D COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION CAUSE NO. FSD OF 2022 ( )

BETWEEN:

(1) GULF INVESTMENT CORPORATION
(2) GENERAL RETIREMENT AND SOCIAL INSURANCE AUTHORITY

Plaintiffs

AND:

(1) PORT LINK GP LTD
(2) MARK ERIC WILLIAMS
(3) WELLSPRING CAPITAL GROUP, INC
(4) KGL INVESTMENT COMPANY ASIA
(5) APACHE ASIA LIMITED (a Hong Kong company)
(6) APACHE ASIA LIMITED (a Macao company)
(7) RONALD HENRY AYLIFFE
(8) ELITE FIRST INVESTMENT LIMITED

Defendants

WRIT OF SUMMONS

TO: (1) PORT LINK GP LTD c/o FFP (Corporate Services) Limited, 2nd Floor Harbour Centre, 159 Mary Street, George Town, Grand Cayman, Cayman Islands

(2) MARK ERIC WILLIAMS of 340 Madison Grove Blvd, Thomasville, Georgia, GA 31757, United States of America

(3) WELLSPRING CAPITAL GROUP, INC c/o Aaron Coch, as Registered Agent, 220 South Hansell Street, Thomasville, Georgia, GA 317792, United States of America

(4) KGL INVESTMENT COMPANY ASIA c/o Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9008, Cayman Islands

(5) APACHE ASIA LIMITED (a Hong Kong company) of 6/F, Wings Building, 110-116 Queen's Road Central, Central, Hong Kong

(6) APACHE ASIA LIMITED (a Macao company) of Tower 1, Basement C, 37 Tv. Dos Anjos, Macao

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was issued by Travers Thorp Alberga, Attorneys for the Plaintiffs, whose address for services is Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G028.2024)

FSD2022-0041 Page 1 of 156 2022-03-03

(7) RONALD HENRY AYLIFFE of No. 1204, 297B Compassvale Street, Sengkang, Singapore, 542297

(8) ELITE FIRST INVESTMENT LIMITED c/o Overseas Trust Management Company Trust (BVI) Ltd, as Registered Agent, OMC Chambers, Wickhams Cay 1, Road Town, Tortola VG1110, British Virgin Islands

THIS **WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs c/o Travers Thorp Alberga, PO Box 472, KY1-1106, Harbour Place, 103 South Church St, George Town, Grand Cayman, Cayman Islands in respect of the claim set out on the following pages.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 3rd day of March 2022

Travers Thorp Alberga

TRAVERS THORP ALBERGA
Attorneys for the Plaintiffs

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was issued by Travers Thorp Alberga, Attorneys for the Plaintiffs, whose address for service is Harbour Place, PO Box 472, 103 South Church Street, George Town, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/20787-004)

STATEMENT OF CLAIM

A. INTRODUCTION

A1. Preliminaries

1. In this pleading, references to the ELP Act are:

   1.1 In respect of periods before 2 July 2014, to the Exempted Limited Partnership Act (Law 11 of 1991) as from time to time amended.

   1.2 In respect of periods from 2 July 2014, to the Exempted Limited Partnerships Act (Law 5 of 2014) as from time to time amended.

2. References to USD are to US dollars.

3. This Statement of Claim sets out the best particulars the Plaintiffs are presently able to provide of their claims. As Limited Partners with no involvement in the management of the Limited Partnership at the relevant times, the Plaintiffs have had to rely in preparing their claims on certain documents and information provided by the First Defendant, the General Partner of the partnership, notwithstanding that the General Partner's disclosure to date has been inadequate and its explanations unsatisfactory. The Plaintiffs reserve the right to amend and/or supplement this Statement of Claim in light of further disclosure or information from the Defendants and of the Plaintiffs' own ongoing investigations into the wrongdoing.

A2. Parties and other relevant persons

The Plaintiffs

4. The First Plaintiff (**GIC**) is and was at all material times a corporation incorporated under the laws of the State of Kuwait, and operates as a sovereign wealth fund owned by the governments of the six member states of the Gulf Cooperation Council.

5. The Second Plaintiff (**GRSIA**) is and was at all material times an enterprise owned by the State of Qatar which is responsible *inter alia* for administering the Qatari social security system.

Port Fund

6. The Port Fund LP (the **Port Fund** or the **Fund**) is and was at all material times an exempted limited partnership formed under the ELP Act, pursuant to a limited partnership agreement dated 21 March 2007 and amended and restated on 24 July 2008 (the **LPA**). The LPA was expressly governed by the law of the Cayman Islands (Clause 11.10). The Plaintiffs will rely on the LPA at trial for its full terms and effect.

7. Between 16 July 2007 and 19 June 2013, GIC made capital contributions of USD 20,000,000 to the Port Fund, representing 10.63% of the Fund's total capital contributions, and it has at all material times been a Limited Partner of the Port Fund.

8. Between 15 July 2007 and 9 September 2008 GRSIA made capital contributions of USD 9,852,000 to the Port Fund, representing 5.236% of the Fund's capital total contributions, and it has at all material times been a Limited Partner of the Port Fund.

9. The sponsor, placement agent and administrator of the Port Fund is and was at all material times KGL Investment Company KSCC (**KGL Kuwait**), a Kuwaiti company which forms part of the KGL Group of companies (the **KGL Group**). The chairman of the KGL Group has at all material times been Mr Saeed Dashti, a Kuwaiti national. At all material times until 27 March 2019, the Vice Chair and Chief Executive of KGL Kuwait was Ms Maria (Marsha) Lazareva, a Russian national.

Port Link

10. The First Defendant, Port Link GP Limited (**Port Link**), is and was at all material times the General Partner of the Port Fund. It has at all material times been a Cayman exempted limited company under the Companies Act.

FSD2022-0041 Page 4 of 156 2022-03-03

11. KGL Kuwait was the sole shareholder of Port Link at all material times until 29 May 2018. At all material times from 29 May 2018 or thereabouts, the entire issued capital of Port Link has been legally owned by Port Link Holdings USA, Inc, (**Port Link Holdings**), a company incorporated under the law of Delaware by the Second Defendant (**Mr Williams**). Mr Williams has at all material times been the legal owner of Port Link Holdings but in view of his past and present role within the KGL Group as set out at paragraph 23 below, it is to be inferred that, notwithstanding the transfer of Port Link shares to Port Link Holdings, KGL Kuwait and its beneficial owners and controllers remain and remained at all material times the ultimate beneficial owners and controllers of Port Link.

12. The *de jure* directors of Port Link have at material times been as follows:

12.1 From 8 March 2007 until 25 April 2007, Ms Lazareva.

12.2 From 26 April 2007 until 17 November 2007, Ms Lazareva and Mr Dashti.

12.3 From 18 November 2007 until 24 May 2018, Ms Lazareva, Mr Dashti, and Mr Abdulghfoor Alwadhi.

12.4 From 25 May 2018 until 28 January 2020, Mr Alwadhi.

12.5 From 29 January 2020 until 28 October 2020, Mr Alwadhi, Mr Andrew Childe and Mr Christopher Rowland.

12.6 From 29 October 2020 to 2 November 2020, Mr Alwadhi and Mr Childe.

12.7 From 3 November 2020 to 28 March 2021, Mr Alwadhi, Mr Childe and Mr Richard Lewis.

12.8 From 28 March 2021, Mr Childe and Mr Lewis.

FSD2022-0041 Page 5 of 156 2022-03-03

The Investment Management Company

13. Pursuant to an investment management agreement dated 28 June 2007 (the **IMA**), the investment manager of the Port Fund was a Cayman Islands exempted limited company incorporated on 8 March 2007 under the name KGL Investment Cayman Limited (the **Investment Management Company**). By the Letter of Claim dated 7 July 2018 (as to which see paragraph 320 below) Clyde & Co LLP (**Clyde & Co**) wrote to Port Link stating that the Investment Management Company had changed its name to Emerging Markets PE Management Ltd. To the best of the Plaintiffs' knowledge that is correct. But for ease of reference the company is referred to as the "Investment Management Company" throughout this Statement of Claim.

14. At all material times until a date in 2018 that the Plaintiffs cannot specify with precision:

14.1 100% of the Investment Management Company's A shares were owned by KGL Kuwait;

14.2 40% of the Investment Management Company's B shares (200 shares) were owned by Ms Lazareva. Pursuant to a shareholders' agreement dated 9 February 2009 and a nominee agreement the terms of which are not known to the Plaintiffs, Ms Lazareva held certain of her B shares as nominee for KGL Kuwait and other persons unknown to the Plaintiffs;

14.3 29.8% of the Investment Management Company's B shares (149 shares) were owned by Mr Williams. The Plaintiffs do not know whether Mr Williams held or holds the beneficial interest in those shares.

15. On a date or dates in 2018 that the Plaintiffs cannot specify with precision:

15.1 KGL Kuwait sold 500 A Shares and 1 B Share of the Investment Management Company to Asia Alternative Asset Management Limited (**AAAML**), a company incorporated in the Cayman Islands.

FSD2022-0041 Page 6 of 156 2022-03-03

15.2 Mr Williams was appointed as an authorised signatory for the company and continued to direct its affairs as if a director and remained a *de facto* or shadow director of it.

16. As explained at paragraphs 151 to 157 below, it is be inferred that this transfer of shares in the Investment Management Company was not a genuine arm's length transaction but a sham and the interest in the Investment Management Company was retained within the KGL Group.

17. Ms Lazareva was a *de jure* director of the Investment Management Company from 8 March 2007 and its sole *de jure* director from 8 February 2009 until 4 February 2019.

18. From 4 February 2019 until the Investment Management Company's dissolution, its sole *de jure* director was Building Smart Limited, a Hong Kong company.

19. On 7 July 2018 the Investment Management Company purported to terminate the IMA.

20. On 18 February 2020, the Investment Management Company was placed in voluntary liquidation, and the Seventh Defendant, Mr Ayliffe, was appointed as its liquidator. The Investment Management Company was voluntarily dissolved on 22 June 2020.

KGLI Asia

21. The Fourth Defendant, KGL Investment Company Asia Limited (**KGLI Asia**), is a company incorporated in the Cayman Islands with regional operating headquarters (**ROHQ**) in Manila, Philippines. It is a wholly owned subsidiary of KGL Kuwait and is part of the KGL Group. It was placed in voluntary liquidation by shareholder resolution on 20 December 2020, with KGL Kuwait appointed as voluntary liquidator.

22. References in this Statement of Claim to the KGL Group include KGL Kuwait, KGLI Asia, the Investment Management Company and all subsidiaries and affiliates of the same.

FSD2022-0041 Page 7 of 156 2022-03-03

Mr Williams and Wellspring

23. In addition to being a director of Port Link and legal owner of Port Link Holdings as set out above, Mr Williams has from time to time occupied various positions within Port Link, in respect of the Port Fund, and in relation to the KGL Group. He was at various times:

23.1 Director of Investments for the Port Fund;

23.2 a member of the Port Fund's Investment Committee;

23.3 at least until around July 2018, the owner of 149 B shares in the Investment Management Company;

23.4 the Investment Director of the Investment Management Company;

23.5 on and after 20 June 2018, an authorised signatory for the Investment Management Company;

23.6 a Director of KGLI Asia and CEO of KGLI Asia ROHQ;

23.7 from 29 May 2018, the sole director of Port Link Holdings;

23.8 a purportedly authorised signatory of numerous contracts signed on behalf of the Port Fund and a person purportedly authorised to give instructions for the payment of invoices submitted to the Port Fund as particularised below;

23.9 a person identified in letters written by the law firms Squire Patton Boggs and Brownstein Hyatt Farber Schreck LLP in July and August 2018 as their client (when writing in connection with Port Link or the Port Fund) (see paragraph 261.2) below;

23.10 a person from whom the law firms of Walkers (Dubai) Limited Liability Partnership (**Walkers**) and Crowell & Moring LLP (**Crowell & Moring**) were accustomed to take instructions in relation to the affairs of Port Link and/or the Port Fund, as evidenced

by their invoices dated 17 July 2018 and the facts and matters set out in Section K2 below;

23.11 a person whose instructions, from 25 May 2018, Mr Alwadhi, the sole *de jure* director of Port Link, was accustomed to follow in relation to the affairs of Port Link and/or the Port Fund (see paragraphs 332, 337 and 340.3 below).

24. In the premises, Mr Williams was at all material times (alternatively at least from 25 May 2018) a *de facto* director of Port Link, alternatively a shadow director, and/or its directing mind and will and/or an agent with general authority to conduct the affairs of, and on behalf of, Port Link.

25. The Third Defendant, Wellspring Capital Group, Inc (**Wellspring**), was incorporated in Florida on 9 September 2013. On 5 May 2020, it was converted into a Georgia corporation and re-registered under company registration number 19107709.

26. At all material times, Wellspring's sole shareholder has been the Mark E Williams Living Trust, of which Mr Williams has been at all material times a trustee. Mr Williams and/or members of his family were at all material times beneficiaries of the Mark E Williams Living Trust.

27. From 27 August 2018, Mr Williams was the Chief Executive Officer, Chief Financial Officer, President, Vice-President, Treasurer, and Secretary of Wellspring.

The Fifth to Seventh Defendants

28. As regards the Fifth to Seventh Defendants:

28.1 The Fifth Defendant, Apache Asia Limited, is a company which was incorporated in Hong Kong on 7 February 2013 (**Apache HK**).

28.2 The Sixth Defendant, Apache Asia Limited, is a company which was incorporated in Macao on 9 August 2013 **(Apache Macao**).

28.3 The Seventh Defendant, Mr Ayliffe, is a former investment banker who is said to own and control AAAML (referred to at paragraph 15.1 above) and to have founded the Fifth and Sixth Defendants.

29. Further information regarding the Fifth to Seventh Defendants and their involvement in the facts giving rise to the present claims is set out in detail in Section F1 below, at paragraphs 78 to 92.

Elite

30. The Eighth Defendant, Elite First Investment Limited (**Elite**), is a company which was incorporated in the British Virgin Islands on 3 January 2017.

31. Further information regarding Elite and its involvement in the facts giving rise to the present claims is set out in detail in Section H1 below.

B. BACKGROUND

B1. The Port Fund's investments

32. The Port Fund was established in 2007 as a vehicle for investments in the port management industry. Its prospectus stated that the Investment Manager (i.e. the Investment Management Company) intended to raise USD 500 million for these purposes, but only USD 188 million in capital contributions was secured from the Limited Partners between 2007 and 2013.

33. The Port Fund's initial term expired on 31 December 2012. It was extended for two years, until 31 December 2014, by a resolution of Port Link dated 28 July 2012, pursuant to clause 2.4 of the LPA. The audited financial statements for the Fund for the year ended 31 December 2015 recorded the expiry of the term and reported that the Investment Manager (i.e. the Investment Management Company) was exiting the Fund's investments and winding up its operations during 2016.

34. To the Plaintiffs' knowledge, the Port Fund made four investments during its lifetime:

FSD2022-0041 Page 10 of 156 2022-03-03

34.1 In August 2007, an investment of USD 20 million by way of a convertible loan agreement with KGL International for Ports, Warehousing and Transport K.S.C.C., which was convertible into 2 million shares in Damietta International Ports Company (**DIPCO**), an Egyptian company. Port Link caused the Port Fund to recognise a provisional loss of the entire investment in its financial statement for the year ended 31 December 2014. Port Link and the Investment Management Company blamed the loss on the Arab Spring and difficulties between DIPCO and the Egyptian government.

34.2 In November 2007, an investment of USD 20 million in Münchmeyer Petersen Capital Global Maritime Opportunities SA (**MPC GMO**). Port Link and the Investment Management Company have stated that the entire investment in MPC GMO was lost, purportedly due to the global financial crisis.

34.3 In January 2008, an investment of approximately USD 28.6 million in Negros Navigation Company Incorporated (**Negros Navigation**), a Filipino shipping and logistics company. In 2010, Negros Navigation purchased one of its competitors, a company called ATS Corporation. The business of ATS Corporation combined with elements of the pre-existing business of Negros Navigation and was rebranded as 2GO Group Inc.

34.4 From April 2008 onwards, an investment in a total amount unknown to the Plaintiffs (said by Port Link to be USD 100,040,000) in a project to build an 'aerotropolis' in the Philippines known as Global Gateway Logistics City (**Clark City**). The Port Fund's interest in Clark City (which interest is referred to herein as the **Clark Asset**) was held through a Filipino special purpose vehicle, Global Gateway Development Corporation (**GGDC**). GGDC was granted a long lease over a 177 hectare parcel of land in Clark City for an initial period of 50 years on 16 July 2008. GGDC was ultimately owned by GGDC Holdings, a Cayman Islands company which was itself wholly owned by the Port Fund.

35. On 28 July 2016, Port Link (on behalf of the Port Fund) entered into a share purchase agreement to sell its interest in Negros Navigation to another Filipino company, Udenna

FSD2022-0041 Page 11 of 156 2022-03-03

Corporation (**Udenna**) for USD 120 million, which sum was fully paid on or about 16 August 2016. In October 2016, the Port Fund made its first distribution of USD 30 million to the Limited Partners, of which USD 4.73 million was distributed to the Plaintiffs. This USD 30 million distribution represented less than a third of the proceeds of the Negros Navigation sale, USD 56.7 million of which was reinvested by the Port Fund into the Clark Asset.

36. By a share purchase agreement dated 31 July 2017 (the **GGDC SPA**), between the Port Fund acting by Port Link and Udenna Development (Udevco) Corporation (**UDEVCO**), the Port Fund agreed to sell its single share in GGDC Holdings for USD 655 million on or before 31 August 2017. UDEVCO is a Filipino company which is and was at all material times 100% (indirectly) owned by Udenna.

37. A deed dated 13 November 2017 (the **Closing Memorandum**) provided that UDEVCO had designated Clark Global City Corporation (**CGCC**) (its wholly owned subsidiary) as the purchaser of the share and recorded that the completion date was 14 November 2017. Schedule 2, Part A, paragraph 2(a) also provided that CGCC was to procure that BDO Unibank Inc, Trust and Investments Group (**BDO Trust**) pay the sum of USD 496,429,777 into account no. 02410890280039 in the name of Port Link at the Dubai branch of Noor Bank PJSC (**Noor Bank** / the **Noor Bank Account**).

B2. The Noor Bank Freeze

38. On or about 15 November 2017 BDO Trust attempted to make a wire transfer of USD 496,429,767 to Port Link's Noor Bank Account through Citi Bank New York.

39. On the same day Noor Bank made a suspicious activity report to the Financial Intelligence Function at the Central Bank of the UAE (the **FIF**) relating to that wire transfer. The suspicious activity report stated that:

39.1 Mr Dashti, Ms Lazareva, Mr Alwadhi and others were being investigated by the Kuwaiti judicial authorities for the embezzlement of public funds.

39.2 KGL Kuwait was listed on World Check as a result of a disciplinary resolution issued by the Capital Markets Authority in Kuwait and Ms Lazareva was listed on World Check as a politically exposed person.

39.3 KGL Kuwait had a complex equity structure for its subsidiaries, the final beneficiary of the transfer was unknown, and Port Link was suspected of having been incorporated in the Cayman Islands for money laundering purposes in order to disguise the source of the funds through the establishment of investment companies and exploiting the international open markets system.

40. Between 15 and 21 November 2017 the FIF and Noor Bank each reported the attempted transfer to the office for Public Prosecution in Dubai (the **Dubai Public Prosecutor**) and on 21 November 2017 the Dubai Public Prosecutor issued a resolution to freeze the Noor Bank Account and form a joint committee of various legal entities to prepare a joint report on its activities.

41. On 22 March 2018, the Dubai Public Prosecutor made a request for assistance to the Kuwaiti Public Prosecutor. In addition to the matters identified in Noor Bank's suspicious activity report, the Dubai Public Prosecutor's request identified as further grounds for suspicion that Port Link had requested Noor Bank transfer USD 94.6 million to Ideal Gulf Holding Limited (**Ideal Gulf**), a shell company said to be owned by one of the authorised signatories of Port Link's bank account and incorporated in the Ajman Free Zone, an offshore free trade zone in the UAE. Ideal Gulf is neither a Limited Partner of the Fund nor, so far as the Plaintiffs are aware, a service provider or other entity with whom Port Link or the Fund had any contractual relationship.

42. The Noor Bank Account remained frozen until 5 February 2019.

43. As is explained further at paragraph 338.1 below, pending disclosure the Plaintiffs do not know the mechanism by which Port Link was denied the use or benefit of the sums BDO Trust attempted to wire transfer to its Noor Bank Account from on or around 21 November 2017 to 5 February 2019. References in this Statement of Claim to the Noor Bank Account being "*frozen*", and cognate expressions, should be read as without prejudice to the Plaintiffs' position as set out at paragraph 338.1 below.

The Lazareva Lobbying Campaign and Kuwaiti Criminal Proceedings

44. Since 2018, Ms Lazareva has been the subject of an international lobbying campaign in furtherance of which a number of law, public relations and lobbying firms have been engaged and several high profile private individuals have been mobilised (the **Lazareva Lobbying Campaign**).

45. On 10 July 2018, Ms Lazareva commenced arbitration proceedings in the International Centre for Settlement of Investment Disputes against the State of Kuwait, ICSID Case No. UNCT/19/1 (the **ICSID Arbitration**).

46. Mr Dashti and Ms Lazareva have been the subject of criminal proceedings in Kuwait (criminal cases 1942/2015 and 1496/2012) that are referred to as the **Kuwaiti Criminal Proceedings** below.

47. For the avoidance of doubt, the Plaintiffs rely on the Kuwaiti Criminal Proceedings as background to the claims advanced but they do not rely on the correctness of the allegations made therein.

48. As set out in Section J3 below, Port Link has unlawfully caused the Port Fund to pay substantial sums of money in support of the Lazareva Lobbying Campaign, Mr Dashti and Ms Lazareva's defence of the Kuwaiti Criminal Proceedings and the ICSID Arbitration.

C. PORT LINK'S DUTIES TO THE PLAINTIFFS

49. Section 3 of the ELP Act preserves the rules of equity and common law applicable to partnerships as modified by the Partnership Act (excluding certain sections which are not relevant to these proceedings).

50. Section 19(1) of the ELP Act imposed a statutory duty upon Port Link to act at all times in good faith and, subject to any express provisions of the LPA to the contrary, in the interests of the partnership. The LPA contained no such provisions limiting the statutory duty of good faith.

51. At all material times, Port Link held all rights and property of the Fund of every description upon trust as an asset of the exempted limited partnership (and hence for each of the partners that made up the limited partnership). Port Link did so as a matter of statute from 2 July 2014 when section 16(1) of the ELP Act came into force pursuant to the revisions made to the ELP Act 2014. Prior to that date it did so in equity and/or at common law.

52. Accordingly, all material times Port Link as general partner of the Port Fund owed and continues to owe the following duties to the Plaintiffs as Limited Partners thereof:

52.1 a duty to account to the Plaintiffs in respect of its dealings with the trust property;

52.2 a duty of utmost good faith and loyalty in equity and/or at common law to each of the Limited Partners of the Port Fund (and the Fund itself) by virtue of the relationship of absolute trust and confidence between Port Link and the Limited Partners of the Fund and the fact that all of the assets of the Fund and its management were vested in Port Link to the exclusion of the Limited Partners;

52.3 a duty pursuant to section 4(3) of the ELP Act as originally enacted in 1991 and subsequently section 19(1) of the ELP Act (2014 Revision) and all subsequent revisions of the ELP Act to act at all times in good faith and in the interests of the Fund;

52.4 a duty in equity and/or at common law and/or impliedly pursuant to the LPA to the Port Fund and the Limited Partners of the Port Fund to protect, preserve and manage the assets of the Fund for the benefit of the Fund and its Limited Partners;

52.5 a duty in equity and/or at common law and/or impliedly pursuant to the LPA:

(a) not to make a profit (whether directly or indirectly) at the expense of the Limited Partners without their full knowledge and consent;

(b) alternatively, not to make a profit (whether directly or indirectly) at the expense of the Limited partners absent a rational and good faith belief that the terms and conditions of the transaction in question were no less favourable to the Limited

Partners than those that could have been obtained for comparable products or services from an unaffiliated third party with comparable expertise and experience;

52.6 a duty in equity and/or pursuant to section 29(1) of the Partnership Act (2013 Revision) to account to the Fund for any benefit derived by it without the consent of the other partners from any transaction concerning the partnership, or from any use by it of the partnership property, name or business connection.

52.7 a duty in equity and/or at common law, to disclose to the Limited Partners any breach of duty or other misconduct by it or any person or entity engaged by it as an employee or agent; and

52.8 a duty pursuant to an implied term under the LPA that Port Link would carry out its role as General Partner with reasonable skill and care, alternatively a like duty at common law.

53. Port Link owed the following further relevant duties to maintain the Fund's books and records and provide information to the Limited Partners regarding the business and affairs of the Fund (the **Information Obligations**):

53.1 a duty pursuant to section 21 of the ELP Act to keep proper books of account including, where applicable, material underlying documentation, necessary to give a true and fair view of the Port Fund's business and financial condition and to explain its transactions;

53.2 a duty pursuant to section 22 of the ELP Act to provide to the Limited Partners on demand true and full information regarding the state of the business and financial condition of the Fund; and

53.3 a duty pursuant to Clause 7.1 of the LPA to keep appropriate records and books of account for the Fund and provide to the Limited Partners (a) access to such records and books of account and (b) copies of such records and books of account "*under such reasonable conditions and restrictions*" as it prescribed.

54. Further duties owed by Port Link to the Plaintiffs under the LPA are set out where relevant below.

D. IMPUTATION OF KNOWLEDGE

55. The knowledge of Ms Lazareva and Mr Dashti is to be imputed to Port Link at all material times until at least 24 May 2018, by reason of their directorships of Port Link.

56. The knowledge of Mr Williams is to be imputed to Port Link at all material times, alternatively at least from 25 May 2018, by reason of his role pleaded at paragraphs 23 to 24 as *de facto*, alternatively shadow, director of Port Link and/or its directing mind and will and/or an agent of Port Link with general authority.

