfied that Primary condition 1 was met.

## VII: Conclusion

60. For these reasons, the conclusion is that, as the Revenue contends, the court answers question 1 “yes”, because there is a system for approving pension schemes as such in Singapore, and the answer to question 2 is “no”, because the claimant has not shown that ROSIIP was genuinely accessible to Singapore residents at any material time.
61. I cannot conclude without paying tribute to both counsel in the case, who have obviously worked tremendously hard, have displayed considerable knowledge, both of the applicable law and the facts, and who, perhaps exceptionally, succeeded in complying with the strict time limits that I had prescribed for them after I had dealt with, perhaps at undue length, the preliminary interim applications. But the decision is, I am afraid from the claimant’s point of view, that on both issues the Revenue are successful.