

# **Primeo Fund (in Official Liquidation) (Appellant) v Bank of Bermuda (Cayman) Ltd and another (Respondents) (Cayman Islands)**

**Case ID: JCPC 2019/0089**

**Jurisdiction: Court of Appeal (Cayman Islands)**

## **Case summary**

### **Issue**

This appeal concerns claims brought by the appellant, Primeo Fund (In Official Liquidation) (Primeo), against the respondents for breach of their contractual duties. The claims arise in the context of the fraud perpetrated by Bernard Madoff. The Judicial Committee of the Privy Council allowed Primeo's appeal in relation to the application of the reflective loss rule to the extent explained in its judgment dated 9 August 2021. The Board is now asked to decide the remaining issues on Primeo's appeal and also decide the respondents' cross-appeal/additional grounds for upholding the decision below.

### **Facts**

Primeo operated as an open-ended investment fund incorporated in the Cayman Islands. It invested funds with Bernard L Madoff Investment Securities LLC (BLMIS), initially a small proportion of its overall investments, growing over time. From 2003, Primeo also placed a small proportion of investments with BLMIS indirectly through Alpha Prime, a Bermudan-domiciled investment fund. From 2004, Primeo also began investing indirectly via another Cayman-domiciled fund, Herald Fund SPC. On 1 May 2007, Primeo switched its remaining direct investments in BLMIS to an indirect investment through Herald Fund SPC. The respondents acted respectively as Primeo's administrator and custodian at all relevant times.

On 11 December 2008, Bernard Madoff was charged with fraudulently operating a multi-billion-dollar Ponzi scheme. Primeo was subsequently placed into voluntary liquidation. On 20 February 2013, Primeo brought claims against the respondents for breach of their contractual duties. At first instance, the judge dismissed Primeo's claims, principally on the basis that strict liability loss and causation had not been established and that the claims were barred by the reflective loss principle in any event. The Court of Appeal agreed that that Primeo's claims were barred by the reflective loss principle, and so dismissed Primeo's appeal on that basis. Primeo now appeals to the Judicial Committee of the Privy Council.

### **Parties**

#### **Appellant(s)**

Primeo Fund (in Official Liquidation)

#### **Respondent(s)**

Bank of Bermuda (Cayman) Ltd and another

### **Appeal**

#### **Justices**

Lord Reed, Lord Hodge, Lord Lloyd Jones, Lord Kitchin, Lord Sales

**Hearing start date**

20 April 2021

**Hearing finish date**

21 April 2021

**Watch hearing**

20 Apr 2021 [Morning session](#) [Afternoon session](#)

21 Apr 2021 [Morning session](#)

**Judgment details****Judgment date**

9 August 2021

**Neutral citation**

[2021] UKPC 22