57. The knowledge of the Investment Management Company in relation to the Port Fund is to be imputed at all material times to Port Link by reason of *inter alia* the following:

57.1 Under the IMA, Port Link delegated broad authority to the Investment Management Company to act on its behalf and that of the Port Fund in respect of the Fund's business and affairs;

57.2 Ms Lazareva was a director of both Port Link and the Investment Management Company;

57.3 Mr Williams was the Investment Management Company's Investment Director and/or a *de facto* or shadow director of the Investment Management Company and his knowledge is also to be attributed to Port Link as pleaded at paragraph 56 above.

FSD2022-0041 Page 17 of 156 2022-03-03

E. CLAIM ONE: KGL KUWAIT'S LATE CAPITAL CONTRIBUTIONS AND GIC'S ADDITIONAL CONTRIBUTIONS

E1. The facts

Relevant provisions of the LPA

58. The LPA contained the following defined terms:

58.1 The term "**Capital Commitment**" was defined as the aggregate amount of cash (or other assets in the sole discretion of the general partner) agreed to be contributed as capital to the partnership by each partner as specified in the Subscription Agreement (as defined) and/or Schedule 1 as the same was modified from time to time under the LPA.

58.2 The term "**Initial Closing Date**" was defined as 31 July 2007 (or such earlier or later date as determined by the general partner, but no such other date was determined by Port Link).

58.3 The term "**Fund Investment**" was defined as any direct investment or investments in a Portfolio Company (as defined) through the purchase of equity (or its equivalents) in such company.

58.4 The term "**Interest**" was defined as follows:

> "*with respect to any Limited Partner other than a Defaulting Partner, as of any date, the interest of a Limited Partner in the Partnership, which may, where the context requires, be expressed as a percentage, the numerator of which is such Limited Partner's Capital Contribution and the denominator of which is the sum of the Capital Contribution of all Limited Partners other than Defaulting Partners. The "Interest" of a Limited Partner that is a Defaulting Partner, as of any date, shall be Zero*".

FSD2022-0041 Page 18 of 156 2022-03-03

59. Clause 4.1 contained the following relevant provisions:

59.1 By Clause 4.1(a), each Partner was required to contribute cash to the Partnership up to an aggregate amount set out in Schedule 1 and equal to such Partners' Unfunded Commitment from time to time. Unfunded Commitment was defined as the amount of each Limited Partner's Capital Commitment (as defined) which, at such time, had not been called by the General Partner.

59.2 Clause 4.1(b) set out the sums to be paid if and when a Limited Partner increased its Unfunded Commitment, i.e. when it increased the amount it agreed to invest in the fund beyond the amount represented by the Capital Commitment it originally committed to invest.

59.3 Clause 4.1(d) provided (so far as relevant) that:

> "*The balance of each Partner's Unfunded Commitment shall be paid to the Partnership, or to pay or provide for fees, expenses, liabilities and obligations of the Partnership ... from time to time as calls are made by the General Partner upon the Partners, in such amount (the "**Call Amounts**") and on such dates as shall be specified by the General Partner upon at least 30 calendar days' prior written notice (the "**Call Notice**") by the General Partner.*"

59.4 Clause 4.1(h) provided that each Partner was required to contribute to the aggregate Call Amount in proportion to its Unfunded Commitment and the amount of each Partner's contribution was to be set out in the Call Notice given to such Partner.

59.5 Clause 4.1(i) defined "**Defaulting Partner**" as a Partner which has failed "*to pay when due any portion of its Capital Contribution to an investment called for by the General Partner, its share of the Management Fees or Fund expenses, or any other payment called for pursuant hereto when due.*"

59.6 Clause 4.1(j) provided that in circumstances where a Partner was in default pursuant to Clause 4.1(i):

FSD2022-0041 Page 19 of 156 2022-03-03

"the General Partner will have the right, in addition to all other available remedies, at the General Partner's sole and absolute discretion:
(i) to require the Defaulting Partner to forego future gains or income (and distributions in respect thereof) on investments made prior to its default, but continue to be subject to losses or reductions in value on such investments;

(ii) to require the Defaulting Partner to transfer, effective immediately upon written notice, the Defaulting Partner's Interest, in which event the Defaulting Partner will be required to transfer its Interest at a transfer price equal to 50 percent of (A) the total Capital Contributions made by the Defaulting Partner less (B) any expenses, deductions or losses allocated to the Defaulting Partner (which Interest will be offered to the other Limited Partners on a pro rata basis);

(iii) to cancel all or any portion of the Defaulting Partner's Unfunded Commitment;

(iv) to require the withdrawal of the Defaulting Partner;

(v) to cause the Defaulting Partner to lose any right to vote its Interest;

(vi) to require the Defaulting Party to pay the Partnership for the benefit of the non Defaulting Partners an amount estimated by the General Partner to be the damages suffered by the Partnership as a result of the breach; and/or

(vii) to cause the Defaulting Partner to pay interest at a rate equal to the lesser of fourteen percent or the maximum legal rate on the defaulted amount; provided that, other than following a transfer of all of a Defaulting Partner's Interest pursuant to (ii) or the withdrawal of a Limited Partner pursuant to (iv) above, a Defaulting Partner shall, in each case, remain fully

FSD2022-0041 Page 20 of 156 2022-03-03

liable (to the extent permitted by law) with respect to its obligations under the Partnership Agreement as if such default had not occurred.

59.7 As a matter of construction of the LPA, alternatively by necessary implication or as a matter of law, in exercising its discretion pursuant to Clause 4.1(j), Port Link was required to comply with its duties set out in Section C above, including to act at all times in good faith and in the interests of the Fund, and to carry out its role with reasonable skill and care.

60. Clause 4.2 required the General Partner to maintain a "**Capital Account**" for each Limited Partner on the books of the partnership in accordance with the terms set out in Clause 4.2(a)-(g). These included (so far as relevant) that:

60.1 Pursuant to Clause 4.2(a), a Limited Partner's Capital Contribution was to be added to its Capital Account when and as received by the Partnership;

60.2 Pursuant to Clause 4.2(b), Net Profit (as defined in the LPA) attributable to any exited Fund Investment was to be allocated among Limited Partners by reference to each partner's Capital Contribution in accordance with the waterfall set out in Clause 4.2(b)(i)-(iv);

60.3 Pursuant to Clause 4.2(d), any Net Loss (as defined in the LPA) was required to be allocated to the Limited Partners in accordance to their respective Capital Contributions and then deducted from each Limited Partner's Capital Account.

61. Clause 4.3 of the LPA set out a waterfall for the order of distributions from exited Fund Investments. In particular, Clause 4.3(b) provided that distributions from exited Fund Investments were to be distributed to the partners in accordance with the following provisions:

61.1 100% to all Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment until each Limited Partner received an amount equal to its Capital Contribution employed in that particular Fund Investment;

61.2 then 100% to the Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment until each Limited Partner received (*pro rata* on the basis of a 365 day year) a compounded 8% per annum return on its Capital Contribution employed in that particular Fund Investment;

61.3 then 100% to the Investment Management Company until it received 20% of the amount allocated to the Limited Partners pursuant to (ii) above;

61.4 then 80% to the Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment and 20% to the Investment Management Company.

Port Link's treatment of late payments of Capital Commitments

62. In the period following the Initial Closing Date, Kuwait Ports Authority (**KPA**) agreed to contribute USD 50 million as capital to the Fund (the **KPA Initial Contribution**) and KGL Kuwait agreed to contribute USD 20 million as capital to the Fund (the **KGL Kuwait Initial Contribution**). Pending disclosure, the Plaintiffs are unable to confirm the precise dates of such agreements.

63. KGL Kuwait is a related party of Port Link: paragraph 11 above is repeated.

64. KGL Kuwait failed to pay its Initial Contribution on time as required under the LPA. Pending disclosure, the Plaintiffs do not currently know precisely how or when the KGL Kuwait Initial Contribution was deemed by Port Link to have been paid. However, it appears that the contribution was deemed paid in 20 instalments during the period May 2008 to October 2016.

65. It appears that Port Link calculated (some of) the interest deemed owing by KGL Kuwait pursuant to Clause 4.1(j) of the LPA in respect of its late payments and recorded such amounts as receivables in the books of the Fund. But the Plaintiffs do not know precisely how such interest was calculated. No such interest was actually levied on KGL Kuwait (nor was any other sanction imposed on KGL Kuwait as set out in Clause 4.1(j) or otherwise) or paid in any form to the non-defaulting Limited Partners such as the Plaintiffs (whether by way of adjustments to the Limited Partners' Capital Accounts or otherwise). The Plaintiffs

FSD2022-0041 Page 22 of 156 2022-03-03

understand that in 2021 Port Link purportedly set off some amount of the receivable from KGL Kuwait against amounts allegedly (but not in fact: see Section J2 below) owed by the Fund to KGLI Asia.

66. This was not in accordance with Port Link's normal practice in relation to late payments as is shown by Port Link's treatment of the KPA Initial Contribution.

66.1 The KPA Initial Contribution was paid on 19 July 2010.

66.2 It appears Port Link treated KPA as a Defaulting Partner (as defined) in respect of the KPA Initial Contribution and pursuant to, or purportedly pursuant to, Clause 4.1(j)(vii) of the LPA, Port Link levied interest on KPA of 10.79% per annum on the KPA Initial Contribution in respect of the period from (a) the dates on which the KPA Initial Contribution would have been paid had KPA invested such monies at the time the then existing Limited Partners in the Fund had been required to make their Capital Contributions, to (b) the date the KPA Initial Contribution was ultimately made i.e. 19 July 2010.

66.3 It reduced KPA's Capital Account by an equivalent amount and distributed this amount to the other Limited Partners, *pro rata* to their Interest in the Fund, by way of a credit in their Capital Accounts.

67. There was no reason why KGL Kuwait should have been treated preferentially in this way, when compared to the other Limited Partners including KPA.

68. Had Port Link treated KGL Kuwait the same as or in parity with KPA, it would have levied interest pursuant to Clause 4.1(j)(vii) of at least USD 6.1 million on KGL Kuwait and it would have allocated this sum to the non-defaulting Limited Partners (including the Plaintiffs) *pro rata* to their respective interests, by way of a credit to their Capital Accounts. Accordingly:

68.1 At all material times since the interest on KGL Kuwait's late payment should have been collected and allocated to the Plaintiffs' Capital Accounts, Port Link has erred in failing to record the sum in the Plaintiffs' Capital Accounts in the Fund's books and records;

68.2 In making distributions to the Limited Partners following the exiting of the Fund's investments and winding up of the Fund, Port Link erroneously calculated the distributions due to GIC on the erroneous basis of the Capital Accounts as uncorrected to give effect to the interest that ought to have been levied on KGL Kuwait.

Increased Capital Commitments

69. At the end of 2012 and during the first half of 2013, GIC, together with KPA and another Limited Partner, Behbehani Investment Company (**BIC**), agreed to and did contribute further capital to the Fund in the total amount of USD 45,300,000 (the **Increased Capital Commitments** and, in respect of GIC's further contribution alone, **GIC's Increased Capital Commitment**). The Increased Capital Commitments were governed by Clause 4.1(b) of the LPA.

70. In relation to the Increased Capital Commitments, GIC entered into a Deed of Consent and Waiver dated 31 December 2012 (the **Deed of Consent**). The effect (in summary) of Clause 2.3 of the Deed of Consent was that if the Fund accepted investment from a new investor in the Fund (i.e. an Additional Limited Partner as defined in Clause 4.1(b) of the LPA), the Additional Limited Partner's interest would be valued in accordance with Clause 2.3(b) of the Deed of Consent. Clause 2.3(b) did not apply to Existing Limited Partners (as defined in the Deed of Consent) who increased their Capital Commitments to the Fund, such as GIC, KPA and BIC, to which Clause 4.1(b) of the LPA applied without amendment.

71. However, Port Link did not follow the provisions of Clause 4.1(b) of the LPA in relation to the Increased Capital Commitments because it erroneously treated each of GIC, KPA and BIC as an Additional Limited Partner (i.e. an investor that was a new investor in the Fund) when they were in fact Existing Limited Partners increasing their Capital Commitments to the Fund. Accordingly, the Increased Capital Commitments were erroneously valued by reference to Clause 2.3(c) of the Deed of Consent on the basis of the net asset value of the Fund as at 31 December 2011 (less any applicable Late Payment Fee) (as defined in the Deed of Consent). GIC's Increased Capital Commitment and resulting Interest in the Fund should have been valued in accordance with Clause 4.1(b) of the LPA.

FSD2022-0041 Page 24 of 156 2022-03-03

72. As a result of the erroneous procedure followed, at all material times since GIC's Increased Capital Commitment, Port Link has treated GIC's Interest in the Fund as 9.28%. Had Port Link treated GIC's Increased Capital Commitment correctly in accordance with Clause 4.1(b), it should have treated GIC's Interest in the Fund as being 10.63% after the relevant capital was contributed. In particular:

72.1 At all material times since GIC's Increased Capital Commitment Port Link has erroneously recorded GIC's Interest at 9.28% instead of 10.63% in its Capital Account maintained in the partnership's books;

72.2 Port Link erroneously allocated the Net Profit from the Negros Navigation sale and Clark Asset sale to GIC's Capital Account in the partnership's books on the erroneous basis that GIC had an Interest of 9.28% rather than 10.63%;

72.3 In making its distributions of the proceeds of the Clark Asset sale, Port Link erroneously calculated the distributions due to GIC on the erroneous basis that it had an Interest of 9.28% rather than 10.63%.

E2. Port Link's breaches of duty and trust

73. In the premises of paragraphs 62 to 68 above, Port Link acted in breach of contract and in breach of its duties to the Plaintiffs arising in equity and/or at common law:

PARTICULARS

73.1 In continuing breach of Clause 4.1(j) of the LPA, Port Link's duties of good faith and loyalty and its duties to act in the best interests of the Fund, to manage the Fund with the care and skill to be expected of a reasonably competent General Partner and to preserve and manage the Fund's assets for the benefit of the Fund and its Limited Partners, Port Link treated its related party, KGL Kuwait, preferentially by failing to levy any interest on it in respect of the KGL Initial Contribution and failing to allocate it to the non-defaulting Limited Partners' Capital Accounts pro rata to their interests, whereas it did levy such interest on the KPA Initial Contribution and allocate this sum *pro rata* to the non-defaulting Limited Partners' Capital Accounts;

73.2 In continuing breach of Clause 4.2 of the LPA and its sub-clauses 4.2(a) and 4.2(b), its duty of good faith and loyalty and its duties to act in the best interests of the Fund, to manage the Fund with the care and skill to be expected of a reasonably competent General Partner and to preserve and manage the Fund's assets for the benefit of the Fund and its Limited Partners, at all material times since the date (presently unknown to the Plaintiffs) on which the interest on KGL Kuwait's late payment should have been collected and allocated, Port Link has failed correctly to adjust and maintain the Plaintiffs' Capital Accounts in the Fund's books and records to reflect its *pro rata* share of the interest that should have been levied on KGL Kuwait;

73.3 In breach of Clause 4.3 of the LPA, its duty of good faith and loyalty and its duties to act in the best interests of the Fund, to manage the Fund with the care and skill to be expected of a reasonably competent General Partner and to preserve and manage the Fund's assets for the benefit of the Fund and its Limited Partners, in making distributions to the Limited Partners following the exiting of the Fund's investments and winding up of the Fund, Port Link erroneously calculated the distributions due to the Plaintiffs on the erroneous basis of the Capital Accounts as uncorrected to give effect to the interest that ought to have been levied on KGL Kuwait.

74. In the premises of paragraphs 69 to 72 above, Port Link acted in breach of contract and in breach of its duties to the Plaintiffs arising in equity and/or at common law:

PARTICULARS

74.1 In breach of Clause 4.1(b) of the LPA and Port Link's duty to use reasonable care and skill, in relation to GIC's Increased Capital Commitment, Port Link treated GIC as an Additional Limited Partner under the Deed of Consent and thereby under-valued its Interest in the Fund;

74.2 In continuing breach of Clause 4.1 of the LPA and its sub-clauses 4.2(a) and 4.2(b) and Port Link's duty to use reasonable care and skill, at all material times since GIC's Increased Capital Commitment Port Link has erroneously treated GIC's Interest in the

Fund as being 9.28% instead of 10.63% and has recorded the same in the Capital Accounts maintained in the partnership books; and

74.3 In breach of Clause 4.2 of the LPA and its duty to use reasonable care and skill, Port Link allocated the Net Profit from the Negros Navigation sale and Clark Asset sale to GIC's Capital Account in the partnership's books on the erroneous basis that GIC had an Interest of 9.28% rather than 10.63%;

74.4 In breach of Clause 4.3 of the LPA and its duty to use reasonable care and skill, in making its distributions of the proceeds of the Clark Asset sale, Port Link calculated the distributions due to the Plaintiffs on the erroneous basis that GIC had an Interest of 9.28% rather than 10.63%.

75. Further or alternatively, in the premises of paragraphs 62 to 72 above, Port Link acted in breach of trust in that to the extent that the distributions made to GIC and/or GRSIA following the Negros Navigation and Clark Asset sales were calculated on the basis of erroneous Capital Accounts, the payments or distributions other than to the Plaintiffs were, to the extent of the shortfall compared to what the Plaintiffs should have received, unauthorised disposals in breach of trust.

E3. Loss and damage

76. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that:

76.1 Had Port Link treated KGL Kuwait the same as or in parity with KPA in respect of its failure to pay the KGL Kuwait Initial Contribution on time, it would have levied interest pursuant to Clause 4.1(j)(vii) of at least USD 6.1 million on KGL Kuwait; allocated this sum to the non-defaulting Limited Partners *pro rata* to their respective interests, increasing the Plaintiffs' Capital Accounts by USD 658,858 (in the case of GIC) and USD 458,393 (in the case of GRSIA); increased the allocation of the Net Profit from the Negros Navigation and Clark Asset sales by reference to the Plaintiffs' increased Capital Accounts and increased the distributions to the Plaintiffs from the Clark Asset sales accordingly;

76.2 Had Port Link correctly valued GIC's Increased Capital Commitment in accordance with Clause 4.1(b) of the LPA, it would have recorded GIC's Interest in the Fund as 10.63% and allocated Net Profit from the Negros Navigation and Clark Asset sales to GIC's Capital Account on this basis, and made distributions from the Clark Asset sales on this basis;

77. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount of loss suffered by each of the Plaintiffs thereby are set out in Section M below. Further or alternatively, Port Link is obliged to account to the Plaintiffs in the same amount.

F. CLAIM TWO: THE APACHE PAYMENTS

F1. The Facts

Apache

78. The Fifth Defendant, Apache HK, was incorporated in Hong Kong on 7 February 2013. From 2013 until 6 December 2018, its sole registered shareholder was Highnoon Limited (**Highnoon**), a company incorporated in Hong Kong, which was throughout that period a corporate director of Apache HK. Apache HK's registered office appears to have been situated at the same address at all material times as a Hong Kong based law firm, Weir & Associates.

79. The Sixth Defendant, Apache Macao, was incorporated in Macao on 9 August 2013. Its registered shareholders at that time were Highnoon and Granville Limited (**Granville**), a company incorporated in Hong Kong. Mr Shane Weir, the owner of Weir & Associates, was at all material times a director of Granville. Regarding Mr Weir's connection to Mr Ayliffe, in their "*Due Diligence Memorandum regarding payments to Apache*" dated 28 May 2021 at paragraph 11.5, Port Link's current directors stated that "*Mr Ayliffe has confirmed that Mr Weir is an attorney who has worked with Mr Ayliffe for a number of years and fulfilled various corporate roles for Mr Ayliffe and his group of companies*".

80. In this Statement of Claim, the term **Apache** means Apache HK and/or Apache Macao.

81. At all material times between 2013 and 6 December 2018, Granville was the sole registered shareholder of Highnoon, and Highnoon was the sole registered shareholder of Granville. It is to be inferred that:

81.1 There was or were some other natural or legal person or persons who beneficially owned Apache HK and Apache Macao.

81.2 Apache HK and Apache Macao had been deliberately structured in a way that was calculated to make it difficult or impossible to identify that person.

82. On 6 December 2018, Granville transferred its shares in Highnoon to Ms Cheongar Wong, a partner of Weir & Associates. It is to be inferred that Ms Wong was acting for a person or persons unknown and was not the beneficial owner of those shares.

83. On 15 February 2019, Highnoon transferred its sole share in Apache HK to a Hong Kong company, Capital Corporation Limited, which two days earlier had become Apache HK's corporate director. The registered shareholders of CCL are Mr Weir and Ms Wong. It is to be inferred that they hold their shares as nominees for a person or person unknown.

84. The other directors of Apache HK (apart from Highnoon and CCL) have been:

84.1 Mr Ayliffe, from 1 April 2013 to 5 March 2014, and again from 15 April 2020, who is said (on Apache's website) to be the founder of Apache.

84.2 Ms Bee Lin Ang, from 5 March 2014.

85. Apache:

85.1 Does not do business at the address in Hong Kong given on its website as its "*Hong Kong office*" (16th Floor, Tesbury Centre, 28 Queen's Road East, Wanchai) and never has done. No allegation or admission is made as to whether it has ever done business from premises elsewhere.

85.2 Has a website which claims that it operates as a "*merchant bank operating in the Asia Pacific Region*". The website is unsophisticated and not consistent with doing business as a merchant bank; it has not been updated since around 2016. Apache is not and never has been an institution fairly capable of being described as a "merchant bank", or as an "investment bank".

85.3 Does not on its website claim to have any track record of doing any transactions, other than three transactions related to the Port Fund namely (i) the refinancing of senior debt for 2GO group (in which, at the material time, the Port Fund had a substantial indirect interest), (ii) the arrangement of an equity swap for an undisclosed client (in fact 2GO), and (iii) the arrangement of a USD 45 million loan for the Port Fund, which transactions are all described below.

85.4 Claims, by Mr Ayliffe, to have retained no paperwork and to have access to no contemporaneous emails, and is said (now) to operate using a personal Gmail account.

86. Mr Ayliffe, who is said by Port Link to have been Apache's founder, had worked as an investment banker at Deutsche Bank, Merrill Lynch, and Bank of America Merrill Lynch.

87. At the material times, Apache had no more than two purported employees other than Mr Ayliffe, namely Mr Brett Braude (a corporate finance attorney) and Mr Calvin Lee (a banker).

88. Apache had no track record prior to 2013 and enjoyed no market reputation. It did not engage in any transactions other than in relation to the Port Fund. Nor, even on the basis of what is said to have been his curriculum vitae (annexed to a report prepared by Mr Marti P Murray for Port Link dated 5 October 2021), and even if that document is accurate, did Mr Ayliffe engage in any advisory work except in connection with the Port Fund between 2013 and 2017.

89. Apache's website:

89.1 was at all material times until at least 13 June 2019 registered to KGL Kuwait, by whom it was first registered in November 2012 (prior to Apache's incorporation, and at a time when Mr Ayliffe, the purported founder of Apache, was employed by Merrill Lynch);

89.2 was, from 2013 until at least 13 June 2019, hosted on a server owned by "Matt Williams Consulting", a trading name and/or trading entity owned by Mr Mark Williams' brother, which also provided web-hosting services to KGL Kuwait, KGLI Asia, the Port Fund, and Wellspring; and

89.3 recorded the name of one Anas Matar, an IT infrastructure manager employed by KGL Kuwait between September 2011 and 2014, on its domain name records from November 2012 until August 2018.

90. In or around 2012, KGL Kuwait provided money to Ayliffe to enable Ayliffe to establish Apache, in the sum of USD 950,000 or thereabouts. That money was returned in or around August 2013. Because Apache's only source of income in 2013 appears to have been the Port Fund and KGL Kuwait, it is to be inferred that it was directly or indirectly repaid out of money derived from the Port Fund and/or KGL Kuwait.

91. Apart from the engagements or purported engagements hereinafter described on behalf of the Port Fund, Apache apparently had an advisory agreement with KGL Kuwait, pursuant to which it was paid at least USD 70,000, as described in paragraphs 148 to 150 below.

92. In the premises, Apache was not a third party company operating truly at arm's length from the Port Fund. Whoever was or were its ultimate beneficial owner(s) (which has been said to be Mr Ayliffe, but the Plaintiffs do not know), it was closely connected with KGL Kuwait and it is to be inferred was formed solely for the purpose of dealing with the Port Fund.

The First Negros Engagement

93. On or about 12 February 2013, that is to say five days after Apache's incorporation, Port Link on behalf of the Port Fund purportedly retained Apache HK as a non-exclusive adviser in connection with a proposed capital raising of USD 15 million (required to meet the Fund's capital call obligation in relation to the Fund's Negros Navigation investment), agreed to pay

FSD2022-0041 Page 31 of 156 2022-03-03

Apache a 5% fee (the **First Negros Engagement**) and to reimburse Apache HK for expenses. The First Negros Agreement was signed by Mr Ayliffe on behalf of Apache and by Ms Lazareva on behalf of the Port Fund.

94. That fee would have been high as a fee to be paid to an established investment bank with a full staff and reputation. As a fee paid to what was in effect a one-man company with no reputation, it was manifestly excessive. Despite having the opportunity to do so in the proceedings brought by the KPA (FSD Cause No 236 of 2020 (RPJ)) (the **KPA Proceedings**), Port Link has not provided any evidence that the fee was negotiated or agreed at arm's length.

95. In the KPA Proceedings, Port Link has asserted that Apache HK was successful, pursuant to that arrangement, in obtaining financing from Goldman Sachs. Beyond asserting that Mr Ayliffe "introduced" the Port Fund to Goldman Sachs, Port Link has produced no documentary evidence that Apache HK provided any advice to the Port Fund or performed any services pursuant to the First Negros Agreement and no invoices for any expenses incurred by Apache HK thereunder, and it is to be inferred (and the Plaintiffs allege) that it did not provide any alternatively any substantial services thereunder.

96. On or about 9 August 2013, the Port Fund (or Port Link acting on behalf of the Port Fund) entered into a facility agreement with, *inter alios*, Best Investments (Delaware) L.L.C., a subsidiary of Goldman Sachs, by which Goldman Sachs agreed to provide to KGL Investment B.V. a loan of USD 45 million (the **Goldman-Negros Loan**). Port Link has stated that KGL Investment B.V. was a Dutch company owned 99% at all material times by Port Link on behalf of the Port Fund for the purpose of holding the Fund's investment in Negros Navigation.

97. On or about 1 September 2013, Port Link paid (on behalf of the Port Fund) a sum of USD 1,750,000 to Weir & Associates, for the account of Apache Asia Macau.

98. On or about 4 November 2013, Port Link paid (on behalf of the Port Fund) a further USD 400,000 to Apache HK.

99. On or about 27 January 2014, Port Link paid (on behalf of the Port Fund) a further USD 100,000 to Apache HK.

100. The aforesaid three payments, totalling USD 2,250,000 are said by Port Link to represent the 5% fee due to Apache under the First Negros Agreement. Port Link has produced no invoices relating to the payments, no explanation for why any payment was made to Weir & Associates or to Apache Macau, and no explanation for why the payments were made in the amounts and at the times they were.

The GGDC Financing Engagement

101. On or around 9 April 2013, Apache Macao purportedly entered into an engagement letter appointing Apache Macao as GGDC's sole and exclusive financial adviser with respect to the placement of senior, mezzanine, convertible, or hybrid debt securities, for a period of two years, automatically renewing for one year periods thereafter unless terminated (the **GGDC Financing Engagement Letter**).

102. The GGDC Financing Engagement Letter provided for GGDC to pay Apache Macao a fee of 4% on the gross amount of committed mezzanine, convertible, or hybrid debt on the closing of any transaction, and a fee of 1.5% on the gross amount of any committed senior debt on the closing of a transaction.

103. The fees agreed to be paid under the GGDC Financing Engagement Letter would have been high as a fee to be paid to an established investment bank with a full staff and reputation. As a fee to be paid to what was effectively a one-man company with no reputation and minimal staff, it was manifestly excessive. Despite having the opportunity to do so in the KPA Proceedings, Port Link has not provided any evidence that the fee was negotiated or agreed at arm's length.

104. Further and in any event, no reasonable person could have considered that it was in the best interests of the Port Fund or of GGDC to commit GGDC to an exclusive advisory arrangement for a term of two years or longer to a one-man company formed two months earlier with no reputation or track record.

FSD2022-0041 Page 33 of 156 2022-03-03

105. In accordance with its terms, the GGDC Financing Engagement Letter would have expired on 8 April 2015, and GGDC could then have terminated it. It apparently did not do so. Despite the opportunity to do so, Port Link has produced no evidence in the KPA Proceedings that Apache provided any or any substantial services to GGDC in the period up to 8 April 2015, or otherwise explained the decision not to terminate the GGDC Financing Engagement Letter when it expired.

106. On or about 25 May 2015, GGDC concluded a USD 40 million loan with ADM Gateway Holdings Limited (**ADM**). Mr Williams on behalf of GGDC (and on behalf of Port Link) authorised Apache to be paid 4%, namely USD 1.6 million, out of the proceeds of the loan on or around 29 June 2015.

107. On or about 18 September 2015, GGDC concluded a USD 150 million loan with Barings and ADM whereby the amount borrowed under the loan referred to in the previous paragraph was increased to USD 150 million. Mr Williams on behalf of GGDC (and on behalf of Port Link) authorised Apache to be paid USD 4.4 million, calculated as 4% of the difference between that loan and the existing loan, namely USD 110 million.

108. On or about 8 September 2015, Apache issued two invoices to GGDC:

108.1 An invoice (**Invoice A**) for USD 1,984,500 purportedly for (i) USD 300,000 in respect of "*third party experts*" (who were not and never have been identified, and which Mr Williams has subsequently claimed represented a mis-described claim for interest at 20% per annum); (ii) USD 84,500 in respect of unspecified "*travel expenses*"; and (iii) a balance of USD 1.6 million purportedly in respect of the "*remaining portion of the held back fee for USD 150,000,000 capital raising by way of loan to GGDC, Clark*".

108.2 An invoice (**Invoice B**) for USD 2,122,500, purportedly in respect of (i) interest "*due on loan from 18 September for one year – USD 325,000*", (ii) unspecified "*expenses*" of USD 97,500 and (iii) "*Remaining portion of fee held back for USD 150,000,000 capital raising by way of loan to GGDC Clark – USD 1,700,000.*"

FSD2022-0041 Page 34 of 156 2022-03-03

109. The fees claimed in Invoice A and Invoice B as allegedly "*held back*" totalled USD 3.3 million. However:

109.1 No part of any fee due to Apache Macao had been "held back". Even assuming that the GGDC Financing Engagement Letter was effective in accordance with its terms, Apache Macao was not entitled to be paid a fee of 4% on the USD 150 million loan in circumstances where only USD 110 million thereof was new money.

109.2 In any event, had it been so entitled, its maximum entitlement would have been for 4% of USD 40 million, namely USD 1.6 million.

109.3 It is to be inferred from its failure to produce any such evidence in the KPA Proceedings that there was no written agreement to pay interest at 20% on any such fee, and it is to be inferred that GGDC had not agreed to pay such interest.

109.4 Had it agreed to pay such interest, the sum due under Invoice A for one year (which, in any event, had not yet passed when the invoice was issued) would have been USD 320,000 (not USD 300,000), and it would not have been described as the expenses of "third party experts".

109.5 Had it agreed to pay such interest, the sum due under Invoice B for one year (which, in any event, had not yet passed when the invoice was issued) would have been USD 340,000 (not USD 325,000), and it would not have been described as relating to a "loan".

109.6 No explanation has been provided of why two invoices (rather than one) were issued, or of the manifest errors therein, or the failure to identify those errors.

110. Mr Williams, acting on behalf of GGDC and/or Port Link, procured the payment of Invoice A by Clark Gateway Investment Group LP (**CGIG**) on or about 26 September 2016. CGIG is and was at all material times a Cayman Islands limited partnership which was established by the Port Fund.

111. Mr Williams, acting on behalf of GGDC and/or Port Link, purportedly procured the part payment of Invoice B by GGDC on or about 17 May 2017. Mr Williams has been unable or unwilling to provide any explanation of why:

111.1 Any sum was paid, in circumstances where Invoice A had already been paid.

111.2 The sum paid, namely USD 2,100,000 which is said to have been paid against Invoice B, was lower than the amount of Invoice B.

111.3 Of two invoices both purportedly dated the same date, one was paid in September 2016, and one not paid until 17 May 2017.

The Negros Sale Engagement

112. On or about 30 September 2014, the Port Fund and Apache HK and/or Apache Macao purportedly entered into an advisory and investor relationship services agreement relating to the sale of the Port Fund's shares in Negros Navigation (the **Negros Sale Engagement**).

113. The Negros Sale Engagement provided for Apache to be paid its expenses, and to receive a success fee (to be paid within 7 days of receiving funds from the buyer of Negros Navigation) at a rate of between 3% and 5%, depending on the price achieved.

114. The fees agreed to be paid under the Negros Sale Engagement would have been high as a fee to be paid to an established investment bank with a full staff and reputation. As a fee to be paid to what was effectively a one-man company with no reputation and minimal staff, it was manifestly excessive. Despite having the opportunity to do so in the KPA Proceedings, Port Link has not provided any evidence that the fee was negotiated or agreed at arm's length.

115. No contemporaneous written evidence that Apache performed any services under the Negros Sale Engagement has been provided by Port Link. Port Link has stated, including in a purported report concerning the sale of the Port Fund's interest in Negros Navigation dated November 2016, that Apache, which was described as a "*Hong Kong IB/investment advisor firm*", performed certain vaguely specified services in relation to it. The Plaintiffs

FSD2022-0041 Page 36 of 156 2022-03-03

make no admission that any services at all were provided; but if any were provided they were of no or no substantial benefit to the Port Fund.

116. As stated in paragraph 35 above, Port Link (on behalf of the Port Fund) sold its interest in Negros Navigation to Udenna in July 2016 for USD 120 million, which sum was fully paid on or about 16 August 2016.

117. On 21 August 2016, CGIG on behalf of Port Link on behalf of the Port Fund transferred USD 1.2 million to Apache purportedly as a final payment of a 5% success fee.

118. On 22 August 2016, CGIG on behalf of Port Link on behalf of the Port Fund transferred USD 4,980,000 to Apache purportedly as a part payment of a 5% success fee.

119. Port Link has been unable to produce any invoices related to those payments, and can explain the excess of USD 180,000 over the 5% that would have been due under the Negros Sale Engagement only on the basis that it is presumed to relate to expenses (details of which have not been provided).

The GGDC Sale Engagement

120. On 17 April 2015 Port Link, on behalf of the Port Fund (through Ms Lazareva) and Apache HK and/or Apache Macao purportedly entered into an engagement pursuant to which Apache was to facilitate the sale of the Port Fund's interest in GGDC (the **GGDC Sale Engagement**). The engagement was to last until 31 December 2017 or the sooner sale of GGDC. Apache was to be reimbursed for its expenses and paid a success fee of between 6% and 7% of the sale price, depending on the price.

121. The fees agreed to be paid under the GGDC Sale Engagement were 2-3 percentage points above the ordinary market rates for such an engagement payable to an established investment bank with a full staff and reputation. As a fee to be paid to what was effectively a one-man company with no reputation and minimal staff, it was manifestly excessive. Despite having the opportunity to do so in the KPA Proceedings, Port Link has not provided any evidence that the fee was negotiated or agreed at arm's length.

FSD2022-0041 Page 37 of 156 2022-03-03

122. Despite having the opportunity to do so in the KPA Proceedings, Port Link has not identified any substantial services provided by Apache after the conclusion of the GGDC Engagement Letter. It has identified only:

122.1 A single presentation jointly prepared by Apache and KGLI Asia in May 2015.

122.2 A presentation on "*exit options*" prepared in March 2016.

122.3 An investor presentation dated October 2016, which bears Apache's logo (alongside the logo of BNP Paribas, which was also engaged as an adviser in relation to the sale of GGDC). The Plaintiffs make no admission as to whether Apache in fact made any substantive input to that presentation.

122.4 Claims that Mr Ayliffe attended some meetings, including at least one meeting with Udenna (but not that he made any presentation to them, or that he was in any way instrumental in those discussions, or as to any specific services provided). The Plaintiffs do not know and do not allege or admit that he did attend meetings.

123. In connection with the proposed sale of GGDC, the Port Fund also engaged (or purported to engage) numerous additional advisers, including:

123.1 BNP Paribas, to which it was agreed, pursuant to an engagement letter between GGDC and BNP Paribas dated 29 July 2016, to pay a commission in an amount "*equal to the aggregate of (1) 1.25% of the principal amount of all "Class A" Preference Shares in [GGDC] placed in the [proposed sale] to investors identified and/or contacted by BNPP and (2) 2% of the principal amount of all "Class B" Preference Shares in [GGDC] placed in the [proposed sale] to investors identified and/or contacted by BNPP*";

123.2 Crescent Point, to which it was agreed to pay a 3% placement fee on an investment amount of USD 50-100 million; and

123.3 On Port Link's case (which the Plaintiffs do not accept), Mr Wilfred Placino.

FSD2022-0041 Page 38 of 156 2022-03-03

124. On 25 April 2017, Udenna entered into a letter of intent, which provided for a deposit of USD 30 million convertible to a preferred equity security on the terms therein set out in the event that Udenna failed to complete the transaction. Udenna appears in fact to have paid a deposit totalling USD 40 million between 9 May and 26 July 2017.

125. On 15 June, Apache issued an invoice for USD 1.8 million purportedly for a "*Part Transaction advisory fee on expected disposal of GGDC, Clark (6% of USD 30,000,000)*" (**Invoice C**). That invoice has been explained by Port Link as calculated on the basis that the USD 30 million deposit paid by Udenna was to be treated as a transaction under the GGDC Sale Agreement, on which a fee of 6% fell due.

126. Invoice C was paid by transfer from CGIG on behalf of Port Link (acting for the Port Fund) on or about 24 June 2017.

127. On 31 July 2017, UDEVCO entered into the GGDC SPA (as described in paragraph 36 above). Pursuant to the GGDC SPA, on 11 August 2017 UDEVCO nominated CGCC as purchaser of the Clark Asset.

128. On or about 1 October 2017, Apache issued an invoice for USD 600,000, purportedly for "*12 months advisory fee @ USD 50,000 per month*" (**Invoice D**).

129. In fact, there was no relevant advisory fee under which Apache was entitled to be paid USD 50,000 per month. Port Link's own position in a letter from its Cayman attorneys, Walkers (a firm), (**Walkers Cayman**) dated 27 February 2020 (the **27 February 2020 Letter**) (paragraph 11.2) was that "*Pursuant to the terms of the agreement between Apache and the Fund, Apache was not entitled to any retainer but was entitled to a success fee...*". The invoice is now said to relate to a success fee payable under the GGDC Sale Engagement, although Port Link has provided no explanation for why that would be so in circumstances where the sum mentioned does not correspond to anything due under that agreement, and when no such success fee (which was payable under the purported terms of the GGDC Sale Engagement within seven days of the receipt of funds from the buyer) was due.

FSD2022-0041 Page 39 of 156 2022-03-03

130. On 15 October 2017, CGIG (on behalf of Port Link, on behalf of the Port Fund) paid Invoice D. No adequate explanation for having done so has been provided and Port Link has been unable, in the KPA Proceedings, to explain how any invoice in those terms was due.

131. On 14 November 2017, Port Link (acting on behalf of the Port Fund) agreed to a share price adjustment under which the purchase price under the GGDC SPA was increased to USD 671,156,885 (the **Share Purchase Price Adjustment Agreement**).

132. That sum was paid on or about 15 November 2017.

133. On 23 November 2017, Petrolink Holding Company K.S.C.C. (**Petrolink Holding**) advanced USD 250,000 to Apache on behalf of the Port Fund, and on 4 December 2017 Petrolink Holding advanced USD 500,000 to Apache on behalf of the Port Fund, which sums the Port Fund repaid on or about 25 December 2017. Such sums were described as "*consultancy fees*". No invoice has been identified by Port Link relating to them, nor has it offered any explanation of how such a sum would have been due under the GGDC Sale Engagement.

134. On 7 January 2018, CGIG paid Apache (on behalf of Port Link, on behalf of the Port Fund) USD 6.5 million purportedly in respect of a "*Partial Advisory and Investor Relationship Fee*". No invoice has been identified by Port Link relating to that payment, nor has it offered any explanation of how that sum would relate to the GGDC Sale Engagement.

135. Had the parties been applying the GGDC Sale Engagement in accordance with its terms, then the sum due to Apache thereunder would have been:

    135.1 On the basis of the GGDC SPA, USD 45.85 million, due on 22 November 2017.

    135.2 On the basis of the upwardly revised price, USD 46,980,981.95, due on 22 November 2017.

136. In fact, however:

    136.1 The only invoice issued by Apache purportedly relating to the sums due was Invoice C.

FSD2022-0041 Page 40 of 156 2022-03-03

136.2 Invoice D did not refer to the terms of the GGDC Sale Engagement, and was inconsistent with it.

136.3 No explanation has been provided for how the subsequent payments made in 2017 and January 2018 related to the terms of that Engagement.

136.4 No further invoice was issued until Invoice E, described below.

137. On 8 February 2019, Apache issued an invoice with the narrative "*For the sale of Global Gateway Development Corporation – USD 36,200,000*" with an instruction to pay that sum to Apache's "*custodian bank*", a trust account with Crowell & Moring (**Invoice E**). No claim for interest was included.

138. Invoice E was paid as follows:

138.1 On or about 12 February 2019, USD 41.7 million was paid from Port Link's Noor Bank account (which then contained the proceeds under the GGDC SPA) to a trust account of the US law firm, Crowell & Moring (the **Crowell Trust Account**). The payment was said to constitute "*retainer monies paid to Crowell for their legal fees and for disbursements on behalf of the [Port Fund].*"

138.2 On 12 and/or 14 February 2019, Apache purported to give Crowell & Moring instructions to (i) "*retain and keep in trust*" USD 14.55 million in settlement of obligations said to be owed by Alternative Asset Management Limited (in fact, this was intended to be AAAML) to KGL Kuwait; and (ii) transfer USD 21.65 million to Law Custodial Inc.

138.3 Law Custodial Inc was at the material time a company owned and/or controlled by Mr Weir.

138.4 On or about 14 February 2019, Crowell & Moring effected those instructions, and the sum of USD 21.65 million was transferred to an account at OCBC Wing Hang,

FSD2022-0041 Page 41 of 156 2022-03-03

Central Branch, Hong Kong in the name of Law Custodial Inc (the **Law Custodial OCBC Account**).

138.5 During the period 18 February 2019 to 6 June 2019 a total of USD 3,722,994 was paid from the Law Custodial OCBC Account to an account at The Hongkong and Shanghai Banking Corporation, Central Branch, Hong Kong in the name of Apache HK.

138.6 On 20 February 2019, USD 500,000 was paid from the Law Custodial OCBC Account to an account at The Hongkong and Shanghai Banking Corporation, Main Office Branch, Hong Kong, in the name of Mr Ayliffe.

138.7 On 6 June 2019, USD 4,099,000 was paid from the Law Custodial OCBC Account to an account at OCBC Wing Hang, Central Branch, Hong Kong in the name of Apache HK (the **Apache OCBC Account**). On 24 June 2019, USD 3 million was transferred from the Apache OCBC Account to the Crowell Trust Account with the narrative reference "*FIRST DRAW LOAN*". Pending disclosure the Plaintiffs do not know why or for whose benefit this payment to Crowell & Moring was made.

The Loan Refinancing Engagement

139. On or about 16 July 2015, Port Link on behalf of the Port Fund (through Ms Lazareva) and Apache Macao purportedly entered into an engagement letter with respect to the refinancing of the Goldman-Negros Loan, under which the Port Fund appointed Apache Macao as its sole and exclusive financial advisor in connection with the refinancing of that loan (which is then said to have stood at USD 65 million) (the **Loan Refinancing Engagement**). The appointment was until 15 July 2017, or the sooner consummation of the transaction, or termination on 90 days' written notice. The Port Fund agreed to pay a flat fee of USD 1.75 million plus expenses of USD 1,000 per calendar month. That amounted, if refinancing of USD 65 million was required, to a rate of approximately 2.7%.

140. Whether or not that would have been a reasonable fee to pay to a reputable investment bank providing substantial services in connection with obtaining a loan of USD 65 million, as a fee to be paid to what was effectively a one-man advisory company with no reputation

FSD2022-0041 Page 42 of 156 2022-03-03

and minimal staff, it was manifestly excessive. Despite having the opportunity to do so in the KPA Proceedings, Port Link has not provided any evidence that the fee was negotiated or agreed at arm's length.

141. Despite having the opportunity to do so in the KPA Proceedings, Port Link has produced no documentary evidence that Apache performed any or any substantial services in connection with the Loan Refinancing Engagement Letter.

142. On or about 28 October 2015, KGL Investment B.V. and Tor Investment Management (Hong Kong) Limited (**Tor**) concluded a written term sheet for a USD 65 million loan, the proceeds of which were to be applied to refinancing the Goldman-Negros Loan.

143. On or about 17 December 2015, Apache sent an invoice to the Port Fund with the narrative "*For the USD 65,000,000 capital raising – USD 1,750,000*" (**Invoice F**).

144. Apache did not provide any invoice for its monthly expenses in connection with the Loan Refinancing Engagement Letter.

145. On or about 28 December 2015, KGL Investment B.V. purportedly entered into a loan facility with Madison Pacific Trust Limited, which purportedly was at all material times an entity controlled by Tor, on those terms (the **Tor-Negros Loan**).

146. On or about 29 December 2015, the sum of USD 1.75 million was remitted to Apache Asia directly from the funds drawn down under the Tor-Negros Loan.

Other Payments to Apache

147. On or about 28 October 2014, Port Link (on behalf of the Port Fund) paid the sum of USD 23,899 to Apache. Despite the opportunity to do so in the KPA Proceedings, Port Link has been unable to identify or produce any contract, invoice, or other contemporaneous document to explain the purpose of that payment.

148. On or about 23 April 2017, Port Link (on behalf of the Port Fund) attempted to pay the sum of USD 70,000 to Apache. The payment was returned on 12 June 2017. Despite the

FSD2022-0041 Page 43 of 156 2022-03-03

opportunity to do so in the KPA Proceedings, Port Link has been unable to explain the purpose of that payment or the reasons for its return, or why it was made if it was not due.

149. On 3 April 2017, Apache sent an invoice to the Port Fund for USD 70,000 in respect of what was described therein as "*Consultancy services retainer April 2017 – USD 70,000*", and that sum was paid by Port Link, on behalf of the Port Fund, on or about 9 May 2017.

150. In fact, Apache had no "consultancy services retainer" with the Port Fund to which that invoice could relate. It apparently had a consultancy services retainer with KGL Kuwait, but there was no legitimate reason for the Port Fund to pay Apache in respect of that retainer.

Purported Purchase of the Investment Management Company

151. As stated above at paragraph 14 at all material times until a date in 2018 the Plaintiffs cannot specify with precision:

151.1 100% of the Investment Management Company's A shares were owned by KGL Kuwait;

151.2 40% of the Investment Management Company's B shares (200 shares) were owned by Ms Lazareva. Pursuant to a shareholders' agreement dated 9 February 2009 and a nominee agreement the terms of which are not known to the Plaintiffs, Ms Lazareva held certain of her B shares as nominee for KGL Kuwait and other persons unknown to the Plaintiffs.

151.3 29.8% of the Investment Management Company's B shares (149 shares) were owned by Mr Williams.

152. The *de jure* directors of the Investment Management Company at the relevant times have been:

152.1 Ms Lazareva from 8 March 2007 to 4 February 2019;

152.2 Kevin Krucik from 28 August 2007 to 8 February 2009; and

152.3 Building Smart Limited from 4 February 2019 to date.

153. Having previously denied in the 27 February 2020 Letter that it had information regarding the alleged sale of the Investment Management Company, in evidence given in the KPA Proceedings, Port Link has subsequently asserted that:

153.1 AAAML was a portfolio company owned and controlled by Mr Ayliffe;

153.2 In or around January 2018, Mr Ayliffe agreed to purchase KGL Kuwait's entire shareholding in the A shares of the Investment Management Company using AAAML, for a price "*in the region of USD 18.5 million*" (the **Investment Management Company Share Sale**). Port Link has produced no documentary evidence of that agreement.

153.3 USD 14.55 million of the sum said to be payable to Apache under the GGDC Sale Engagement was used by Apache to discharge AAAML's liability under the Investment Management Company Share Sale, by giving instructions to Crowell & Moring to "*retain and keep in trust*" that sum.

153.4 Walkers have asserted in their defence to proceedings brought by KPA their understanding that a board resolution of the Investment Management Company confirmed that, following the share sale from KGL Kuwait to AAAML, Mr Williams would retain 149 Class B Shares in the Investment Management Company: see Walkers' Defence, paragraph 15(b).

154. Port Link has not explained:

154.1 why KGL Kuwait sold an interest in the Investment Management Company to AAAML;

154.2 what the price was (beyond it being "*in the region of USD 18.5 million*") or how that price was calculated or negotiated;

154.3 why Mr Ayliffe wished to purchase the Investment Management Company, in circumstances where the only explanation offered by Mr Ayliffe, namely that he wished to purchase an "*asset manager with a clean track record*", bears little or no resemblance to the Investment Management Company's position as a manager which had only ever had one client, which remained contractually bound to that client, and which was, at the time of the alleged purchase, in a difficult financial position because of the Noor Bank Freeze;

154.4 why, if he wished to purchase an "*asset manager with a clean track record*", Mr Ayliffe would have purchased A shares in the Investment Management Company while others, including Mr Williams and Ms Lazareva, retained the B shares;

154.5 why, if he wished to purchase an "*asset manager with a clean track record*", Mr Ayliffe did not become a director of the Investment Management Company, and why he permitted Mr Williams to remain a signatory;

154.6 why KGL Kuwait transferred its shareholding to AAAML without simultaneously receiving payment from AAAML or on its behalf;

154.7 how the balance of the allegedly due consideration was paid;

154.8 why, having allegedly purchased the Investment Management Company for a significant sum of money, Mr Ayliffe then put it into voluntary liquidation.

155. Further, in defending proceedings in Georgia brought by the Plaintiffs (the **Georgia Proceedings**) and in a letter from their Cayman attorneys, Campbells, Mr Williams, Wellspring and other entities have asserted that AAAML received none of (or almost none of) the c. USD 60 million DIFC Judgment (purportedly reflecting the Investment Management Company's claim to Management and Performance Fees), since the judgment sum was received by Wellspring as the Investment Management Company's payment agent and distributed to the former shareholders of the Investment Management Company. Assuming this is correct, it would follow, on Port Link's case, that AAAML paid around USD 18.5 million for the Investment Management Company in circumstances where

it was to receive none of the Investment Management Company's sole asset, its (alleged) entitlement to fees from Port Link.

156. For the above reasons, the Plaintiffs do not accept that AAAML was in truth acting as a "portfolio" company for Mr Ayliffe to purchase KGL Kuwait's interest in the Investment Management Company in an arm's length or bona fide transaction with KGL Kuwait or for his own commercial benefit or purposes. The inferences that the Plaintiffs contend should be drawn about AAAML and its supposed purchase of the Investment Management Company's A shares are set out below.

Inferences of Fact

157. In the premises and for the reasons set out below, the Plaintiffs' case is that the following inferences of fact are to be drawn regarding Apache, the transactions in which it was involved as hereinbefore set out (the **Apache Transactions**), and the payments received by it (the **Apache Payments**):

157.1 Port Link, KGL Kuwait, and Mr Williams (on the one hand) and Apache HK, Apache Macao, AAAML, and Mr Ayliffe (on the other hand), did not operate at arm's length or independently. Apache HK, Apache Macao, and AAAML were facades maintained at the instigation of Mr Williams and/or KGL Kuwait to give the false appearance of arm's length commercial dealings when in reality they did not so operate (the **Inference of Lack of Independence**).

157.2 In substance and by design (of Port Link, KGL Kuwait and Mr Williams, alone or in conspiracy with Mr Ayliffe), the purported engagements between Apache and Port Link, on behalf of the Port Fund, were shams or devices designed to enable the proceeds of capital raising and the realisation of the Port Fund's assets to be dishonestly creamed off for the benefit of Mr Williams and/or Mr Ayliffe and/or KGL Kuwait (the **Inference of Sham**).

157.3 Mr Williams, Mr Ayliffe, and each of the companies involved (all of which had, through Mr Williams and/or Mr Ayliffe, actual knowledge of the true facts) including Port Link intended thereby to harm the interests of the Port Fund and its Limited

Partners (other than KGL Kuwait), including the Plaintiffs (the **Inference of Intent to Harm**).

158. In support of the Inference of Lack of Independence, the Plaintiffs rely on the following facts and matters.

PARTICULARS

158.1 The connections between Mr Williams, Wellspring, KGL Kuwait, Apache and AAAML as set out in paragraphs 23 to 27 and 78 to 92 above.

158.2 The elaborate care taken to conceal the true beneficial ownership of Apache behind circular layers of shell companies.

158.3 The terms of the various engagements which were in every case manifestly excessive given Apache's experience, reputation, capabilities and resources.

158.4 The absence of any evidence of genuine arm's length negotiations between Apache and Port Link.

158.5 The fact that Apache had no, or no substantial, business apart from its engagements for the Port Fund and KGL Kuwait.

158.6 The Investment Management Company Share Sale, as set out in paragraph 153 above.

158.7 All the matters relied on in relation to the Inference of Sham, below.

159. In support of the Inference of Sham, the Plaintiffs rely on the following facts and matters:

PARTICULARS

159.1 The fact that Apache was masquerading as a merchant bank whereas it was, plainly, at the most a vehicle for one individual.

FSD2022-0041 Page 48 of 156 2022-03-03

159.2 The amateurish and informal way in which dealings were conducted between Apache and the Port Fund including (i) the terms of the agreements used; (ii) the payment of sums without any or any proper invoices, and against inaccurate invoices, and of sums that were not due; (iii) the use of bizarre and uncommercial payment channels through (on two occasions) lawyers' client accounts.

159.3 The lack of any or any adequate commercial rationale on the part of Port Link for the engagement of Apache rather than an established and reputable investment bank or financial adviser, if any adviser was required at all (or any further adviser, given that BNP Paribas and Crescent Point had also been engaged: see paragraph 123 above).

159.4 The terms of the various engagements which were in every case manifestly above reasonable market terms given Apache's experience, reputation, capabilities and resources.

159.5 The absence of any substantial documentary or other reliable evidence that Apache in fact performed substantial services remotely capable of justifying the fees allegedly paid.

159.6 The fact that in the absence of any reasonable or adequate commercial rationale, the only purpose served by the arrangements was to enable Port Link to pay money, which would otherwise have inured for the benefit of the Port Fund, to Apache to divert it away from the Port Fund.

159.7 All the matters relied on in support of the Inference of Lack of Independence, above.

160. In support of the Inference of Intent to Harm, the Plaintiffs will rely on the following matters:

FSD2022-0041 Page 49 of 156 2022-03-03

PARTICULARS

160.1 Mr Williams and Mr Ayliffe both knew from their involvement with the Port Fund that it was a Limited Partnership.

160.2 It was obvious to both Mr Williams and Mr Ayliffe (and through them to all those companies for which they acted including Apache, AAAML and Port Link) that by reducing the assets of the Port Fund their conduct would harm the Port Fund, and the Limited Partners.

161. Further, in the premises, Mr Williams, Mr Ayliffe, Port Link, Apache HK, Apache Macao, AAAML and KGL Kuwait acted dishonestly.

F2. Port Link's breaches of duty

162. In the premises, in entering into (or causing or permitting GGDC to enter into) the Apache Transactions, and/or in making (or causing or permitting GGDC to make) the Apache Payments, Port Link acted in breach of its duties to the Plaintiffs.

PARTICULARS

162.1 The Apache Transactions and the Apache Payments were not entered into in good faith in the interests of the Port Fund. Their true purpose was not to benefit the Port Fund but to benefit KGL Kuwait and/or persons connected with KGL Kuwait namely Apache and/or Mr Ayliffe.

162.2 The Apache Payments were made in breach of trust because they were made pursuant to sham contracts and/or devices entered into not for the benefit of the Port Fund but for the purpose of dishonestly removing assets from the Port Fund.

162.3 The Apache Transactions (even if, contrary to the Plaintiffs' primary case, they were genuine transactions and even if, contrary to the Plaintiffs' primary case, Apache was independent of KGL Kuwait) were unreasonable transactions entered into negligently because their terms (including as to length and exclusivity) and the

FSD2022-0041 Page 50 of 156 2022-03-03

amount of the fees paid thereunder were unreasonably onerous to the Port Fund having regard to Apache's experience, reputation, capabilities, and resources.

F3. The other defendants' wrongdoing

163. Apache Macao, Apache HK and Mr Ayliffe each dishonestly assisted Port Link in the breaches of trust and/or fiduciary duty alleged at paragraph 162 above.

PARTICULARS OF ASSISTANCE

163.1 Apache Macao and/or Apache HK each entered into (or purported to enter into) the Apache Transactions as described above.

163.2 Apache Macao and/or Apache HK each received the Apache Payments as described above.

163.3 Mr Ayliffe signed or purported to sign each of the Apache Transactions described above and/or otherwise procured Apache to do the aforesaid acts.

PARTICULARS OF DISHONESTY

163.4 Mr Ayliffe, Apache HK and Apache Macao knew that Apache was not independent and that the Apache Transactions were not arm's length transactions or commercial transactions entered into in good faith. They knew that because Mr Ayliffe knew (i) that Apache was not independent; (ii) that Apache was not a genuine investment bank with any reputation or real market activities, but a device established by KGL Kuwait to effect the Apache Transactions and receive the Apache Payments; (iii) that the fees charged by Apache were not reasonable commercial fees or the result of any genuine or good faith negotiation; and (iv) that Apache was to provide and had provided no or no substantial services thereunder.

163.5 Mr Ayliffe, Apache HK and Apache Macao knew that the true purpose of the Apache Transactions and the Apache Payments was to injure the Port Fund and

FSD2022-0041 Page 51 of 156 2022-03-03

cause harm to the Limited Partners thereof. They knew that because there was no other or legitimate rationale for them.

164. Mr Williams dishonestly procured and/or assisted Port Link in the breaches of trust and/or fiduciary duty alleged at paragraph 162 above.

PARTICULARS OF ASSISTANCE

164.1 Mr Williams' role in relation to the management of the Port Fund was such that it is to be inferred that he participated in arranging the Apache Transactions.

164.2 Invoices in relation to the Apache Transactions were sent to Mr Williams and it is to be inferred that he procured those payments to be made and further to be inferred, because of that and because of his role in managing the Port Fund and the Investment Management Company, that he procured or authorised all the Apache Payments to be made.

PARTICULARS OF DISHONESTY

164.3 The Plaintiffs repeat paragraphs 163.4 and 163.5, *mutatis mutandis*. For the reasons there given, Mr Williams knew the matters there set out as well as did Mr Ayliffe, and acted with the intention of harming the Port Fund and the Plaintiffs as Limited Partners and deliberately contrary to their interests.

165. Further or alternatively, the Apache Transactions were effected and the Apache Payments were made pursuant to one or more conspiracies among (at least) Port Link, Mr Ayliffe, Apache HK, Apache Macao and Mr Williams to injure the Port Fund and the Plaintiffs as Limited Partners by unlawful means.

PARTICULARS OF CONSPIRACY

165.1 The Apache Transactions and the Apache Payments could not have been effected except with the agreement of Apache, Port Link, Mr Ayliffe and Mr Williams. That agreement is also evidenced by (i) the role of KGL Kuwait in establishing and

operating Apache and its website; (ii) the role of Mr Ayliffe in relation to the supposed purchase of the Investment Management Company and its subsequent liquidation; (iii) the fact that Mr Ayliffe and Mr Williams have purported to provide the current directors of Port Link with explanations of the Apache Transactions and the Apache Payments.

165.2 Accordingly, it is to be inferred that Port Link, Mr Ayliffe, Apache HK, Apache Macao and Mr Williams each agreed (either generally or in relation to each of the Apache Transactions and Apache Payments from time to time) to enter into the transaction and/or effect the payment.

PARTICULARS OF UNLAWFUL MEANS

165.3 The said agreement involved unlawful means namely the breach by Port Link of its duties as alleged in paragraph 162 above.

PARTICULARS OF INTENTION

165.4 The Plaintiffs will rely on the Inference of Intent to Harm and the facts and matters set out at paragraph 160, 163.4 and 164.3 above.

F4. Loss and damage

166. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

167. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below and Apache HK, Apache Macao, Mr Ayliffe, and Mr Williams are obliged to account as constructive trustees therefor.

G. CLAIM THREE: THE PETROLINK LOAN

G1. The facts

168. In May 2015, GGDC (the Port Fund SPV that was lessee of the Clark Asset lease) entered into a USD 10 million credit facility (as borrower) with Petrolink Overseas Company Limited (as lender) (**Petrolink** and the **Petrolink Loan**). The Petrolink Loan was dated 29 May 2015 but backdated to 11 May 2015. The loan was signed on behalf of GGDC by Mr Williams as President.

169. Petrolink is a company incorporated in the Cayman Islands under registration number 269121.

170. Petrolink is a member of the KGL Group and/or closely connected to Port Link and KGL Kuwait. In support of this contention, the Plaintiffs will rely *inter alia* on the following:

170.1 The Petrolink loan was signed on behalf of Petrolink by Ms Lazareva, who (as stated above) was also (among other things) Vice Chairman and CEO of KGL Kuwait and a director of Port Link.

170.2 Dr Abdullah Akbar, who was at all relevant times chairman of KGL Kuwait, is also a director of Petrolink. As explained in paragraph 239 below, in a memorandum dated 28 May 2021 Port Link has stated that while Dr Akbar was never a (*de jure*) director of Port Link, he worked closely with the Port Fund.

170.3 Petrolink is related to Petrolink Holding (referred to at paragraph 133 above) which is a Kuwaiti company which is a Limited Partner of the Port Fund and a subsidiary of KGL Kuwait. Dr Akbar is also a director of Petrolink Holding and Ms Lazareva was a director of Petrolink Holding until 15 June 2015.

171. The purpose of the Petrolink Loan was stated in Clause 3.1 to be "*general working capital and general corporate purposes of the Borrower*". It was repayable 5 years after the sums were first drawn down (Clause 6.1). The loan was secured by way of a second-ranking

FSD2022-0041 Page 54 of 156 2022-03-03

security interest created by GGDC Holdings, in favour of Petrolink, over the shares of GGDC (Clause 14).

172. The agreed interest rate payable under the Petrolink Loan was 20% per annum (Clause 8).

173. This interest rate was manifestly excessive and exorbitant. In support of this contention, the Plaintiffs will rely *inter alia* on the following:

173.1 In 2012, GGDC entered into a USD 5 million unsecured credit facility (as borrower) with Port Link (as lender), the interest rate of which was 8% per annum. This facility was later increased to USD 15 million and again to USD 30 million, whilst retaining the same interest rate.

173.2 On 25 May 2015, GGDC entered into a USD 40 million secured credit facility with various lenders and Citicorp International Limited as facility agent, which was increased to a USD 150 million secured credit facility on 18 September 2015 (the **Citi Loan**). The interest rate applicable to the Citi Loan was 7% per annum. This loan is defined as the "*Credit Agreement*" in the Petrolink Loan.

173.3 It is to be inferred that the mortgage over GGDC's shares granted to Petrolink under the Petrolink Loan gave Petrolink ample security and the risk it assumed under the loan was correspondingly low.

174. Pending disclosure, the Plaintiffs do not know how much of the Petrolink Loan was drawn down by GGDC or when the sums were drawn down and repaid. However, it is be inferred that GGDC drew down (at least) substantial sums because the Port Fund's audited financial statements for the year ended 31 December 2017 record that a USD 7.15 million repayment of the Petrolink Loan was made that year.

175. On 14 December 2021, Petrolink was put into voluntary liquidation, with Walkers Liquidation Limited appointed liquidator.

Inferences of fact

176. In the premises, it is to be inferred that:

176.1 The Petrolink Loan was not a genuine arm's length transaction but a transaction commercially disadvantageous to the Port Fund and its Limited Partners, pursuant to which Petrolink, KGL Kuwait and/or other persons associated with the KGL Group illegitimately benefitted at the Fund's expense from exorbitant interest rates vastly in excess of prevailing market rates;

176.2 In view of the foregoing and the fact that GGDC was a wholly owned subsidiary of Port Fund and the transaction was arranged by Mr Williams (Port Link Investment Director) and Ms Lazareva (Port Link director), it is to be inferred that Port Link procured and/or permitted the Petrolink Loan and the payments under it and/or Port Link is to be treated as having done so;

176.3 The Petrolink Loan was entered into without a good faith belief that its terms and conditions were no less favourable than those that could have been obtained for comparable services from a comparable but unaffiliated third party;

176.4 Mr Williams and Ms Lazareva knew the above facts and matters at all material times and their knowledge is to be imputed to Port Link by virtue of Mr Williams' role as Port Link's Investment Director and Ms Lazareva's directorship at Port Link.

G2. Port Link's breaches of duty

177. In the premises, Port Link acted in breach of duty in procuring and/or permitting that GGDC enter into the Petrolink Loan and make payments under it.

PARTICULARS

177.1 It was not in the interests of, or for the benefit of, the Port Fund to procure or permit that GGDC enter into the Petrolink Loan or make payments thereunder;

FSD2022-0041 Page 56 of 156 2022-03-03

177.2 Further or alternatively, Port Link did not act in good faith in procuring or permitting the making of the Petrolink Loan and payments thereunder;

177.3 It was negligent for Port Link to procure or permit the making of the Petrolink Loan and payments thereunder.

G3. Loss and damage

178. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that:

178.1 The assets of GGDC were reduced by the amount of the excessive interest paid on the Petrolink Loan. It is to be inferred this caused a corresponding decrease in the sale price under the GGDC SPA and/or a decrease in the net proceeds of the Clark Asset sale, which decrease the Plaintiffs are unable to quantify pending disclosure.

178.2 Accordingly, the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. Pending disclosure including regarding the amounts drawn down on the Petrolink Loan and when they were drawn down and repaid, the Plaintiffs are unable to quantify the amount by which their distributions from the Port Fund were reduced by reason of the excessive interest on the Petrolink Loan.

179. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the same.

H. CLAIM FOUR: THE ELITE PAYMENTS

H1. The Facts

180. The Eighth Defendant, Elite, was incorporated in the British Virgin Islands on 3 January 2017.

181. In a notice dated 13 December 2018 sent to shareholders of ISM Communications Corporation, a Filipino company, regarding a proposed share swap with Udenna, Elite was described as being "*a corporation ultimately owned by Mr. Dennis A. Uy*". This is a reference to Mr Uy, the Chairman and CEO of Udenna Group and the founder, Chairman and President of UDENNA Holding, Corp. However, the Plaintiffs do not know who ultimately beneficially owns and controls Elite and will seek disclosure including from Elite itself regarding its ultimate beneficial owners and controllers. Without prejudice to this position and their right to amend and/or supplement their claims following disclosure or further information in due course, the below particulars of Claim Four proceed on the basis that Elite is owned by Mr Uy.

182. On or about 17 February 2017, Elite purportedly entered into an advisory and arranger engagement agreement with Udenna (the **Elite Advisory Agreement**). By that agreement (had it been genuine) Elite would have been engaged to provide various advisory services to Udenna in connection with Udenna's interest in purchasing the Clark Asset in return for a fee of USD 250 million.

183. The Elite Advisory Agreement was not a genuine agreement made in good faith. In support of that allegation, the Plaintiffs will rely upon:

183.1 its terms, and in particular the grossly disproportionate fee that was to be paid to Elite thereunder, and the terms on which it was to be paid namely not until such time as Udenna had "*raised funding sufficient to settle the Purchase Price separate from and in addition to the Advisory Fee*";

183.2 the fact that Elite had been established less than two months earlier and had (so far as the Plaintiffs are aware) no capability, expertise, or experience, and that Udenna could have had access to numerous advisers with genuine capability, expertise, and experience at a fraction of the cost;

183.3 the fact that the agreement nevertheless falsely stated that Elite was to be engaged because of the "*expertise and track record of [Elite] at completing transactions for its clients*" which both purported parties to the Elite Advisory

FSD2022-0041 Page 58 of 156 2022-03-03

Agreement must have known was false and/or could not genuinely have believed to be true; and

183.4 the fact that, to the best of the Plaintiffs' knowledge, no evidence has been produced by Port Link that Elite played any role in the Clark Asset sale.

184. On or about 25 April 2017, Udenna entered into a letter of intent with respect to the purchase of the Clark Asset, as set out in paragraph 124 above.

185. By letters dated 8 May 2017, Elite purported to inform Port Link that it was "*transaction advisory*" in relation to the proposed Clark Asset purchase and purported to direct Port Link to pay from a "*Payment Account maintained in trust for the benefit of the parties*" what it claimed as its advisory fee as follows:

185.1 USD 110 million, in two tranches, to Udenna, purportedly in respect of an "*equity investment by Elite in UDENNA under a separate agreement*";

185.2 USD 140 million to UDEVCO, in three tranches, purportedly in respect of an "*equity investment by Elite in UDEVCO under a separate agreement*".

186. At that date:

186.1 Udenna (and its subsidiaries) had entered into a letter of intent, pursuant to which they had paid a non-refundable deposit to Port Link on behalf of the Port Fund, but had not agreed to the terms of the Clark Asset purchase.

186.2 No arrangements under which Port Link was to maintain a "*payment account in trust for the benefit of*" Elite had been agreed or established.

186.3 There was no legitimate reason why Port Link should agree to pay any sum received from Udenna (or any purchaser nominated on its behalf) to Elite.

FSD2022-0041 Page 59 of 156 2022-03-03

186.4 Elite had not entered into agreements with Udenna or UDEVCO to purchase shares (and did not do so until 11 August 2017 and 6 October 2017, as described below).

187. Accordingly, those two letters were incomprehensible, and purported to give instructions that Elite was not entitled to give and which Port Link had no legitimate commercial reason to accept.

188. Nevertheless, Port Link took no action upon receipt of those letters to question them, and did not respond to them.

189. In July and August 2017 UDEVCO entered into the GGDC SPA and nominated Clark City Development Corporation to purchase the Clark Asset. Paragraph 36 above is repeated. The GGDC SPA contained no reference to Elite. It made no provision to establish any trust account for Elite's benefit. And it offered no commercial rationale or justification for any payment to be made by Port Link to Elite. It provided by clause 16.1 that each of the parties would pay its own costs and expenses in relation to the sale and purchase of the Sale Share and to the preparation, execution and carrying into effect of the GGDC SPA and all other documents referred to in it.

190. Purportedly on 10 August 2017, the Directors of Port Link, namely Ms Lazareva, Mr Dashti, and Mr Alwadhi, are recorded as having met to consider a request made by CGCC that "*the Partnership [i.e. the Port Fund] enter into a letter relating to certain conditions precedent including, among other things, the payment of an advisory fee by the Partnership to the Purchaser's advisers, Elite Investment Limited … a draft of which has been received and reviewed by the Directors*". (The Plaintiffs do not know and make no admission as to whether any actual meeting took place.)

191. At that meeting, if such were held, the said Directors purportedly unanimously agreed that it would be in the best interests of Port Link and the Port Fund for Port Link to enter into and perform the obligations in the proposed letter, approved those transactions on behalf of Port Link and the Port Fund, and appointed Evan McBride as authorised signatory to sign the proposed letter.

FSD2022-0041 Page 60 of 156 2022-03-03

192. By a letter dated 11 August 2017 sent to the Port Fund c/o Walkers Corporate Limited and marked for the attention of the directors of Port Link, CGCC delivered a "*Letter of Instruction and Condition Precedent to GGDC Holdings Share Purchase Agreement dated July 31, 2017*". The said letter was signed by Mr Uy. The Plaintiffs infer that it is the letter discussed the previous day by the Directors of Port Link, although it does not appear to be signed by Mr McBride as then envisaged.

193. That letter stated as follows:

> *"This correspondence is to notify the Seller that as a prerequisite for the parties complying with the Completion requirements under the SPA, Elite First Investment Limited (Elite) has been appointed as the advisor for services related to the Acquisition. Elite's acquisition services included but are not limited to arranging or providing temporary and/or permanent acquisition financing (both PHP and USD), negotiating with equity and debt partners and providers, advising on capital related structuring strategies, and advising on potential foreign currency exposure and hedging mechanisms. Elite will be entitled to an advisory and arranger fee of US$250 million (the Advisory Fee) separate from and in addition to the payment of the Purchase Price by the Purchaser to the Seller.*
>
> *"The Advisory Fee is to be paid to Elite from funds received by the Seller from the Purchaser specifically for such purpose. For the avoidance of doubt, the Seller shall not be obliged to pay the Advisory Fee to Elite until such time as the Seller has received (i) the Transaction Deposit and (ii) sufficient funds to satisfy the Advisory Fee separate from and in addition to the Transaction Deposit.*
>
> *"Any monies received by the Seller from the Purchaser and further paid to Elite by the Seller in accordance with the instructions of the Purchaser shall not be considered a deposit, shall not form part of or reduce the Transaction Deposit, nor shall it [sic] be considered partial down payment towards the Purchase Price of US$655.0 million. The Purchaser further agrees that any funds received by the Seller specifically for the purpose of paying the Advisory Fee*

FSD2022-0041 Page 61 of 156 2022-03-03

shall not reduce the Purchase Price Balance due to the Seller by the Purchaser under the SPA provided that the Seller has forwarded to Elite such monies in accordance with this agreement and the payment instructions of the Purchaser."

194. In effect, what was being asked of Port Link (on behalf of the Port Fund) was to act as a mere conduit for the payment of USD 250 million (a sum which was being described as an "*Advisory Fee*" but which no honest person could have believed was in truth such a fee) from CGCC to Elite.

195. On 11 August 2017, Elite entered into a subscription agreement with UDEVCO whereby it agreed to pay PP 7.14 billion (amounting to approximately USD 139,944,000 at the exchange rates then prevailing) to subscribe for 14,280,000 non-voting redeemable preference shares in UDEVCO.

196. On 12 August 2017, USD 30 million was paid to CGIG's account at Mashreq Bank by an un-named payor, which the Plaintiffs infer and allege, because of the pattern demonstrated by the payments referred to in the following paragraphs, was CGCC.

197. On 14 August 2017, USD 30 million was paid from CGIG's account at Mashreq bank to an account of UDEVCO at China Banking Corporation.

198. On 19 August 2017, USD 30 million was paid by CGCC to CGIG's account at Mashreq Bank.

199. On 21 August 2017, USD 30 million was paid from CGIG's account at Mashreq Bank to an account of UDEVCO at China Banking Corporation.

200. On 3 September 2017, USD 50 million was paid by CGCC into CGIG's account at Mashreq Bank.

201. On 4 September 2017, USD 50 million was paid from CGIG's account at Mashreq Bank to an account of Udenna at Maybank, Philippines.

FSD2022-0041 Page 62 of 156 2022-03-03

202. On 9 September 2017, USD 80 million was paid by CGCC into CGIG's account at Mashreq Bank.

203. On 10 September 2017, USD 80 million was paid from CGIG's account at Mashreq Bank to an account of Udenna at Maybank, Philippines.

204. On 4 October 2017, USD 60 million was paid by CGCC into CGIG's account at Mashreq Bank. On 6 October 2017, Elite entered into an agreement with Udenna whereby Elite agreed to pay PP 5.61 billion (amounting to approximately USD 109,395,000 at the exchange rates then prevailing) to subscribe for 701,250,000 non-voting redeemable preferred shares in Udenna.

205. On 11 October 2017, USD 60 million was paid from CGIG's account at Bank Mashreq. The Plaintiffs infer and allege, consistently with the pattern set out above, that this sum (which precisely corresponded to the sum received from CGCC on 4 October) was paid to Udenna.

206. The audited consolidated financial statements of Udenna and its subsidiaries as at 31 December 2016 and 31 December 2017 stated that the consideration paid by CGCC to acquire the Clark Asset amount to USD 980 million.

207. Pending disclosure, the Plaintiffs do not currently know precisely what that consideration comprised. However, it appears that it comprised a USD 40 million deposit, the USD 496,429,767 payment made on or around 15 November 2017 to the Noor Bank Account (referred to in paragraph 37 above), the payment of USD 193,570,223 by way of settlement of existing debt financing granted to GGDC, and the total payments of USD 250 million referred to in paragraphs 196, 198, 200, 202 and 204 above (the **Elite Payments**). Accordingly, the Elite Payments were treated by Udenna as part of the consideration paid to the Fund for the acquisition of the Clark Asset.

H2. Inferences to be drawn

208. In the premises, it is to be inferred that the Elite Payments were facilitated by Port Link corruptly and for the purpose of enabling Udenna falsely to inflate the apparent consideration for the Clark Asset purchase, and to divert money which was represented to

FSD2022-0041 Page 63 of 156 2022-03-03

be part of the consideration for the Clark Asset purchase for improper purposes namely the purchase by Elite of Udenna's shares.

209. Port Link knew that the Elite Payments were in furtherance of that dishonest and unlawful purpose. Port Link knew:

209.1 That Elite was not "*transaction advisory*" in relation to the GGDC SPA, and that it had no legitimate reason to receive any payment in respect thereof, much less any payments on the scale that were made.

209.2 That the sums that Port Link received and which it passed on to Elite were not sums which Port Link had any reason to receive and that it had no legitimate or genuinely justifiable commercial role in relation to their payment.

209.3 That it was in effect acting simply as a conduit (for no legitimate reason) to transfer money to Elite.

210. Elite knew the above facts and matters via Mr Uy, its directing mind and will, and/or via its director(s) (which the Plaintiffs are unable to identify pending disclosure) who were involved in making the purported Elite Advisory Agreement and arranging and receiving the Elite Payments in furtherance of the dishonest and unlawful purpose set out above.

H3. Port Link's breaches of duty

211. In agreeing to receive and make the Elite Payments, Port Link acted in breach of its statutory and equitable duties of good faith and fair dealing to the Plaintiffs as Limited Partners because it was not, and could not honestly have been considered to be, in the best interests of the Port Fund to participate in them.

H4. Elite's wrongdoing

212. Elite dishonestly assisted Port Link in the breaches of fiduciary duty alleged at paragraph 211 above.

FSD2022-0041 Page 64 of 156 2022-03-03

PARTICULARS OF ASSISTANCE

212.1 Elite entered into the purported Elite Advisory Agreement which formed part of the pretext for the Elite Payments.

212.2 Elite facilitated and received the Elite Payments.

PARTICULARS OF DISHONESTY

212.3 Paragraph 210 above is repeated.

212.4 Elite, via Mr Uy as its directing mind and will and/or its directors, must also have known that in agreeing to receive and make the Elite Payments, Port Link was acting in breach of its fiduciary duties to the Limited Partners because no honest person can have thought it in the interests of the Fund to be involved in a corrupt scheme to launder money or conceal corruption and fraud.

H5. Loss and damage

213. By reason of the Elite Payments, the Plaintiffs have suffered (alternatively may suffer) loss and damage:

213.1 Udenna has accounted for the Elite Payments as part of the consideration paid for the Clark Asset. That gives rise to the inferences (a) that Udenna values the Clark Asset at around USD 981 million and (b) that it would or might have been willing to pay that sum, and in any event a sum exceeding what it actually paid to Port Link for it. By facilitating or permitting the Elite Payments, by which part of that sum was diverted, Port Link reduced the amount actually received by the Port Fund for the Clark Asset and/or deprived the Port Fund of the possibility of achieving a greater return.

213.2 Alternatively, by making the Elite Payments and participating in the wrongdoing set out above, Port Link has or may have exposed the Port Fund to potential liabilities, and the Plaintiffs are entitled to and claim a declaration that it is liable to indemnify them in respect of any such liability.

214. Elite is also liable to account as constructive trustee for the aforementioned loss and damage the Plaintiffs have suffered (or may suffer).

I. CLAIM FIVE: THE PLACINO PAYMENT

I1. The Facts

215. On or around 9 February 2019, Port Link caused a payment of USD 2.72 million to be made from the Noor Bank Account to Mr Wilfred A. Placino.

216. Port Link first disclosed this payment to Mr Placino to the Plaintiffs in the 27 February 2020 Letter, which was sent in response to GIC's application dated 12 December 2019 in the Cayman Grand Court for disclosure under s.22 of the ELP Act (**GIC's s.22 Application**) and GIC's parallel application in the United States for disclosure relating to Port Fund from 12 correspondent banks pursuant to 28. U.S.C. §1782 and other provisions. In the 27 February 2020 Letter, Port Link described this payment to Mr Placino as "*Advisor fees paid in connection with sale of GGLC*".

217. In evidence filed in the KPA Proceedings, Port Link has disclosed a further payment to Mr Placino of USD 200,000, allegedly made on 1 August 2017. The two combined payments of USD 2.92 million are referred to below as the **Placino Payment.**

218. As at (the latest) 22 September 2017, Mr Placino was a director and shareholder of CGCC's ultimate parent company, Udenna. As stated at paragraph 36 above, Udenna is the parent company of UDEVCO, the Filipino company with which Port Fund made the GGDC SPA on 31 July 2017 for the sale of the Clark Asset. UDEVCO is and was at all material times the 100% owner of CGCC, the SPV it nominated as the acquisition vehicle for its purchase of the Clark Asset. Pursuant to the GGDC SPA, Port Link transferred its single share in GGDC Holdings to CGCC on or before 31 August 2017.

219. In an affidavit (**Childe 2**) dated 1 May 2020 of Mr Childe filed in response to KPA's application under s.22 of the ELP Act (**KPA's s.22 Application**), Port Link stated:

FSD2022-0041 Page 66 of 156 2022-03-03

"I understand from speaking to representatives of the Fund that Mr Placino played a crucial role in facilitating the transaction with Udenna and facilitating the closing of the sale. Mr Placino was engaged by the Fund on a success fee structure and his fees were calculated as a percentage of the sale price of the Clark Asset in order to incentivise Mr Placino to achieve the highest possible sale price. I am informed by representatives of the Fund and verily believe that Mr Placino was integral in the completion of the transaction and that, in all likelihood, the transaction would not have completed without his involvement.

Mr Placino was engaged by the Fund in his personal capacity and, as noted above, performed a crucial role in facilitating the completion of the transaction. The Defendants do not consider that it is for the Fund to scrutinise the connections Mr Placino has with Udenna or any other third party for that matter provided that he provided valuable services to the Fund and fulfilled his obligations to the Fund in accordance with the agreement between the parties. I am informed by representatives of the Fund who were involved in the transaction at the time, that they do not consider that it would have been possible to complete the transaction without the involvement of Mr Placino."

220. Port Link subsequently:

220.1 provided a "*Due Diligence Memorandum*" (the **Placino Memorandum**) in relation to KPA's allegations in the KPA Proceedings regarding the payment to Mr Placino stating that:

(a) Mr Placino did not become a director of Udenna until 15 September 2017;

(b) the current directors of Port Link had conducted an interview with Mr Placino, the results of which it summarised at paragraph 4.4 including:

(i) One of Mr Placino's former clients was Mr Uy who had appointed him CFO for Phoenix Petroleum (**Phoenix**), another company owned and/or controlled by Mr Uy;

FSD2022-0041 Page 67 of 156 2022-03-03

(ii) Mr Placino met Mr McBride, the Chief Investment Officer of Port Link, in connection with the Fund's Negros Navigation investment;

(iii) Mr Placino claimed that, although not an employee, consultant or director of Udenna at that time, he had a direct relationship with Mr Uy and "*ultimately persuaded [Mr Uy] to make the investment*" in the Clark Asset;

(iv) Mr Placino also claims he: assisted Udenna in obtaining funding for the transaction; liaised between the Fund, Udenna and the banks and other parties to the transaction; was "*heavily involved*" in the due diligence in relation to the sale of the Clark Asset; and assisted in the regulatory and statutory requirements for closing; and

(v) He was appointed as a director of the newly constituted board of Udenna only after the SPA was completed, as well as being appointed President of CGCC after completion.

220.2 disclosed:

(a) a purported invoice dated 26 November 2017 from Mr Placino for USD 2.72 million, calculated as a percentage success fee of the Clark Asset sale, and recording a further previous payment of USD 200,000; and

(b) a purported letter agreement dated 8 March 2017 and signed by Ms Lazareva on behalf of the Port Fund, pursuant to which Mr Placino was appointed as a "*Non-Exclusive Arranger*" on behalf of the Port Fund in respect of the sale of the Clark Asset, including provision of services including identifying potential investors, introducing and leading in discussions with potential investors and facilitating closing the deal (the **Placino Agreement**); and

(c) three documents that purport to be records of searches of the Philippines Security and Exchange Commission and which appear to show that Mr Placino was not appointed a *de jure* director of Udenna until 15 September 2017.

FSD2022-0041 Page 68 of 156 2022-03-03

221. As to this:

221.1 Port Link's account of Mr Placino's business relationship with Mr Uy (based on the interview with Mr Placino) is vague. It states that Mr Uy was a former client of Mr Placino from his banking career and subsequently a client of the consultancy Mr Placino set up in 1997. But it also states that Mr Placino was CFO of Phoenix, which was and is a major asset owned by Udenna / Mr Uy. No dates are provided for Mr Placino's role as CFO of Phoenix but it appears from context in the Placino Memorandum that he remained CFO, and therefore an (indirect) senior employee and director of one of Mr Uy's companies, at the time he is said to have met Mr McBride of the Port Fund and discussed the sale of the Clark Asset. It follows that, on this account, at the time the Placino Payment was made, Mr Placino was allegedly not a director of Udenna but he was closely involved in advising and acting for Mr Uy as a consultant and as a senior executive officer at one of Mr Uy's companies.

221.2 The description of the services Mr Placino provided is vague and confused:

(a) Insofar as it is suggested that Mr Placino introduced Mr Uy, Udenna or UDEVCO as a potential investor for the Clark Asset, it is to be inferred this is false:

(i) no introduction was required because Udenna (which at all material times (indirectly) owned 100% of UDEVCO) was already known to Mr McBride and Port Link / Port Fund, since Udenna had invested in the previous Negros Navigation project;

(ii) moreover, it is to be inferred from *inter alia* the following matters that Udenna was already aware of the Clark Asset investment opportunity before the date of the Placino Agreement (8 March 2017) and was not introduced to it by Mr Placino in performance of the Placino Agreement:

(a) the purported Elite Advisory Agreement dated 17 February 2017 referred to at paragraph 182 above indicates that Udenna was

already aware of and interested in purchasing the Clark Asset by that date;

(b) Udenna submitted a letter of interest to the Port Fund in respect of the Clark Asset on 14 March 2017, together with an indicative valuation, only four business days after Mr Placino had purportedly been engaged under the Placino Agreement to identify and introduce potential investors.

(iii) Port Link had purportedly engaged at least three other investment advisers (Apache, BNP Paribas and Crescent Point) to facilitate the Clark Asset sale.

(b) Despite its Information Obligations and being required to do so by the Order of Parker J dated 26 August 2020 and the Consent Order dated 3 November 2020 (together the **Cayman Disclosure Orders**), Port Link has failed to disclose any evidence of Mr Placino having identified or introduced any other potential investors in the Clark Asset. The Placino Memorandum similarly makes no reference to Mr Placino having introduced any other potential investors. It is to be inferred that this is because he did not do so.

(c) The Placino Memorandum relays Mr Placino's account that he "*ultimately persuaded*" Mr Uy to make the investment of buying the Clark Asset. As to this:

(i) Udenna's purchase of the Clark Asset was an investment of USD 730 – 980 million (see paragraphs 206 to 207 above) which Mr Placino confirms was Mr Uy's biggest ever.

(ii) It is not credible to suggest that Mr Placino "*ultimately persuaded*" Mr Uy to make such a significant transaction, or that Mr Uy relied on Mr Placino's advice and judgment in this respect, unless Mr Placino was a close trusted adviser of Mr Uy in his capacity as consultant, CFO of Phoenix or some other advisory role to Mr Uy or one of his corporate vehicles.

(d) If (as alleged, which is not admitted) Mr Placino assisted Udenna/UDEVCO in obtaining transaction financing and was involved in the due diligence, those were services he performed on behalf of Udenna/UDEVCO as purchaser, not Port Link as buyer. Again, insofar as he acted in an investment advisory capacity to Udenna/UDEVCO, he would have acted (at least) as a consultant to Udenna/UDEVCO, contrary to Port Link's position, and would have owed professional duties to UDEVCO in respect of those services.

221.3 In the premises, if (which is not admitted) Mr Placino "*ultimately persuaded*" Mr Uy to make the Clark Asset transaction, it is to be inferred that:

(a) he was a close adviser to Mr Uy and Udenna, whether as consultant, investment adviser, employee, director and/or in some other capacity; and

(b) he therefore owed advisory and other duties to act in Mr Uy's, Udenna's and/or UDEVCO's interests in respect of the purchase of the Clark Asset to act in their interests to seek to negotiate and agree the best possible terms, including the lowest possible price, whereas the Port Fund was interested in obtaining the best possible terms for it, including the highest possible price.

Inferences of fact

222. In the premises, based on the limited information provided by Port Link regarding the Placino Payment to date, it is to be inferred that:

222.1 Mr Placino provided no services, alternatively no services of commensurate value to the fees paid;

222.2 alternatively, if Mr Placino provided services of any value of the nature alleged:

(a) he did so in breach of his contractual and/or fiduciary duties to act in Mr Uy's, Udenna's and/or UDEVCO's best interests including by providing unbiased independent advice as to whether to invest in the Clark Asset and to assist Mr

FSD2022-0041 Page 71 of 156 2022-03-03

Uy and Udenna and/or UDEVCO to obtain the best (i.e. lowest) possible sale price and terms;

(b) Mr Placino could not lawfully or properly act for the Port Fund in relation to the transaction and was unfit to do so; and

(c) Port Link engaged Mr Placino to breach the duties he owed to Mr Uy, Udenna and/or UDEVCO as director, consultant, investment adviser and/or employee, further or alternatively paid Mr Placino a secret commission (in contravention, *inter alia*, of s.21(1)(a) of the Cayman Islands Anti-Corruption Act).

I2. Port Link's breaches of duty

223. In the premises, in entering into the Placino Agreement and making the Placino Payment, Port Link acted in breach of its duties to the Plaintiffs.

PARTICULARS

223.1 It was not in the interests of, or for the benefit of, the Port Fund to undertake to enter into the Placino Agreement or use the Port Fund's monies to make the Placino Payment because:

(a) Mr Placino provided no services in exchange for the Placino Payment (alternatively no services of commensurate value);

(b) Alternatively, if Mr Placino provided the services of the nature alleged, the Placino Arrangement and the Placino Payment involved engaging Mr Placino in circumstances where he could not properly or lawfully act for the Fund, incentivising him to breach his duties to Mr Uy, Udenna and/or UDEVCO, and/or paying him a secret commission;

223.2 Further or alternatively, for the above reasons:

FSD2022-0041 Page 72 of 156 2022-03-03

(a) Port Link did not act in good faith in so undertaking and using the Port Fund's monies;

(b) it was negligent for Port Link to enter into the Placino Agreement and the Placino Payment;

223.3 Further, the Placino Payment was made in breach of trust because it was not made in good faith or in the interests of the Fund.

I3. Loss and damage

224. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

225. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below.

J. CLAIM SIX: THE GOLDEN SHAHIN AND KGLI ASIA PAYMENTS AND ALLEGED PR, LEGAL AND LOBBYING FEES

226. In the 27 February 2020 Letter and via disclosure it gave pursuant to the s.22 Application (the **s.22 Disclosure**) and other evidence it has filed in the KPA Proceedings, Port Link has disclosed payments from the Noor Bank Account totalling just under USD 26 million to 24 different recipients said to have provided PR, legal, lobbying or similar services to the Port Fund. A total of USD 23,546,235.25 of these payments, in respect of which the Plaintiffs make the claims set out in this Section J, are set out in Appendix 1 hereto. References to items below are to items in Appendix 1.

J1. Item 1: the Golden Shahin Payment

The Facts

227. On 12 February 2019, shortly after the Noor Bank Account was unfrozen, Port Link transferred USD 14.07 million of the Port Fund's monies to a Kuwaiti company called Golden Shahin General Trading and Contracting Company (**Golden Shahin**). This payment is referred to below as the **Golden Shahin Payment.**

228. Golden Shahin's registered activities at the Kuwait Chamber of Commerce and Industry are cleaning of buildings and structures, roads and streets, and general trading and contracting.

229. Golden Shahin is and was at all relevant times closely connected to Mr Dashti and the KGL Group:

229.1 It is and was at all material times ca. 75% indirectly owned by National Cleaning Company K.P.S.C. (**National Cleaning**).

229.2 Until at least December 2019 and at all material times, National Cleaning was 35.87% owned by Kuwait and Gulf Link Transport Company K.P.S.C. (**KGLTC**), of which Mr Dashti is (or at least as at 31 December 2019 was) a Board Member. KGLTC's current interest in National Cleaning is ca. 30%.

230. Port Link was required by the Cayman Disclosure Orders to provide "*Details of the third parties/parties to whom payment was made in order to secure release of the monies held in the Nour [sic] Bank Account … and all information and documents pertaining to the interactions with such third party/parties*". In purported compliance with the orders, Port Link disclosed the following documents:

230.1 A purported support services agreement dated 1 December 2017 executed between Mr Alwadhi (acting as director of Port Link) and Golden Shahin (the **Golden Shahin Agreement**). As to this:

FSD2022-0041 Page 74 of 156 2022-03-03

(a) The Golden Shahin Agreement provided that Golden Shahin would assist the Port Fund in "*unfreezing and releasing the exit proceeds held in the UAE [i.e., the proceeds of the Clark Asset sale that were subject to the Noor Bank Freeze] and to restore the reputation of [the Port Fund] discredited by the smear campaign led strong business competitor [sic] and other governmental authorities …*" (see clause 1).

(b) The Golden Shahin Agreement describes Golden Shahin as "*a Kuwaiti company with a reputable network and resources in Kuwait and abroad especially in the GCC countries including local and international consultants and advisors as well as experts, with vast knowledge and experience in commercial and financial transactions, amongst others.*" This description is inconsistent with its registered activities at the Kuwait Chamber of Commerce as noted at paragraph 228 above.

(c) In return, Golden Shahin would be paid USD 14.07 million, together with costs and expenses (see clause 3).

(d) Despite committing Port Link to a fee of USD 14.07 million, the agreement is short, contains numerous typographical errors and does not appear to have been professionally drafted. The agreement does not specify with any precision the services that Golden Shahin was to provide in exchange for these fees.

230.2 An addendum (the **Golden Shahin Addendum**) to the Golden Shahin Agreement dated 15 August 2018 between Port Link (acting by Mr Alwadhi), Golden Shahin, and Al Morabitoon International General Trading and Contracting WLL (**Morabitoon**). As to this:

(a) Morabitoon is another company closely connected to Mr Dashti and the KGL Group.

(i) He is described in the Kuwaiti Chamber of Commerce's records as an "*authorized partner*" of Morabitoon.

(ii) Morabitoon's full name in the Kuwaiti Ministry of Commerce and Industry records is Al-Marabtoon International Group for General Trading and Contracting Co, but the Kuwaiti Ministry of Commerce and Industry's records the company's name as *"Saeed Ismail Dashti and Partner Company WLL – Al Morabitoon International Group General Trading And Contracting Company."*

(iii) Morabitoon's partners are Mr Dashti and Fouad Ismail Ali Dashti, who is Mr Dashti's brother.

(iv) Morabitoon was a board member of KGL Kuwait from at least 2010 until a date presently unknown to the Plaintiffs.

(v) Morabitoon's website, www.morabitoon.com, is associated with kgl.com, which is the same name server associated with the KGL websites. Morabitoon's website was developed by Axis Solutions K.S.C.C., an IT company which is part of the KGL Group and of which Mr Dashti has previously acted as Chairman and CEO;

(vi) Morabitoon's website states that its activities include "*acting mainly as a local agent for international companies to do different government projects especially with the State's different oil companies.*" It does not suggest that Al Morabitoon has or ever had the necessary experience or expertise to assist with unfreezing the Noor Bank Account.

(b) In the Golden Shahin Addendum, the Port Fund and Golden Shahin purportedly retained Morabitoon to perform all of the services under the Golden Shahin Agreement, as amended by the addendum, those amended services being: "*to cooperate with all retained parties and local and international lawyers and consultants, for the purposes of unfreezing and releasing the [Clark Asset sale proceeds]*" (see clause 2.1)).

(c) The Golden Shahin Addendum also amended the remuneration provisions of the Golden Shahin Agreement, such that, once "*all government entities*

investors [sic] in the Port Fund are paid fully their shares" from the Clark Asset sale proceeds, Golden Shahin would be paid 3% of the unfrozen amount "*due after distribution of all government entities investors shares [sic]*" (see clauses 2.2, 2.3 and 3.1). Notwithstanding this, the amount paid reflected the success fee in the original Golden Shahin Agreement.

231. In a "*Due Diligence Memorandum*" regarding the Golden Shahin Payment, Port Link relies on statements from other third parties involved in the release of the Noor Bank Account funds to the effect that they were aware of work having been done to secure the funds' release by Kuwaiti consultants allegedly engaged by Morabitoon on behalf of the Port Fund. They do not identify any specific individuals, allegedly on the basis that this would expose these individuals to persecution in Kuwait. However:

231.1 The description in the memorandum of the work allegedly undertaken by the Kuwaiti consultants is wholly unspecific.

231.2 The memorandum provides no explanation as to how a company whose registered activities including cleaning of buildings, roads and streets was likely to have been able to assist in the unfreezing of the Noor Bank Account.

231.3 To date Port Link has not disclosed a single piece of work product from Golden Shahin or Morabitoon or other documents evidencing work undertaken pursuant to the Golden Shahin Agreement and Addendum. This is despite the fact that the Cayman Disclosure Order required Port Link to disclose (*inter alia*) "*all information and documents pertaining to the interactions with such third party/parties*" and it has disclosed work product from other parties allegedly retained to assist with the release of the Noor Bank Freeze, such as letters and emails written to prominent individuals in Kuwait and Dubai by Crowell & Moring and Neil Bush (the son of former US President George H. W. Bush and the brother of former US President George W. Bush, who had an engagement with Port Link, beginning in September 2018).

231.4 The Golden Shahin Agreement provides no information as to the purported basis for the calculation of the fee, e.g. by reference to particular individuals' hourly rates

or a percentage success fee. Despite numerous opportunities to do so, Port Link has also failed to provide any explanation or justification for the fee or any evidence that it was negotiated at arm's length.

231.5 Golden Shahin's fee is equivalent to the combined fees paid by Port Link to 22 other third party service providers over the relevant period. Whether or not those other third party service providers provided services for the benefit of Port Fund or for Mr Dashti, Ms Lazareva and/or KGL Kuwait, the fees paid to Golden Shahin were exorbitant by comparison.

231.6 Insofar as Golden Shahin undertook any reputational work of the kind envisaged in clause 1 of the Golden Shahin Agreement (which is not admitted):

(a) it would have been for the benefit of Mr Dashti, Ms Lazareva and/or the KGL Group only: the Port Fund (as distinct from its management) had not had its reputation tarnished and in any event had no ongoing interest in its reputation in circumstances where it was being wound up and had sold its assets;

(b) moreover, as corporate vehicles closely connected with Mr Dashti (who at the time of the Golden Shahin Addendum had been convicted by the Kuwaiti court of facilitating embezzlement), Golden Shahin and Morabitoon were highly unlikely to have been well placed to improve the Port Fund's reputation.

Inferences of fact

232. In the premises of paragraphs 227 to 231 above, it is to be inferred that:

232.1 the Golden Shahin Agreement and Addendum were shams and not genuine agreements and not the product of a genuine arm's length negotiation between Port Link and Golden Shahin but rather a mechanism to transfer money to Golden Shahin;

232.2 Accordingly, Port Link entered or purportedly entered into the Golden Shahin Agreement and Addendum wholly or substantially to directly or indirectly benefit

FSD2022-0041 Page 78 of 156 2022-03-03

one or more of Golden Shahin, the KGL Group, Mr Dashti and/or unknown other persons and not for the benefit or in the interests of the Port Fund;

232.3 Golden Shahin and its delegate Morabitoon provided no services of benefit to the Port Fund, alternatively, if (which is not admitted) any services were provided, they were not of commensurate value to the fee, which was manifestly excessive and unreasonable;

232.4 The Golden Shahin Payment or a substantial proportion of it was made for an illegitimate purpose pursuant to a dishonest scheme involving Port Link, Mr Alwadhi, Mr Dashti, Golden Shahin and/or unknown other related persons or entities.

Port Link's breaches of duty / trust

233. In the premises, by entering or purportedly entering into the Golden Shahin Agreement and Addendum and making the Golden Shahin Payment, Port Link acted in breach of duty and/or trust.

PARTICULARS

233.1 It was not in the interests of, or for the benefit of, the Port Fund to enter into the Golden Shahin Agreement or Addendum or to use the Port Fund's monies to make the Golden Shahin Payment;

233.2 Further or alternatively, Port Link did not act in good faith in so undertaking and using the Port Fund's monies;

233.3 It was negligent for Port Link to make Golden Shahin Agreement and Addendum and the Golden Shahin Payment;

233.4 Further, the Golden Shahin Payment was made in wilful and/or intentional, alternatively negligent, breach of trust because it was not made in good faith or in the interests of the Fund.

Loss and damage

234. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

235. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below.

J2. Item 2: the KGLI Asia Payments

The Facts

236. To date the Plaintiffs have identified net payments out of the Port Fund's funds to KGLI Asia of approximately USD 2.96 million (the **KGLI Asia Payments**). The payments are recorded as having been made to "*KGLI Asia ROHQ*" which the Plaintiffs understand to be a reference to its regional operating headquarters in the Philippines.

237. KGLI Asia is a company incorporated in the Cayman Islands. It is part of the KGL Group and closely connected to Port Link and the Investment Management Company (among others):

237.1 It is a wholly owned subsidiary of KGL Kuwait, which (as stated above) is and was at all material times the sponsor, placement agent and administrator of the Port Fund (as well as a Limited Partner in it) and at all material times until 29 May 2018 was the 100% owner of Port Link.

237.2 It was placed in voluntary liquidation by shareholder resolution on 20 December 2020, with KGL Kuwait appointed as voluntary liquidator.

FSD2022-0041 Page 80 of 156 2022-03-03

237.3 At all material times, Mr Williams was CEO of KGLI Asia ROHQ and he was (and remains) a Director of KGLI Asia. As stated above, Mr Williams was previously (among other things) the Director of Investments for the Port Fund.

237.4 From on or around December 2011 until a date presently unknown to the Plaintiffs, Ms Lazareva was a director of KGLI Asia.

238. KGLI Asia and the Port Fund entered into an administrative support agreement effective 1 December 2017 (the **ASA**) pursuant to which:

238.1 KGLI Asia undertook to "*to provide administrative and personnel support to the Partnership in regards to the fulfilment of obligations and representations made by the Partnership to the buyer of GGDC Holdings*" and to assist "*with other administrative matters in regards to the Partnership*" (Clause 3.1),

238.2 in consideration for remuneration of USD 125,000 per month payable in advance on the first business day of each month (Clause 6.1).

239. The ASA was signed by Mr Williams on behalf of KGLI Asia, notwithstanding the fact he was at the time also Director of Investments for Port Link. The ASA was signed by Dr Akbar on behalf of Port Link / the Port Fund. As admitted in its "*Due Diligence Memorandum regarding Port Link's engagement of KGLI Asia*" dated 28 May 2021 (the **KGLI Asia Memorandum**), discussed further below, Dr Akbar was never a (*de jure*) director of Port Link but was chairman of KGL Kuwait and worked closely with Port Fund and had been authorised to sign the ASA by a board resolution dated 27 November 2017. No explanation has been provided as to why one of Port Link's *de jure* directors did not sign the ASA on behalf of Port Link / the Port Fund. Dr Akbar's signing the ASA confirms the fact that the ASA was at best an intra-group agreement within the KGL Group, not an arm's length transaction between independent commercial entities.

240. As to the ASA:

240.1 By December 2017, the Port Fund had no active investments, having exited the last of its investments (the Clark Asset) in November 2017.

240.2 In those circumstances, there were no substantial administrative support services which the Port Fund required. The Port Fund was not transacting any business.

240.3 Further and in any event, such needs as the Port Fund had for administrative support services should have been capable of being met internally by Port Link.

240.4 The principal activity in which the Port Fund engaged from November 2017 involved seeking the release of the funds in the Noor Account, which funds were released in February 2019.

240.5 At no time during the currency of the ASA can the Port Fund have required external administrative support services that would have remotely justified remuneration on the scale provided for under the ASA.

241. The invoices that were disclosed in the s.22 Disclosure indicate that approximately USD 1.95 million was paid to KGLI Asia purportedly under the ASA:

241.1 All but one of the relevant invoices refer to "*Advisory Services Fee[s]*" and "*Various Expenses*". However, the ASA did not contemplate KGLI Asia providing advisory or consulting services.

241.2 An invoice dated 9 February 2019 in the sum of USD 975,000 refers to "*Retainer against Consulting Contract Monthly Fees*".

242. In the 27 February 2020 Letter, Port Link stated that payments totalling USD 1,948,976.32 were made in respect of fees "*for administrative and personnel services [KGLI Asia] provided to the Fund in 2018 – 2019 in respect of the sale of GGLC and the subsequent release of the monies frozen at Noor*".

243. In paragraph 40 of Childe 2, Mr Childe stated: *"representatives of KGLI Asia were involved on a daily basis in securing the release of the Fund monies at Noor bank."*

FSD2022-0041 Page 82 of 156 2022-03-03

244. In the KGLI Asia Memorandum, Port Link has claimed that KGLI Asia was involved in liaising with UDEVCO to prevent it issuing legal proceedings to recover approximately USD 58 million that was outstanding while the Noor Bank Account was frozen and settling an alleged breach of warranty claim, as well as assisting in the efforts to unfreeze the Noor Bank Account, as well as various other matters such as preparing the Port Fund's audited accounts and preparing a claim against Noor Bank.

245. However:

245.1 The source of the Port Link directors' information appears exclusively to be Mr Williams (against whom the Plaintiffs make serious allegations of fraud and dishonesty in this Statement of Claim).

245.2 The tasks allegedly undertaken by KGLI Asia appear to be largely or solely work allegedly undertaken by Mr Williams himself (said to have been on behalf of KGLI Asia).

245.3 So far as any work was undertaken by Mr Williams (as to which no admissions are made), this is work he could and should have undertaken for Port Link (as its Director of Investments), and provides no justification for Port Link entering into the ASA or making the payments to KGLI Asia.

245.4 Further or alternatively, all of the tasks allegedly undertaken by KGLI Asia are tasks which could and should have been undertaken by the Investment Management Company. Port Link has failed to provide any justification for engaging or paying a further KGL Group entity for these services (so far as any were undertaken).

246. As President and a director of KGLI Asia and CEO of its ROHQ in the Philippines at all material times, Mr Williams was and is in a position of acute and irresolvable conflict of interest in entering into the ASA and in now seeking to justify its execution and the KGLI Asia Payments on behalf of Port Link. There is no evidence that Port Link obtained any independent advice that the fees paid to KGLI Asia reflected value for money and it is to be inferred it did not.

Inferences of fact

247. In the premises, it is to be inferred that:

247.1 The ASA, the engagement of KGLI Asia, and the KGLI Asia Payments (whether made under the ASA or otherwise) were not genuine arm's length transactions but commercially disadvantageous transactions pursuant to which KGLI Asia, Mr Williams and/or other persons associated with the KGL Group illegitimately and improperly benefitted and KGLI Asia provided no or no substantial services and the fees paid to KGLI Asia far exceeded the market value of any services that were provided.

247.2 Port Link's engagement of KGLI Asia, entering into the ASA and making the KGLI Asia Payments constituted transactions that Port Link entered into without a good faith belief that the terms and conditions of such transactions were no less favourable than those that could have been obtained for comparable services from an unaffiliated third party with similar (or better) expertise and experience.

247.3 Port Link failed to consider properly or at all whether KGLI Asia was an appropriate entity to engage to provide any services it purportedly provided.

247.4 Among other individuals, Mr Williams knew at all material times the above facts regarding the ASA and the KGLI Asia Payments.

Port Link's breaches of duty / trust

248. In the premises, Port Link acted in breach of duty and trust in entering into the ASA and making the KGLI Asia Payments:

PARTICULARS

248.1 It was not in the interests of, or for the benefit of, the Port Fund to enter into the ASA or to use the Port Fund's monies to make the KGLI Asia Payments;

FSD2022-0041 Page 84 of 156 2022-03-03

248.2 Further or alternatively, Port Link did not act in good faith in so undertaking and using the Port Fund's monies;

248.3 It was negligent for Port Link to make the ASA and the KGLI Asia Payments;

248.4 Further, the KGLI Asia Payments were made in wilful and/or intentional, alternatively negligent, breach of trust because they were not made in good faith or in the interests of the Fund.

Knowing receipt by KGLI Asia

249. Mr Williams' knowledge pleaded at paragraph 247 above is to be imputed to KGLI Asia by virtue of his roles as a director of KGLI Asia and as President and CEO of its ROHQ in the Philippines. Accordingly, KGLI Asia knew the KGLI Asia Payments were made in breach of fiduciary duty and/or breach of trust and it is unconscionable for it to retain receipt of the payments. KGLI Asia is therefore liable in knowing receipt and liable to account for the payments that it received from Port Link as if it were constructive trustee and/or to pay equitable compensation to the Plaintiffs on behalf of the Fund to compensate the Fund for the loss caused to it.

Loss and damage

250. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

251. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below and Mr Williams and KGLI Asia are each obliged to account as constructive trustees therefor.

J3. Items 3-16: PR, legal and lobbying fees

The facts

252. In summary, the following paragraphs concern payments which were made purportedly for the purpose of enabling the Fund to obtain the release of the frozen Noor Bank Account funds or to address the Fund's public relations needs in Kuwait. In fact it is apparent that in many cases, all or most of the work allegedly done in consideration for the payments was for the benefit of individuals and entities other than Port Fund, in particular Ms Lazareva, Mr Dashti, Mr Williams, KGL Kuwait and/or other related persons. In these circumstances, the Plaintiffs are entitled to recover by way of damages or equitable compensation the amount by which its distributions from the Fund were reduced as a result of payments wrongfully made otherwise than for the benefit of the Fund.

253. The relevant payments are set out at items 3-16 of the Appendix 1 hereto. They total USD 7,527,258.93 purportedly for public relations, legal and lobbying services by 13 third party service providers, pursuant to a range of contractual and other arrangements.

254. Port Link initially maintained in the 27 February 2020 Letter that all the payments out of the Noor Bank Account were legitimate and in the interests of the Fund. In Childe 1 in response to GIC's s.22 Application, Port Link then admitted that:

> "*Some of the firms engaged by the Fund to assist with the unfreezing of the $496 million [the Noor Account funds]* ***were also assisting the former directors of the GP in relation to ongoing criminal proceedings in Kuwait***" (paragraph 85, emphasis added)

255. Subsequently, in evidence in the KPA Proceedings and in due diligence memoranda provided to the Limited Partners, Port Link has conceded that in respect of at least 5 of the third party service providers, the payments were wholly or substantially for the benefit of Mr Dashti, Ms Lazareva and/or KGL Kuwait, not the Port Fund. In circumstances where Port Link has either not yet reclaimed the wrongfully paid sums or has not distributed them to the Plaintiffs so as to make good their loss, the Plaintiffs maintain a claim in respect of them

below. The Plaintiffs further claim in relation to payments to 8 other service providers which, the Plaintiffs say, comprised or included substantial sums that were not for the benefit of the Port Fund.

Item 3: Crowell & Moring

256. Crowell & Moring are said to have received payments from the Noor Bank Account purportedly *"for their legal fees and for disbursement on behalf of the Fund"* in the following amounts:

256.1 USD 7.5 million on 7 February 2019;

256.2 USD 41.7 million on 12 February 2019; and

256.3 USD 1.5 million on 30 March 2019.

257. Of these sums, Crowell & Moring is said to have retained USD 2,576,349.69 in respect of fees purportedly for "*legal and other services to the Fund and Port Link GP*". The remainder is said to have been paid out to a range of different entities, including the payments referred to at items 4, 5, 7, 9, 11 and 13-15 of Appendix 1.

258. Crowell & Moring represents Ms Lazareva personally (*inter alia* in the ICSID Arbitration) and KGL Kuwait in relation to public and media relations, and has been (and continues to be) heavily involved with the Lazareva Lobbying Campaign. The s.22 Disclosure included a number of invoices that were issued by Crowell & Moring to the Port Fund in respect of "*Advice re Kuwaiti Legal Proceedings and Related Matters*". These invoices confirm that the Port Fund was charged and has paid legal fees for work done by Crowell & Moring on behalf of (1) Ms Lazareva in relation to the ICSID Arbitration, (2) Ms Lazareva and Mr Dashti in relation to the Kuwaiti Criminal Proceedings, (3) KGL Kuwait, (4) the Investment Management Company, (5) the shareholders of Port Link and/or Mr Williams, and (6) Apache. It is accordingly to be inferred that the USD 2,576,349.69 in fees paid to Crowell & Moring from the Noor Bank Account included substantial sums which were paid not for the benefit of the Fund but for the benefit of the individuals/entities listed at (1)-(6). Pending

FSD2022-0041 Page 87 of 156 2022-03-03

disclosure, the Plaintiffs cannot plead with specificity what proportion of the fees paid to Crowell & Moring were improperly incurred by Port Link.

Item 4: Squire Patton Boggs

259. A total of USD 1,405,930.69 was paid to Squire Patton Boggs LLP (**SPB**), a full-service international law firm.

260. In the 27 February 2020 Letter, Port Link stated that SPB were "*[e]ngaged to provide legal and other services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor*".

261. However, in addition to undertaking lobbying efforts in relation to the lifting of the Noor Bank Freeze, SPB has also undertaken work in support of the Lazareva Lobbying Campaign and lobbying efforts in relation to the Kuwaiti Criminal Proceedings. In support of this, the Plaintiffs rely *inter alia* on:

261.1 the letters disclosed by Port Link which were sent by SPB (together with Neil Bush and Brownstein Hyatt Farber Schreck LLP) to the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait dated 14 November 2018 and 26 November 2018 in which SPB lobbied the Kuwaiti government to withdraw the charges against Ms Lazareva and Mr Dashti;

261.2 SPB's letters dated 10 July 2018, 31 July 2018, 17 August 2018 and 28 September 2018 identify Mr Williams as SPB's client (rather than Port Link or the Fund); and

261.3 Despite its Information Obligations, its obligations pursuant to the Cayman Disclosure Orders and numerous opportunities, Port Link has failed to provide evidence or documents that justify or explain its position (which it has stated in evidence in the KPA Proceedings) that there is no evidence that SPB supported the Lazareva Lobbying Campaign, ICSID Arbitration or the defence of the Kuwaiti Criminal Proceedings. In particular, the terms of engagement disclosed by Port

Link are inconclusive and the SPB invoices it has disclosed only contain narrative explaining SPB's work in respect of a small fraction of the fees paid.

262. In the premises, it is to be inferred that the sums paid to SPB included substantial sums in respect of work not undertaken for the benefit of the Fund but for the benefit of Ms Lazareva, Mr Dashti and/or KGL Kuwait. Pending disclosure, the Plaintiffs cannot plead with specificity what proportion of the fees paid to SPB were improperly incurred by Port Link.

Item 5: Neil Bush

263. Neil Bush received payments of USD 1,215,589.59 from the sums paid on retainer to Crowell & Moring from the Noor Bank Account.

264. Mr Bush had an engagement with Port Link beginning in September 2018 which provided for Mr Bush to be paid USD 40,000 per month plus a USD 500,000 "*success fee*" upon the lifting of the Noor Bank Freeze. In a Memorandum regarding lobbying and legal fees dated 4 June 2021 (the **Lobbying and legal fees memorandum**), Port Link has explained that Mr Bush's "*success fee*" was increased to USD 1,000,000 a few weeks prior to the release of the Noor Bank Freeze on 5 February 2019. Port Link claimed to have considered the position and found no evidence Mr Bush worked on any issue other than the Noor Bank Freeze.

265. However, in addition to undertaking lobbying efforts in relation to the lifting of the Noor Bank Freeze, Mr Bush has in fact also undertaken work in support of the Lazareva Lobbying Campaign and lobbying efforts in relation to the Kuwaiti Criminal Proceedings. In support of this, the Plaintiffs rely *inter alia* on the letters disclosed by Port Link which were sent by Mr Bush (either alone or with other lobbyists) to various senior figures within the Kuwaiti and UAE governments on 24 October 2018, 14 November 2018, 26 November 2018, 28 November 2018, 28 December 2018 and 7 February 2019.

266. In the premises it is to be inferred that the sum paid to Mr Bush included substantial sums paid not for the benefit of the Fund but for the benefit of Ms Lazareva, Mr Dashti and/or KGL Kuwait. Pending disclosure, the Plaintiffs cannot plead with specificity what proportion of the fees paid to Mr Bush/ were improperly incurred by Port Link.

Item 6: Dr Al Harbash

267. A total of USD 1,002,189.69 was paid to Dr Yousef Thaher Al Harbash (**Dr Al Harbash**) in four tranches:

267.1 A payment of USD 83,954 was made on 9 November 2017.

267.2 A payment of USD 165,359.55 was made on 5 March 2018.

267.3 A payment of USD 82,679.77 was made on 15 May 2018.

267.4 A payment of USD 670,196.37 was paid to on 11 February 2019.

268. In Childe 2, Port Link claimed that Dr Al Harbash was engaged to assist with both the unfreezing of the Noor Bank Account and the Kuwaiti Criminal Proceedings. However, in its Due Diligence Memorandum on the payments to Dr Al Harbash dated 28 May 2021, Port Link has conceded that the services provided by Dr Al Harbash were exclusively for the benefit of KGL Kuwait, Ms Lazareva and Mr Dashti, in relation to the Kuwaiti Criminal Proceedings, and not the Port Fund.

Item 7: Marathon

269. From the sums paid to Crowell & Moring from the Noor Bank Account, payments totalling USD 349,961.85 were made to Marathon Strategies LLC (**Marathon**).

270. One of the payments to Marathon, in the amount of USD 260,795.18 was disclosed in the 27 February 2020 Letter, which described it as being in respect of "*services to assist in the Fund's efforts to unfreeze $496 Million held by Noor* ***and protect the reputation of the Fund***" (emphasis added).

271. However:

FSD2022-0041 Page 90 of 156 2022-03-03

271.1 Marathon is a New York-headquartered public relations firm. The Port Fund had little or no use for a public relations firm to manage its global reputation in order to obtain the unfreezing of the Noor Bank Account. By contrast, Ms Lazareva and Mr Dashti engaged in extensive efforts to rehabilitate their public reputation in the light of the Kuwaiti Criminal Proceedings.

271.2 Port Link has disclosed an engagement letter dated 10 January 2018 pursuant to which Marathon was engaged by Crowell & Moring to advise it in relation to "*certain public relations and media strategies associated with [Crowell & Moring's] advice to [the Investment Management Company]*". The letter defines the Investment Management Company as "*the Client*". The scope of services to be provided by Marathon, listed in Schedule A to the letter, include "*develop[ing] a media strategy to support [the Investment Management Company's] objective of raising the public profile in the U.S. and other media markets of the unjustified actions by the State of Kuwait, including the Kuwait Port Authority, against [the Investment Management Company] and its executives and/or shareholders*". There is no reference in the letter to work on behalf of the Port Fund or in relation to the unfreezing of the Noor Bank account.

271.3 In its Lobbying and legal fees memorandum at paragraph 16.3, Port Link has conceded that the fees of USD 349,962 were entirely for the benefit of KGL Kuwait and not the Port Fund.

Item 8: Al Mutairat

272. On 21 June 2017, the Port Fund (represented by Ms Lazareva) entered into a legal services agreement with Badr N Al Mutairat, a Kuwaiti law firm (**Al Mutairat**), pursuant to which Al Mutairat was to represent the Port Fund, Ms Lazareva and Mr Dashti in the criminal case 1496/2012 which formed part of the Kuwaiti Criminal Proceedings. The agreement stated that Al Mutairat would join a "*Consortium of Law Firms which is led by Dr. Yousef Al-Harbash Law Firm … All legal actions related to Court and this case to be coordinated with Dr. Yousef Al-Harbash Law Firm*". So far as the Plaintiffs are aware, the Port Fund was not a participant, and did not require representation in, the Kuwaiti Criminal Proceedings.

273. Under the agreement, Al Mutairat was to be paid fees totalling KD 100,000 (amounting to approximately USD 329,154 at the exchange rates then prevailing). Statements for the Port Link Noor Bank Account show that Al Mutairat was paid USD 83,990 on 3 August 2017 and USD 83,921 on 4 October 2017.

274. In the premises, it is to be inferred that the sums paid to Al Mutairat comprised or included fees in respect of work undertaken not for the benefit of the Fund but for the benefit of Ms Lazareva and Mr Dashti in relation to Kuwaiti Criminal Proceedings.

Item 9: Baker Tilly

275. On 10 January 2018, the Port Fund entered into an agreement with Baker Tilly, Kuwait, pursuant to which Baker Tilly would scrutinize and report on, from a financial perspective, accusations made against Ms Lazareva and Mr Dashti in the Kuwait criminal proceedings (the **Baker Tilly Report**). Under the agreement, Baker Tilly was to be paid fees totalling KD 65,000 (amounting to approximately USD 215,581 at the exchange rates then prevailing).

276. Statements for the Port Link Noor Bank Account show that Baker Tilly was paid USD 100,313 on 18 February 2019. The Plaintiffs understand that Baker Tilly was paid a further USD 49,607 during the "*financial year ended 2018*" by the Investment Management Company, and that the Investment Management Company then reclaimed this sum from the Port Fund.

277. The Baker Tilly Report and, it is to be inferred, any other services provided by Baker Tilly, were for the benefit of Ms Lazareva and Mr Dashti, not the Port Fund.

Item 10: Triple Canopy

278. USD 304,267.32 was paid to Triple Canopy Media LLC (**Triple Canopy**).

279. In its Lobbying and legal fees memorandum at paragraph 13.11-12, Port Link has conceded that its preliminary view, subject to further investigation, is that "*a significant proportion*" of Triple Canopy's work appears to relate to KGL Kuwait, Ms Lazareva and Mr Dashti, as opposed to the Fund, and states its investigations are ongoing.

FSD2022-0041 Page 92 of 156 2022-03-03

280. Triple Canopy describes itself in publicity material as a "*boutique Internet marketing firm offering search engine optimization (SEO), local search, and reputation management services to small and mid-sized businesses.*" Such services were irrelevant to unfreezing the Noor Bank account.

281. In the premises, it is to be inferred that the payment to Triple Canopy comprised or included substantial sums in respect of work undertaken for the benefit of Ms Lazareva, Mr Dashti and/or KGL Kuwait and not for the benefit of the Port Fund.

Item 11: Navigant

282. Navigant Consulting, Inc. (**Navigant**) is a specialist consulting firm providing forensic accounting and associated services.

283. The sums paid by Port Link to Navigant include USD 229,593.56 which Port Link disclosed in the 27 February 2020 Letter and sought to justify on the basis that Navigant were "*Engaged to provide services in support of legal advice to the Fund and the GP.*"

284. However, in its Lobbying and legal fees memorandum, Port Link admitted that USD 129,593.56 of these sums were in fact paid in respect of two expert reports filed in support of Ms Lazareva's defence in proceedings in Kuwait to which the Port Fund was not a party and accordingly were not for the benefit of the Port Fund.

Item 12: Trax

285. On 12 September 2017, Port Link (acting by Ms Lazareva) entered into an agreement with Trax Marketing Consulting Company (**Trax**), in relation to (amongst other things) "*the personal reputation of the [Port] Fund's director who has been subject for a strategic attack through twitter and prints*". Trax was hired to "*gradually change the negative misconception [of Ms Lazareva] to neutral first then positive*".

286. Under the agreement, Trax was to be paid monthly fees totalling KD 5,000 (amounting to approximately USD 16,590 at the exchange rates then prevailing) plus at least a further KD 11,500 (approximately USD 38,157).

287. Statements for the Port Link Noor Bank Account show that Trax was paid USD 64,769 on 19 September 2017 and USD 20,569 on 8 November 2017.

288. From a spreadsheet disclosed pursuant to the Cayman Disclosure Orders, it appears that Trax was paid a further USD 20,257 during the "*financial year ended 2018*" by the Investment Management Company, which then reclaimed this sum from the Port Fund.

289. In the premises, the payments to Trax were for the benefit of Ms Lazareva, not the Port Fund.

Item 13: McKool Smith

290. A payment of USD 85,641.54 is said to have been made to "*McCool Smith, A Professional Corporation*" which the Plaintiffs understand to be a reference to the US law firm McKool Smith. Walkers Cayman described McKool Smith as having been "*Engaged to provide legal services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor*". However:

290.1 Port Link has disclosed a McKool Smith invoice dated 8 August 2018 which, in addition to Noor Bank Freeze, refers to work undertaken in relation to the Kuwaiti Criminal Proceedings and obtaining the release of Ms Lazareva and Mr Dashti.

290.2 In its Lobbying and legal fees memorandum, Port Link stated that it considers the "*vast majority*" of services provided by McKool Smith related to releasing the Noor Bank Accounts but that it is continuing to review the matter to consider whether to seek to recover a portion of the McKool Smith from KGL Kuwaiti, Mr Dashti or Ms Lazareva.

290.3 McKool Smith is a specialist US trial law firm. It is unclear what use Port Link could have had for such trial law services in relation to releasing the Noor Bank funds. In the Lobbying and legal fees memorandum at paragraph 15.5, Port Link states that Mr Williams has told the Port Link directors that McKool Smith was considering filing a bankruptcy claim in the US against the Fund and appointing US directors

FSD2022-0041 Page 94 of 156 2022-03-03

to the board of Port Link. However, Port Link has apparently found no documentary support for this contention as it has disclosed none despite its obligations pursuant to the Cayman Disclosure Orders and its Information Obligations.

291. In the premises, it is to be inferred that the fees paid to McKool Smith included substantial sums which were not paid for the benefit of the Fund but for the benefit of Mr Dashti, Ms Lazareva and/or KGL Kuwaiti. Pending disclosure, the Plaintiffs cannot plead with specificity what proportion of the fees paid to McKool Smith were improperly incurred by Port Link.

Item 14: diGenova & Toensing

292. A payment of USD 23,875 is said to have been made to diGenova & Toensing LLP (**diGenova**), a Washington D.C. law firm focussed on governmental and regulatory work.

293. In the 27 February 2020 Letter, Port Link said diGenova was "*[e]ngaged to provide services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor*". However, this description was falsified by the fact that, in purported compliance with its duty under the Cayman Disclosure Orders to identify the legal basis for the payment to diGenova and in evidence in the KPA Proceedings, Port Link subsequently disclosed:

293.1 an engagement letter dated 6 August 2018 between diGenova and Crowell & Moring, on behalf of its client Ms Lazareva, to assist in the representation of Ms Lazareva in the Kuwaiti Criminal Proceedings and ICSID Arbitration; and

293.2 three invoices from diGenova, all of which refer to services provided in relation to "*Marsha*".

294. In its Lobbying and legal fees memorandum at paragraph 16.8, Port Link has conceded that the fees paid to diGenova were entirely for the benefit of Ms Lazareva and/or KGL Kuwait and not the Fund.

FSD2022-0041 Page 95 of 156 2022-03-03

Item 15: Covington & Burling

295. A payment of USD 10,434 is said to have been made to Covington & Burling LLP (**Covington**), a full-service US law firm.

296. In the 27 February 2020 Letter, Port Link said Covington was "*[e]ngaged to provide services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor*". However, this description is falsified by the fact that, in purported compliance with its duty under the Cayman Disclosure Orders to identify the legal basis for the payment to Covington and in evidence in the KPA Proceedings, Port Link has disclosed:

296.1 an engagement letter dated 22 January 2018 confirming that Covington had been engaged by Crowell & Moring, on behalf of KGL Kuwait, "*in connection with the detention of two senior [KGL Kuwait] executives – Marsha Lasareva and Saeed Dashti – who have been detained by Kuwaiti authorities since late November 2017*"; and

296.2 an invoice dated 26 February 2018 which refers in its narrative to "*case strategy*" and "*Treaty Arbitration*", which is a reference to the ICSID Arbitration.

297. In its Lobbying and legal fees memorandum at paragraph 16.14, Port Link has conceded that the fees paid to Covington were entirely for the benefit of Ms Lazareva, Mr Dashti and/or KGL Kuwait and not the Fund.

Item 16: Olko

298. On 1 March 2018, the Port Fund (acting by Port Link) entered into an advisory services agreement with OOO "Olko" Ltd, a Russian registered company (**Olko**).

299. The advisory services provided that Olko was to work towards (amongst other things) "*clearing The Port Fund name and the reinstatement of The Port Fund reputation*". However, it is to be inferred from the following matters that the real purpose of Olko's engagement and any work undertaken by Olko was to assist in the reputation rehabilitation exercise

FSD2022-0041 Page 96 of 156 2022-03-03

evidenced by, for example, the Trax payment referred to above and was therefore, in truth, for the benefit of Ms Lazareva and Mr Dashti, not the Port Fund:

299.1 Amongst other fees, Olko was to be paid a USD 500,000 success fee if Mr Dashti and Ms Lazareva were acquitted in the Kuwaiti criminal cases 1942/2015 and 1496/2012 referred to above.

299.2 The use of a Russian company supports the inference that the work related to Ms Lazareva's reputation (as a Russian national) rather than the reputation of Port Fund in Kuwait.

299.3 It was Ms Lazareva and Mr Dashti, not the Port Fund itself, whose name and reputation had been damaged by allegations of wrongdoing at the Fund, not the name or reputation of the Fund itself, which in any event was a defunct entity in the process of being wound up.

300. Pending disclosure, the Plaintiffs do not know what, if any, payments were made to Olko pursuant to the advisory agreement with Olko.

Other PR, lobbying and legal fees

301. The Plaintiffs rely on further payments purportedly made by Port Link in respect of PR, lobbying and legal fees in support of their claim for an account: see paragraphs 370 below.

Port Link's breaches of duty / trust

302. In the premises, Port Link acted in breach of duty and trust in entering into the agreements and making the payments described at paragraphs 256 to 300 above.

PARTICULARS

302.1 It was not in the interests of the Port Fund to enter into these agreements or make these payments because:

FSD2022-0041 Page 97 of 156 2022-03-03

(a) As particularised in respect of each of items 3-16 in Appendix 1 above, these payments comprised or included substantial sums paid in respect of PR, legal, lobbying or other services for the benefit not of the Port Fund but of Ms Lazareva, Mr Dashti, Mr Williams, KGL Kuwait and/or other persons;

(b) Further or in any event, if Port Link were to enter into engagements purportedly for the joint or mutual benefit of the Port Fund and third parties, in order to discharge its obligation to act only in the interests of the Fund, it was incumbent on Port Link to ensure that:

(i) contracts and other terms of engagement were drafted in such a way as to ensure that the Fund did not pay for services that were not for its benefit;

(ii) consistently with its Information Obligations, adequate books and records were maintained to enable Port Link readily to demonstrate that the fees paid were solely for the Fund's benefit; and

(iii) the Port Fund did not pay more for such services on account of the fact that the service provider was also undertaking work for Mr Dashti, Ms Lazareva, KGL Kuwait and/or other persons.

302.2 Further or alternatively, and for the same reasons:

(a) Port Link did not act in good faith in so undertaking and using the Port Fund's monies;

(b) It was negligent for Port Link to make the aforementioned agreements and/or payments;

302.3 Further, these payments were made in wilful and/or intentional, alternatively negligent, breach of trust because they were not made in good faith or in the interests of the Fund.

FSD2022-0041 Page 98 of 156 2022-03-03

Loss and damage

303. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

304. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below.

K. CLAIM SEVEN: THE DIFC CLAIM AND PAYMENT TO THE INVESTMENT MANAGEMENT COMPANY

K1. Relevant contractual provisions

305. In addition to the terms summarised at paragraphs 58 to 61 above, the LPA contained the following relevant provisions.

306. The term "**Investment Manager**" was defined in the LPA as the Investment Management Company or any entity wholly owned by it. Clause 3.7(a) provided that the partnership was to pay the following management fees to the Investment Manager (the **Management Fee**):

306.1 from the Initial Closing Date (i.e. 31 July 2007) until 31 December following the fifth anniversary of the Initial Closing Date (i.e. 31 December 2012), an annual management fee equal to 2% of the Fund's aggregate Capital Commitments; and

306.2 from 1 January following the fifth anniversary of the Initial Closing Date (i.e. 1 January 2013), until the termination of the Fund for any subsequent period, an annual management fee equal to 1.5% of the Fund's aggregate Capital Commitments.

307. The Management Fee was to be payable quarterly in advance, commencing on the Initial Closing Date and thereafter on the first day of each calendar quarter. The Management Fee was at all times to be borne by the Limited Partners *pro rata* to their Capital Commitments, and appropriate adjustments made to their Capital Accounts (as defined): see clause 3.7(b).

308. As stated at paragraph 61 above, Clause 4.3 of the LPA set out a waterfall for the order of distributions from exited Fund Investments.

308.1 Clause 4.4(a) recorded that the general partner intended to make distributions from exited Fund Investments within 60 calendar days from receipt of the proceeds of each exited investment but provided that in any event they were to be made (i) in the case of cash received by the partnership, within 90 days of receipt of such cash; and (ii) in the case of any proceeds other than cash or cash equivalents at such time as the general partner determined.

308.2 As stated at paragraph 61 above, Clause 4.3(b) provided that distributions from exited Fund Investments were to be distributed to the partners in accordance with the following provisions: (i) 100% to all Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment until each Limited Partner received an amount equal to its Capital Contribution employed in that particular Fund Investment; then (ii) 100% to the Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment until each Limited Partner received (*pro rata* on the basis of a 365 day year) a compounded 8% per annum return on its Capital Contribution employed in that particular Fund Investment; then (iii) 100% to the Investment Manager until it received 20% of the amount allocated to the Limited Partners pursuant to (ii) above; then (iv) 80% to the Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment and 20% to the Investment Manager (defined as the **"Carry"**).

308.3 Distributions paid to the Investment Manager in accordance with clause 4.3(b) were to be referred to as the "**Performance Fee**".

308.4 Clause 4.3(f) provided that:

FSD2022-0041 Page 100 of 156 2022-03-03

> *"Upon termination of the Partnership, if the Limited Partners have received back less than their Capital Contributions together with an amount equal to 8% per annum (compound interest) thereon from the drawdown of each Capital Contribution to the date such sums are returned, then the Investment Manager shall pay to each Limited Partner, out of any Carry received by the Investment Manager (but not otherwise) the lesser of:*
> *(i) the sum of all the Carry received by way of distribution to the Investment Manager; and*
> *(ii) such amount as would return to each Limited Partner the aggregate of its Capital Contributions together with an amount equal to 8% per annum (compound interest) thereon from the date of drawdown to the date such sums are returned."*

309. By Clause 2.2 of the IMA, the Investment Management Company accepted appointment as Investment Manager and agreed to manage the investment and re-investment of any investment of the Fund and to carry out certain other functions provided that (amongst other things) it would at all times observe and comply with the terms of the LPA.

310. Clause 5 of the IMA dealt with remuneration:

310.1 Clause 5.1 provided that, in consideration for the provision of investment management services, the general partner would pay the Investment Manager a "**Management Fee**" on the same terms as clause 3.7(a) of the LPA (see above).

310.2 Clause 5.2 provided that the general partner would pay the Investment Manager a "**Performance Fee**" on the same terms as clauses 4.3(b) and 4.4(a) of the LPA (see above).

311. Clause 6 contained the same provision which was contained at clause 4.3(f) of the LPA.

312. Clause 12 dealt with termination of the IMA:

FSD2022-0041 Page 101 of 156 2022-03-03

312.1 The Investment Manager could terminate the IMA at any time by giving not less than 90 days' notice in writing to the Fund (or such shorter notice as the Fund might accept): see clause 12.2(a).

312.2 The Investment Manager could also terminate the IMA at any time in writing to the Fund if the Fund had committed any material breach of its obligations under the IMA: see clause 12.2(c).

312.3 Subject to clause 7 of the IMA, upon termination of the IMA, the Investment Manager was entitled to receive immediately all fees and other monies accrued but not yet paid on a *pro rata* basis up to the date of termination. The Fund was also to pay immediately a performance fee to the Investment Manager based on the accrued value of the Fund Investments which had not been disposed of (such value to be determined, in summary, by an investment bank acting as an independent valuer and appointed by agreement between the parties) to be calculated in accordance with the distribution methodology in clause 5 (defined as the "**Accrued Performance Fee**"): see clause 12.5.

313. Clause 7 of the IMA provided for the Fund to retain 10% of all Carry distributions to be made to the Investment Manager in a segregated reserve account until the earlier of the dissolution of the Fund or termination of the Investment Manager, to be subject to the clawback provisions in Clause 6 of the IMA in the event the Investment Manager was terminated for cause.

314. The termination of the IMA was to be without prejudice to accrued rights and liabilities and any provisions expressed to survive the termination: see clause 12.7.

315. On the true construction of Clause 11, the Investment Management Company owed Port Fund and/or each Limited Partner:

315.1 a duty to act in good faith and in the interests the Fund; and

315.2 a duty to exercise reasonable care and skill in the exercise of its duties under the IMA.

FSD2022-0041 Page 102 of 156 2022-03-03

316. Alternatively, a term is to be implied into the IMA to like effect, on the basis that it is so obvious as to go without saying and/or necessary to give business efficacy to the agreement.

317. The IMA was expressly governed by Cayman Islands law (Clause 18.1). It contained a jurisdiction clause in favour of the Cayman courts (Clause 18.2) in the following terms:

> *"Each of the parties agrees that the courts of the Cayman Islands shall have jurisdiction to hear and determine any action or proceeding arising out of or in connection with this Agreement and for that purpose irrevocably submits to the jurisdiction of such court and agrees that the process by which any such action or proceeding is begun may be served on it by being delivered to its registered address set out above."*

That clause was, on its true construction, an exclusive jurisdiction clause.

318. The Plaintiffs will rely on the IMA at trial for its full terms and effect.

K2. The Facts

319. By letter dated 16 June 2018 the Investment Management Company wrote to Port Link (and the Fund) demanding payment of "**Carry**" under clause 4.3(b)(iv) of the LPA. The claim made in that letter was confined to a purported claim for the Carry, not any Management Fee under the LPA or IMA.

320. By letter of claim dated 7 July 2018 (**Letter of Claim**) and addressed to both Port Link and the Port Fund, Clyde & Co wrote to both parties:

320.1 stating that the firm had been instructed by the Investment Management Company;

320.2 asserting that Port Link had committed breaches of the IMA by failing to pay the Carry and the Management Fee and demanded payment of USD 56,784,054 (inclusive of interest allegedly due on both sums);

FSD2022-0041 Page 103 of 156 2022-03-03

320.3 asserting that the Fund had committed material and fundamental breaches of the IMA by failing to pay the Carry and the Management Fee;

320.4 purporting to give notice that the IMA was terminated with immediate effect under clause 12.2(a) of the IMA;

320.5 asserting that the Investment Management Company was entitled to receive all fees and other expenses and monies accrued but not yet paid up to the date of termination under clause 12.5 of the IMA.

321. On 9 July 2018, Clyde & Co issued a Claim Form (the **Claim Form**) on behalf of the Investment Management Company in the DIFC Court of First Instance (the **DIFC Court**) claiming the sum of USD 53,568,386 representing both the Carry and the Management Fee together with accrued interest of US USD 3,938,614 (the **DIFC Claim**). By the DIFC Claim the Investment Management Company claimed the following sums:

321.1 Allegedly unpaid Carry (as defined in clause 5.2(d)(iv) of the IMA) in the sum of USD 45,462,000;

321.2 Compound interest on the allegedly unpaid Carry of 8% per annum;

321.3 Allegedly unpaid Management Fees (as defined in clause 5.1 of the IMA) of USD 8,106,386; and

321.4 Compound interest on the allegedly unpaid Management Fees of 8% per annum.

322. The Claim Form expressly stated that the law governing the dispute was the law of the Cayman Islands.

323. The Claim Form also stated that the law giving rise to the jurisdiction of the DIFC Court was Article 5(A)(2) of the Judicial Authority Law (Law No. 12 of 2004) which provided (and provides) as follows:

> *"The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."*

324. In the Claim Form Clyde & Co stated that both Port Link and the Port Fund had expressly submitted to the jurisdiction of the DIFC Court:

> *"On 7 July 2018, EMPEML legal representatives wrote to PLGP [i.e. Port Link] and the Partnership on behalf of EMPEML requesting their agreement that this dispute and any claims under the IMA and/or the LPA be heard by the DIFC Courts. On 8 July 2018, PLGP and the Partnership confirmed their express agreement in writing to the jurisdiction of the DIFC Courts. Accordingly, the parties have agreed to submit to the jurisdiction of the DIFC Courts in respect of disputes arising out of both the IMA and the LPA in specific, clear and express terms."*

325. Under cover of two letters dated 9 July 2018 Clyde & Co purported to serve the proceedings on Port Link and the Port Fund by email at the email address corporate@walkersglobal.com. In each letter Clyde & Co stated as follows:

> *"Further to the parties' written agreement regarding service by electronic communication, we enclose, by way of service, our Client's Part 7 Claim Form, as filed and sealed by the DIFC Courts earlier today, 9 July 2018. We also enclose the Case Plan provided by the Court Registry upon issuance of the Claim."*

Mr Williams' role in the bringing of the DIFC Claim

326. At all material times after at the latest 20 June 2018 (and possibly before) Walkers acted as attorneys not only for the Port Fund (and Port Link as general partner) but also, and at the same time, as attorneys for the Investment Management Company. They received and followed instructions from Mr Williams on behalf of Port Link as well as on behalf of the

FSD2022-0041 Page 105 of 156 2022-03-03

Investment Management Company. In support of these allegations the Plaintiffs will rely, *inter alia,* upon a letter from Walkers Cayman to Travers Thorp Alberga dated 6 January 2021 and Walkers' time entries set out in the invoice dated 17 July 2018. In particular, in that letter Walkers Cayman stated that it had been agreed between the Fund and the Investment Management Company that any advice provided to the Investment Management Company would be billed to the Fund and that the Fund and the Investment Management Company would be responsible for conducting the necessary reconciliation following the receipt of any invoices from Walkers. Further, the time entries set out in the invoice dated 17 July 2018 stated that during June and July 2018, Walkers undertook various tasks for the Investment Management Company relating to its own corporate governance and/or shareholdings including:

326.1 drafting a resolution to appoint Mr Williams as its authorised signatory;

326.2 making preparations to change its name from KGL Investment Cayman Limited to Emerging Markets PE Management Ltd; and

326.3 making arrangements for shares in the Investment Management Company to be transferred to AAAML on or before 7 July 2018.

327. On 2 July 2018, Walkers issued a memorandum addressed to the board of directors of Port Link (as general partner of the Fund) advising that they did not consider that the Investment Management Company had a claim under the LPA and had no standing to bring claims on behalf of the Limited Partners. In relation to any claim under the IMA, they gave the following advice:

> *"9. Under the terms of the IMA, we consider that KGL has the right to bring a claim against Port Link GP on the grounds that it has breached clause 5.2(d) of the IMA and failed to make distributions from exited investments within within [sic] 60 calendar days from receipt of the proceeds from such exited investments."*

328. By email dated 3 July 2018 (timed at 2.19pm) (the **3 July email**) Mr Luke Petith, an associate at Walkers, wrote to Mr Williams, copying in Mr Daniel Wood, who was (and remains) the

FSD2022-0041 Page 106 of 156 2022-03-03

managing partner of Walkers. He advised Mr Williams (ostensibly acting on behalf of Port Link/the Fund) that Walkers did not consider that the Investment Management Company could reasonably continue to claim the Management Fee under the IMA and the LPA. It is not clear why this advice was tendered. In particular Mr Petith wrote:

> *".....it may be difficult for [the Investment Management Company] to argue that it continues to provide investment management services to the Fund – although happy to discuss this point if you take the view that it is the IM (as opposed to the GP) that has been working tirelessly for the release of the frozen funds."*
>
> *"...the GP will potentially open itself up to legal action by the LPs if it continues to pay [the Investment Management Company] the Management Fee..."*
>
> *"In addition to the requirement to provide investment management services in accordance with IMA, it will also be necessary to conclude that the Fund has not yet terminated....in our view, the proper construction of this clause [i.e. cl. 5.1(b)] is that termination relates to the end of the term of the Fund and accordingly we do not consider that [the Investment Management Company] could reasonably continue to claim the Management Fee under the terms of the IMA and the LPA for the reasons outlined above."*

329. Upon receipt of that email Mr Williams and Mr Wood had a telephone call, the contents of which are presently unknown to the Plaintiffs. However by email dated 4 July 2018 (timed at 5.43pm) (the **4 July email**), Mr Petith wrote to Mr Williams, again copying in Mr Wood, and now setting out a number of reasons why Port Link could justify the payment of the Management Fee to the Investment Management Company:

> *"However, notwithstanding the above [i.e. a paragraph of the email where Mr Petith summarised the advice provided in the 3 July email], and on the basis that KGL continued to provide discretionary investment management services after 31 December 2014, we consider that the GP could seek to justify the payment of the Management Fee to KGL between 31 December*

FSD2022-0041 Page 107 of 156 2022-03-03

2014 and the time when the Fund exited its final investments by relying on (i) its powers and duties under clause 3 of the LPA and (ii) its fiduciary duties to act in the best interests of the Fund. Specifically, clause 3.1(a)(xii) provides the GP with the express power to "retain the Investment Manager and any sub-advisors to provide management, advisory and related services to the Partnership" in addition to the general powers to pay Fund expenses as the GP determines to be necessary. As such, provided the GP is comfortable that KGL continued to provide investment management services for the final investments of the Fund and retaining KGL to carry out this role was in the best interests of the Fund, we consider that the GP could seek to justify the payment on such grounds."

330. In the 3 and 4 July emails Mr Petith ostensibly advised Mr Williams in his capacity as an officer or agent of Port Link and the Fund; yet both emails were written from the perspective of the Investment Management Company and were concerned to provide Mr Williams with reasons to justify the Investment Management Company's claim, so were also directed at Mr Williams in his capacity as an officer or agent of the Investment Management Company. As to this:

330.1 There is no evidence that Mr Williams sought or received any advice on what defences to the claim would be available to the Port Fund and it is to be inferred he did not.

330.2 There was an irresolvable conflict of interest in Mr Williams seeking advice on behalf of both the Port Fund and the Investment Management Company.

330.3 Given that the apparent purpose for which Mr Williams sought the advice from Walkers was to establish the amount that Port Link could at least arguably justify paying out to the Investment Management Company, it was not permissible for this advice to be provided to him or for Port Link to pay for it.

331. It is to be inferred that a claim for Management Fees, which had not been included in the Demand, was added to the Letter of Claim and DIFC Claim, on Mr Williams' instructions, as

FSD2022-0041 Page 108 of 156 2022-03-03

a result of this advice provided by Walkers in the 4 July email, purportedly to Mr Williams on behalf of Port Link.

332. There is no evidence that Mr Alwadhi, Port Link's sole *de jure* director, received any information or had any discussions with Walkers (or any other legal counsel) regarding the DIFC Claim (see further paragraph 337 below) and it is to be inferred that he did not do so.

333. Mr Williams also appears to have given instructions to Crowell & Moring regarding work billed to the Port Fund in relation to the preparation of the DIFC Claim. In support of this contention, the Plaintiffs will rely *inter alia* on time entries set out in a Crowell & Moring invoice dated 17 July 2018 which show that:

333.1 on 15 June 2018, a Crowell & Moring attorney billed the Port Fund to "*prepare DFIC [sic] complaint review legal standards re DFIC [sic] jurisdiction and breach of contract claim; review supporting materials provided by Mr. Williams*";

333.2 on 17 June 2018, that same Crowell & Moring attorney billed the Port Fund to "*[r]eview and revise KGLI [i.e. the Investment Management Company] complaint; compile supporting materials*".

The Resolutions

334. By written resolutions dated 11 July 2018 and signed by Mr Alwadhi, Port Link passed three resolutions on behalf of the Port Fund (the **Resolutions**). The document which Mr Alwadhi signed containing the Resolutions is referred to as the "**Minutes**" of the Resolutions (even though no actual meeting took place). Paragraph 3.1 of the Minutes stated (*inter alia*) that Mr Alwadhi had "*received and carefully considered*" a series of claim documents and "*carefully considered the Claim, its merits and the amount of the Outstanding Debt*".

335. Resolutions (a)-(c) provided as follows:

> *"(a) in the opinion of the Director, the merits of the Claim and the amount of the Outstanding Debt is valid:*

"(b) the submission to the jurisdiction of the DIFC Courts be and is hereby ratified, confirmed, approved and adopted in all respects as fully as if such actions had been presented for approval, and approved by, the Director prior to such actions being taken;

"(c) the Company and/or the Partnership submit a form admitting the Claim using the DIFC courts' e-filing system within the prescribed timeframe".

336. Resolutions (d) to (f) purported to authorise Port Link and the Port Fund to deliver instructions and to make, sign or execute any other documents (in such form as any "**Attorney**" or "**Authorised Signatory**" might determine). Paragraph 4 of the Minutes contained general authorisation (the **General Authorisation**) for any Attorney or Authorised Signatory to sign, make, execute, deliver, issue or file any document with any governmental authority.

337. It is to be inferred that Mr Alwadhi had not "*carefully considered the Claim, its merits, and the amount of the Outstanding Debt*":

337.1 There is no evidence that Mr Alwadhi, Port Link's sole *de jure* director, received any information or had any discussions with Walkers (or any other legal counsel) regarding the DIFC Claim and it is to be inferred that he did not.

337.2 Walkers' time entries indicate Mr Wood took instructions in relation to the preparation of the Minutes from Mr Williams and advised him about its contents.

337.3 Further, the time entries of Mr Wood, Mr Petith and Ms Arch do not record that Walkers provided any information to Mr Alwadhi (including any of the documents referred to in the Minutes themselves) or took any instructions from him or gave him any advice. Indeed they appear to have had no communications whatsoever with Mr Alwadhi.

337.4 The Minutes do not record that Mr Alwadhi had received the Memorandum of Advice from Walkers or the 3 or 4 July emails or that he had either read or considered them. If he had done so, Walkers would have recorded this in the Minutes.

FSD2022-0041 Page 110 of 156 2022-03-03

338. Contrary to Resolution (a), as at 11 July 2018 the DIFC Claim was not valid and the Port Fund did not owe the Outstanding Debt (or any part of it) to the Investment Management Company. In particular:

338.1 As at 11 July 2018 Port Link had not received the sum of USD 496,429,767 into its Noor Bank Account because that sum had been frozen by the Public Prosecutor. Further, there was a significant risk that Port Link would never receive that sum unless the account was unfrozen. As to this:

(a) As stated at paragraph 43 above, the Plaintiffs do not yet know the mechanism by which the Noor Bank Freeze was given effect. In particular, pending disclosure the Plaintiffs do not know whether (i) the sum BDO Trust attempted to transfer on or about 15 November 2017 was held throughout the Noor Bank Freeze within an internal account at Noor Bank separate from Port Link's Noor Bank Account or (ii) the sum BDO Trust attempted to transfer was credited to Port Link's Noor Bank Account but Port Link's rights in relation to its account and/or the monies transferred by BDO Trust were disabled during the Noor Bank Freeze.

(b) In either scenario, the monies transferred by BDO Trust were not received by Port Link for the purposes of Clause 4.4(a) of the LPA until the Noor Bank Account was unfrozen on or around 5 February 2019 because, as a matter of construction of Clause 4.4(a), alternatively by necessary implication, receipt of the cash proceeds of an exited Fund investment required not only that the cash was credited to a bank account held by Port Link on behalf of the Fund but also that the cash was available in cleared funds for immediate use. Cash sale proceeds were not received so as to trigger Port Link's duty to distribute under clause 4.4(a) in circumstances where Port Link was unable to transfer or distribute them or exercise any other rights or benefits attaching to them.

338.2 Accordingly, as at 11 July 2018 the Investment Management Company was, on any view, not entitled to the payment of a Performance Fee under clause 4.3(b) of the

FSD2022-0041 Page 111 of 156 2022-03-03

LPA or clause 5.2 of the IMA and could not become entitled, in any circumstances, to a Performance Fee until 60 or 90 days after the account had been unfrozen and the sum of US $496,429,767 had been received by Port Link.

338.3 Further or alternatively, the Investment Management Company was not entitled to a Performance Fee at all unless and until all of the distributions in clause 4.3(b)(i) and (ii) of the LPA (as mirrored by clause 5.2(d)(i) and (ii) of the IMA) had actually been made to the Limited Partners. Moreover the Investment Management Company's entitlement could not be calculated until after prior distributions had been made to the Limited Partners (and hence the amounts of those distributions calculated).

338.4 Further or alternatively, to the extent that a Carry may have otherwise been payable to the Investment Management Company pursuant to clause 4.3(b)(iv) of the LPA and clause 5.2(d)(iv) of the IMA, given the terms of clause 4.3(f) of the LPA and clause 6 of the IMA, the amount claimed as Carry should not have been paid in circumstances where (i) the Fund had exited all of its investments and (ii) the Limited Partners had received back less than their Capital Contributions together with an amount equal to 8% per annum (compound interest) thereon from the drawdown of each Capital Contribution to the date such sums were returned.

338.5 Further or alternatively, the Investment Management Company was not entitled to the payment of a Management Fee under clause 3.7 of the LPA and clause 3.1 of the IMA because the termination of the Fund had taken place on 31 December 2014 and the Fund should have been dissolved under clause 9.1(a).

338.6 The purported termination of the IMA contained in the Letter of Claim was invalid and the letter itself was a sham. The Fund had committed no material breaches of its obligations under the IMA.

338.7 Finally, there was no basis for the Investment Management Company's claim for interest because the IMA imposed no obligation upon Port Link to pay interest on unpaid fees to the Investment Management Company and no basis for the claim to recover interest at 8%.

338.8 Further, for the reasons explained at 0 below, even after the Clark Asset proceeds were received and distributions were made to the Limited Partners, no fees ever fell due to the Investment Management Company.

339. As to Resolution (b):

339.1 The statements made in the second paragraph 3.1(i) of the Minutes were untrue because Port Link and the Port Fund had not submitted (or purported to submit) to the jurisdiction of the DIFC Court:

(a) By order dated 26 August 2020 of the Grand Court of the Cayman Islands Port Link was ordered to disclose all written communications from the Investment Management Company to Port Link relating to demand notices and any information and documents pertaining to the DIFC Claim.

(b) However, Port Link (whether acting by Walkers or otherwise) has not disclosed either a letter dated 7 July 2018 (or indeed bearing any other date) from Clyde & Co requesting Port Link and the Fund to submit to the jurisdiction of the DIFC Court or a reply to Clyde & Co from Port Link (whether acting by Walkers or otherwise).

339.2 Even if (which is denied) Port Link (whether acting by Walkers or otherwise) had replied to Clyde & Co's letter dated 7 July 2018 purporting to submit to the jurisdiction, it was not in the interests of Port Link/the Fund to ratify, confirm, approve or adopt that action.

(a) The IMA contained an exclusive jurisdiction clause by which the parties had irrevocably submitted to the jurisdiction of the Courts of the Cayman Islands and it was not in the interests of Port Link/the Fund to waive its contractual rights under clause 18.2.

(b) But for a voluntary submission to its jurisdiction, the DIFC Court would not have had jurisdiction over the dispute.

FSD2022-0041 Page 113 of 156 2022-03-03

(c) There was no benefit to Port Link of the dispute being litigated in the DIFC Court.

(d) Port Link did not seek or obtain any advice as to the advantages and disadvantages of submitting to the DIFC Court's jurisdiction or the prospects of challenging its jurisdiction.

(e) The Minutes did not state either that it was in the interests of Port Link/the Fund to submit to the jurisdiction or that it was in Port Link/the Fund's interests to ratify that action or explain why or what advantage Port Link/the Fund would gain by doing so.

(f) Mr Williams and Port Link have been given an opportunity in the KPA Proceedings to explain how submitting to the jurisdiction was in the Fund's interests and have failed to do so.

(g) Further, it is implicit in Resolution (b) that Walkers or Global Advocates (defined below) or some other agent had replied to Clyde & Co purporting to submit to the jurisdiction on behalf of Port Link/the Fund and without their authority. No honest and reasonable director would have ratified conduct of this nature taken by a legal adviser or other agent without instructions or, alternatively, would have ratified conduct of this nature without an adequate explanation. The Minutes contained no such explanation.

340. Mr Williams and Mr Alwadhi knew that it was not in the Fund's best interests to make the Resolutions, submit to the DIFC Court's jurisdiction or admit the DIFC Claim, alternatively they were reckless and/or wilfully blind as to the same. In support of this contention, the Plaintiffs will rely *inter alia* on the following:

340.1 As regards the Management Fee claim:

(a) Note 7 to the audited financial statements of the Fund for the years ended 31 December 2015 and 31 December 2016 stated that the Investment

FSD2022-0041 Page 114 of 156 2022-03-03

Management Company was not eligible or entitled to charge a Management Fee after 31 December 2014 and the Investment Management Company had signed both sets of financial statements acknowledging their accuracy. It is to be inferred that Mr Williams and Mr Alwadhi were aware of the contents of the Fund's accounts and therefore knew that the clear view taken by Port Link in the past was that the Investment Management Company was not entitled to the claimed Management Fee.

(b) In any event, Walkers' advice to Mr Williams, purportedly on behalf of Port Link, set out in the 3 and 4 July emails referred to above, was that although it was arguable that the Management Fee was due, it was clearly arguable to the contrary. Further, at least Mr Williams knew that the advice sought from Walkers regarding the claim was advice from the Investment Management Company's perspective as to whether there was any arguable basis on which a payment to the Investment Management Company could be made and not as to what if any defences were available to Port Link.

(c) As stated above, there is no evidence Mr Alwadhi received Walkers' 3 or 4 July emails. It appears likely that Mr Williams communicated the substance of the advice to Mr Alwadhi, but at present the Plaintiffs do not know whether he did or not.

(d) Either way, in the premises, it was manifestly in the interests of the Port Fund to contest the Management Fee claim and Mr Williams and Mr Alwadhi cannot have honestly believed that it was in the Port Fund's interests merely to pay it without further ado.

340.2 As regards the Performance Fee claim:

(a) Mr Williams and Mr Alwadhi knew that no legal advice had been sought for the Port Fund regarding the merits of the Performance Fee claim or

FSD2022-0041 Page 115 of 156 2022-03-03

possible defences to it (including objections to the jurisdiction of the DIFC Court).

(b) Mr Williams and Mr Alwadhi knew the provisions in Clause 4 of the LPA regarding the waterfall of distributions following exited Fund investments. It is to be inferred they knew it was inimical to the waterfall for the Investment Management Company to receive its Performance Fee before the Limited Partners had been paid, because if the Investment Management Company had a claim on the proceeds and had not been paid, it is just as much true that the Limited Partners had a claim and had not been paid.

(c) In view of the foregoing, Mr Williams and Mr Alwadhi cannot have honestly believed that it was in the best interests of the Fund to admit the claim without further ado.

340.3 As regards both claims, Mr Alwadhi permitted Mr Williams to act on behalf of Port Link, and appears to have followed his instructions without exercising independent judgment, even though he knew, at a minimum, that Mr Williams had an irreconcilable conflict and, it is to be inferred, was aware that Mr Williams was acting in the interests of the Investment Management Company rather than Port Link.

340.4 As regards submitting to the DIFC Court's jurisdiction:

(a) It is to be inferred that Mr Williams and (so far as he gave the issue any consideration) Mr Alwadhi knew the LPA contained an exclusive jurisdiction clause in favour of the Cayman courts.

(b) Mr Williams and Mr Alwadhi knew that no advice had been sought on behalf of the Fund regarding whether it was in the Fund's best interests to submit to the DIFC Court's jurisdiction.

(c) Both Mr Williams and Mr Alwadhi would have been advised, if they had taken advice, that the DIFC Court would not have had jurisdiction unless Port Link voluntarily submitted to it.

(d) Mr Williams and Port Link have been given an opportunity in the KPA Proceedings to explain how submitting to the jurisdiction was in the Fund's interests and have failed to do so.

(e) Mr Williams and Mr Alwadhi knew that by submitting to the DIFC Court's jurisdiction, the Port Fund would be enabling, and acting in furtherance to, collusive litigation designed to obtain judgment in the Investment Management Company's favour.

(f) In the premises, Mr Williams and Mr Alwadhi cannot honestly have believed it was in the Fund's interests to submit to the DIFC Court's jurisdiction.

340.5 In summary, in the premises no reasonable person could have concluded it was in the interests of the Port Fund:

(a) to engage in collusive litigation whose only practical purpose was to take the sums claimed in the DIFC Claim out of the Fund's assets and to earn interest on that money in priority to the interests of the Limited Partners;

(b) to make the Resolutions, whose true purpose was to pave the way for the steps subsequently taken in Dubai and did not reflect, nor were intended to reflect, any genuine consideration by Mr Alwadhi or Port Link as to what if any sums were due to the Investment Management Company.

Acknowledgment of Service

341. On 11 July 2018 Global Advocacy and Legal Counsel (**Global Advocates**), a firm of local counsel licensed to practice in Dubai and other Middle Eastern jurisdictions, acknowledged service on behalf of Port Link and the Port Fund. In the Acknowledgment of Service Global Advocates did not challenge the jurisdiction of the DIFC Court. It is to be inferred from the

above facts and matters, that Global Advocates did not provide independent legal advice to Port Link on behalf of the Fund but merely followed instructions purportedly given on behalf of the Fund by Mr Williams, Mr Alwadhi and/or Walkers.

Admission

342. On 11 July 2018 Global Advocates submitted an Admission form on behalf of both Port Link and the Port Fund in which they admitted liability for USD 56,808,005 (the **Admitted Amount**) and did not request time to pay this sum. The Statement of Truth was signed by Ms Sharon Lakhan of Global Advocates.

Judgment

343. On 12 July 2018 the Investment Management Company filed a Request for Default Judgment for Admissions in the DIFC Proceedings for the Admitted Amount. Port Link and the Port Fund did not take any steps to resist this request.

344. By order dated 25 July 2018 (and amended on 31 July 2018) (the **DIFC Judgment**) the DIFC Court gave judgment on admissions against both Port Link and the Port Fund to the Investment Management Company for the sum of USD 56,999,978 (which consisted of the Admitted Amount and interest at 8% on a compound basis from 9 July 2018): see paragraph 15(a). Further:

344.1 At paragraph 12 of the DIFC Judgment it was stated that Port Link and the Fund had "*agreed to submit to the jurisdiction of the DIFC Courts in specific, clear and express terms*".

344.2 At paragraph 15(b) of the DIFC Judgment Port Link and the Fund were ordered to pay the Investment Management Company's costs, to be assessed if not agreed.

344.3 At paragraph 16 of the DIFC Judgment the Court also ordered both Port Link and the Fund to pay interest at 9% per annum from the date of judgment to the date of payment.

345. So far as the Plaintiffs are aware the DIFC Judgment was made without any independent judicial assessment but was a purely administrative act. The terms of the judgment were prescribed by the parties and agreed between them.

Unfreezing of the Noor Bank Account

346. On 5 February 2019 the Noor Bank Account was unfrozen and the sum of USD 496,429,767 was credited to Port Link's Noor Bank Account. From 5 February 2019 Port Link held the sum of USD 496,429,767 upon trust for the Port Fund pursuant to section 16(1) of the ELP Act (2018 Revision). (Before that date Port Link held the chose in action representing its entitlement to sums due under the Closing Memorandum on trust for the Port Fund.)

Payment

347. On 2 February 2019, presumably in anticipation of the unfreezing of the Noor Bank Account, Port Link instructed Noor Bank to pay the DIFC Judgment debt to Wellspring and on 7 February 2019 Port Link paid the total sum of USD 59,990,461 (being the sum of USD 56,999,978 together with interest accruing thereon from 25 July 2018) to Wellspring out of the funds which had by now arrived in its account. Port Link gave such instructions to Noor Bank before it had received written notice from the Investment Management Company on 4 February 2019 designating Wellspring as the recipient and payee of the DIFC Judgment debt. In view of Mr Williams' role in orchestrating the DIFC Proceedings set out above, it is to be inferred that the payment was made by Mr Alwadhi on Mr Williams' instructions.

348. Neither Port Link nor Walkers disclosed to the Limited Partners at any time prior to satisfying the DIFC Judgment: (i) the Demand and the ensuing DIFC Proceedings; (ii) its intention to admit the Admitted Amount; (iii) its intention to satisfy the DIFC Judgment by making the Wellspring Payment; (iv) the existence of the conflict of interest faced by Walkers and that no action was being taken to address that conflict; and (v) the fact that Walkers had advised both sides to the dispute in the DIFC Proceedings.

Alleged Paying Agent Agreement

349. In the Georgia Proceedings, Mr Williams and Wellspring have asserted that on 4 February 2019, the Investment Management Company and Wellspring entered into a "*Paying Agent Agreement*" (**PAA**), pursuant to which Wellspring distributed the DIFC Judgment debt to:

> "*the former shareholders of the Investment Management Company in proportion to their shareholding in the Investment Management Company and their respective contractual arrangements with the Investment Management Company (the "Former Shareholders"). The distribution under the PAA occurred in conjunction with the Investment Management Company's redemption of the Class B shares held by the Former Shareholders that same day (share repurchase agreements were entered into on 4 February 2019 between the Investment Management Company and each of the Former Shareholders). Following the share redemption, [AAAML] was left as the sole member of the Investment Management Company, being an entity wholly owned and controlled by Mr. Henry Ayliffe*".

350. If correct (as to which no admissions are made), the beneficiaries of the DIFC Judgment payment include KGL Kuwait, Ms Lazareva and Mr Williams, together with other persons unknown to the Plaintiffs pending disclosure (the **Unknown Beneficiaries**).

Port Link's accounts of the purpose of the DIFC Claim

351. In the 27 February 2020 Letter, Port Link rejected the Plaintiffs' allegations of wrongdoing in relation to the DIFC Claim on the following basis:

> "*Without waiving any privileges, the Fund concluded that [the Investment Management Company's] claims asserted in the DIFC Proceedings had merit and that the Fund was not in the position, financially or otherwise, to engage in protracted and costly litigation without a sufficient expectation of a success.*"

FSD2022-0041 Page 120 of 156 2022-03-03

352. By contrast, in Walkers' Defence dated 6 December 2021 to a claim by KPA and another Limited Partner of the Port Fund, the Public Institution for Social Security (**PIFSS**), in relation to the DIFC Claim (the **KPA v Walkers Proceedings**):*"In the particular circumstances and in light of the Common strategy, the DIFC Proceedings were* ***not truly adversarial***" (emphasis added) (paragraph 5(e)(i)). The "*Common Strategy*" is described, vaguely, as follows: "*common interest in the taking of steps to (i) prevent the misappropriation of the funds held by Noor Bank in Dubai by the State of Kuwait and/or the Plaintiffs and (ii) secure the release of such funds to Port Link as General Partner*" (paragraph 5(b)(ii)).

353. Accordingly, Walkers' Defence admits that the reason why the claims were not contested had nothing to do with the avoidance of "*protracted and costly litigation*", as Port Link had claimed falsely in the 27 February 2020 Letter. The litigation was, as Walkers admit, "*not truly adversarial*".

354. The alleged "*Common Strategy*" is incoherent and unsupported by any evidence:

354.1 The sole beneficiary of the steps taken in June and July 2018 was the Investment Management Company (and those standing behind it), which obtained a judgment against Port Link, as general partner, and the Fund, which it had no entitlement to.

354.2 The direct consequence of those steps was that the Fund was burdened with a very substantial judgment together with accruing interest.

354.3 The purpose and effect of the "*Common Strategy*" was to allow the Investment Management Company to subvert the waterfall provisions in the LPA by obtaining Performance Fees in priority to the Limited Partners.

354.4 So far as the Plaintiffs are aware, at no stage after the DIFC Judgment was obtained was it deployed *"in an attempt to prevent the release of the [sums which had been remitted to Noor Bank]…whether formally by an Attachment to the [those sums] or informally by using the existence of the same to apply pressure to Noor Bank and/or the Dubai authorities not to give in the State of Kuwait's demands…."*. This contradicts the so-called "*Judgment Strategy*" pleaded by Walkers in the Defence to the KPA/PIFSS claim (at paragraph 43(b)). Indeed the Judgment Strategy on its face

FSD2022-0041 Page 121 of 156 2022-03-03

makes no sense: the only sums the DIFC Judgment could conceivably protect were the amount of that Judgment itself, and so it could only ever be deployed to benefit the judgment creditor, being the Investment Management Company.

Inferences of fact

355. In the premises, the following conclusions and/or inferences of fact are to be made:

355.1 The communications and correspondence between Clyde & Co and Walkers / Port Link in relation to the DIFC Claim were not a genuine exchange of pre-action correspondence between independent, adversarial parties, but a collusive sham coordinated by Mr Williams for the benefit of the Investment Management Company and the ultimate recipients of the fees it claimed.

355.2 The DIFC proceedings were not genuinely adversarial litigation but a collusive sham orchestrated by (among others) Mr Williams, Mr Alwadhi, and Port Link, for the purpose of extracting money from the Fund for the benefit of the Investment Management Company (directly) and (indirectly) Mr Williams, KGL Kuwait, Ms Lazareva and the Unknown Beneficiaries, and to the detriment of the Limited Partners (the **DIFC Scheme**).

355.3 Neither Mr Williams nor Mr Alwadhi (nor anyone else on behalf of Port Link) considered, or sought or obtained independent legal advice on, the defences Port Link could raise on behalf of the Fund to any claim by the Investment Management Company or the merits of, or tactical advantages associated with, a challenge to the DIFC Court's jurisdiction. Instead, Mr Williams sought and obtained advice as to the basis on which Port Link could seek to justify making payment to the Investment Management Company. The reality of the advice sought by Mr Williams from Walkers, as Mr Williams knew and Mr Alwadhi must have known if he gave it any consideration, was that it was designed to assist the Investment Management Company's objectives and was not genuinely advice sought in the Fund's interests.

355.4 Mr Alwadhi followed the instructions of Mr Williams in relation to the DIFC Proceedings. He exercised no authority or independent judgment, being a mere puppet of Mr Williams and Mr Williams was Port Link's controlling mind. In the premises, Mr Williams was a *de facto*, alternatively shadow, director of Port Link in respect (at least) of the DIFC Scheme and his actions and state of mind are to be attributed to Port Link.

355.5 The overarching purpose of the entire train of events described above was to enable the Investment Management Company to obtain sums to which it was not entitled and/or to obtain them at a time when its entitlement had not yet arisen and/or to obtain them whether or not they were entitled to them and/or to obtain them in priority to and in disregard of the rights of the Fund and its Limited Partners, including the Plaintiffs.

K3. Port Link's Breaches of Duty/Trust

356. In the premises, Port Link committed the following breaches of duty / trust.

357. In breach of its duty of good faith and loyalty and its duties to act in the best interests of the Fund, to manage the Fund with the care and skill to be expected of a reasonably competent General Partner and to preserve and manage the Fund's assets for the benefit of the Fund and its Limited Partners:

357.1 Port Link (acting by Mr Alwadhi) made or entered into Resolutions (a)-(c) set out above, and acted upon them, knowing they were contrary to Port Fund's interests and were (and were designed to be) in the interests of the Investment Management Company (alternatively, being reckless as to the same);

357.2 Port Fund (acting by Mr Williams and/or Mr Alwadhi) conceived and implemented the DIFC Scheme, to the detriment of the Fund and the Limited Partners.

358. In breach of clauses 3.1(a) and/or clause 3.1(b) of the LPA, its duties of good faith and loyalty and its duties to act in the best interests of the Fund and to manage the Fund with the care

FSD2022-0041 Page 123 of 156 2022-03-03

and skill to be expected of a reasonably competent General Partner, Port Link exceeded its authority and purported to pass Resolutions (d) and (e) and to give the General Authorisation to Global Advocates to submit to the jurisdiction of the DIFC Court and to file and serve the Admission.

PARTICULARS

358.1 Port Link, acting by Mr Alwadhi, made or entered into Resolutions (a) to (f) and gave the General Authorisation in bad faith and for the improper purpose of enabling Mr Williams to use the Judgment of the DIFC Court to disguise or cloak the misappropriation of USD 59,990,461 from the Port Fund.

358.2 Port Link thereafter gave instructions that the jurisdiction of the DIFC Court not be contested and that the claim be admitted in full and did not oppose the entry of judgment against it.

359. In breach of trust and/or in breach of the priority of distributions required by Clause 4 of the LPA Port Link transferred the sum of USD 59,990,461 (being the DIFC Judgment debt plus 9% interest running from the date of the Judgment) to Wellspring out of the Noor Bank Account on 7 February 2019.

PARTICULARS

359.1 Port Link had authority to pay or distribute the Port Fund's assets but only in a manner which was consistent with the provisions of the LPA: see clause 3.1(b)(vii) (above).

359.2 The payment of USD 59,990,461 to Wellspring was unauthorised and inconsistent with the terms of the LPA for the following reasons:

(a) Wellspring had no right or entitlement to the payment of USD 59,990,461 (or any sum) out of the Fund. It was not a Limited Partner and had no interest in the Fund.

FSD2022-0041 Page 124 of 156 2022-03-03

(b) Wellspring was not the Investment Manager and was not entitled to the payment of any Management or Performance Fees under the IMA.

(c) Further or in any event, the Investment Management Company was not entitled to payment of USD 59,990,461 for the reasons set out in the particulars under paragraph 338 above.

359.3 If the Investment Management Company had purported to assign the benefit of the Judgment sum to Wellspring or to authorise Wellspring to receive the Judgment sum (as to which no admissions are made), the Judgment was and is in any event not binding on the Plaintiffs or Port Link/the Fund for the following reasons:

(a) The Plaintiffs are not bound by the Judgment because they were not a party to the DIFC Claim.

(b) The Port Fund is not bound by the Judgment because the Investment Management Company procured the Judgment by (equitable) fraud or bad faith and through the dishonest collusion of the Investment Management Company and Port Link.

(c) Alternatively, the Resolutions and the Judgment are not binding on the Fund because Mr Alwadhi, to the knowledge of the Investment Management Company, exceeded his authority and himself acted in breach of his duties as director of Port Link. In particular, he breached those duties and exceeded his authority by instructing Global Advocates to submit to the jurisdiction of the DIFC Court and file and serve the Admission for an improper purpose and knowing that the sums claimed were not due.

(d) Accordingly, the DIFC Court had no in personam jurisdiction to order the Port Fund to pay the Judgment sum to the Investment Management Company (or, for that matter, to Wellspring) and the Judgment is not enforceable in the Courts of the Cayman Islands.

K4. The other defendants' wrongdoing

360. Mr Williams dishonestly procured and/or assisted Port Link in the breaches of trust and/or fiduciary duty alleged at paragraph 356 to 359 above.

PARTICULARS OF ASSISTANCE

360.1 Mr Williams directed Mr Alwadhi in entering into Resolutions, coordinated the DIFC Proceedings and directed the payment of the DIFC Judgment debt to be paid in breach of authority to Wellspring.

PARTICULARS OF DISHONESTY

360.2 The Plaintiffs repeat paragraphs 340 and 355 above. For the reasons there given:

(a) it must have been obvious to Mr Williams that making the Resolutions, submitting to the DIFC Court's jurisdiction and admitting the claim was not in the Fund's interests, alternatively he was reckless and/or wilfully blind as to the same.

(b) At all material times, Mr Williams acted solely in the interests of the Investment Management Company. He did not at any point consider the Fund's interest, he failed to ensure the Fund received any or any adequate legal advice from its perspective, and he knew that Mr Alwadhi had not independently considered it either.

360.3 Further or alternatively:

(a) Mr Williams knew, because it was obvious, that there was a conflict between the interests of the Fund and its Limited Partners, on the one hand, and the interests of the Investment Management Company, on the other hand; alternatively, at the very least Mr Williams must have suspected there was (or may be) a conflict of interest and he then failed to make such

FSD2022-0041 Page 126 of 156 2022-03-03

inquiries that an honest person would make including by obtaining legal advice.

(b) Mr Williams knew that no proper steps had been taken to ensure the Fund received genuinely neutral and independent advice regarding the Investment Management Company's entitlement to fees. He knew that the only advice that had been sought concerned the level of fees that Port Link could conceivably get away with paying the Investment Management Company.

(c) Mr Williams appreciated that he needed to manage the conflict of interest but he did so not by ensuring that the Fund received neutral and independent advice and by removing himself from the Fund's decision-making process, but by taking steps to minimise the appearance of a conflict, including by having Port Link make the Resolutions to give the false and misleading appearance that a properly independent decision-making process had been followed by the Fund and by ensuring that the Fund instructed purportedly independent local counsel in the DIFC Proceedings.

(d) In the circumstances, Mr Williams knew that the conflict of interest had not been resolved in the interests of the Fund and its Limited Partners or he was reckless and/or wilfully blind as to whether it had.

361. Wellspring dishonestly assisted Port Link in the breaches of trust and/or fiduciary duty alleged at paragraphs 356 to 359 above.

PARTICULARS OF ASSISTANCE

361.1 Wellspring received the DIFC Judgment payment and (so it alleges) agreed pursuant to the PAA to distribute the amounts to Mr Williams, Ms Lazareva, KGL Kuwait and the Unknown Beneficiaries.

FSD2022-0041 Page 127 of 156 2022-03-03

PARTICULARS OF DISHONESTY

361.2 Mr Williams' dishonest knowledge and state of mind is to be attributed to Wellspring on the basis that when it received the DIFC Judgment, Mr Williams was its Chief Executive Officer, Chief Financial Officer, President, Vice-President, Treasurer, and Secretary.

362. Further or alternatively, the DIFC proceedings, the DIFC scheme, and the breaches of duty by Port Link were all made pursuant to one or more conspiracies among (at least) Port Link, Mr Williams, Wellspring and KGL Kuwait, to injure the Plaintiffs by unlawful means.

PARTICULARS OF CONSPIRACY

362.1 Mr Williams was a long-time employee of KGL Kuwait. On his and Wellspring's own account, he was only one of the ultimate beneficiaries of the DIFC Judgment payment, the others being KGL Kuwait, Ms Lazareva and the Unknown Beneficiaries. Further, the scheme could not have been effected without the involvement of Wellspring in receiving the payment, entering into the PAA (as alleged by Mr Williams) and distributing the money. In the premises, it is to be inferred that the DIFC Scheme was the product of an agreement between (at least) Mr Williams, KGL Kuwait, Ms Lazareva and/or one or more Unknown Beneficiaries wrongfully to extract the DIFC Judgment sum from the Fund.

PARTICULARS OF UNLAWFUL MEANS

362.2 The said agreement involved unlawful means namely the breach by Port Link of its duties as alleged in paragraph 356 to 359 above.

PARTICULARS OF INTENTION

362.3 The Plaintiffs will rely on the inferences set out at paragraph 355 above, from which it is to be inferred that Mr Williams acted at all times pursuant to the DIFC Scheme with the intention of harming the Port Fund and its Limited Partners (including the Plaintiffs) and acting deliberately contrary to their interests.

K5. Loss and damage

363. By reason of the foregoing, the Plaintiffs have suffered loss and damage in that the assets of the Port Fund available for distribution and distributed to the Limited Partners have been reduced for the following reasons:

363.1 The sums claimed in the DIFC Claim were not due for the reasons set out in paragraph 338 above.

363.2 Further, even after the Clark Asset funds were received by Port Link and all distributions had been paid to the Limited Partners:

(a) no sums should ever have been paid to the Investment Management Company because:

(i) the improper payments and other wrongdoing particularised in Claims Two to Seven above each involved breaches by the Investment Management Company of its duties under the IMA, in particular those pleaded at paragraphs 315 to 316 above;

(ii) each of these breaches of duty individually and/or cumulatively disentitles the Investment Management Company to its fees on the basis that:

(a) a condition precedent to its fees entitlement was provision of the contracted-for services, which it totally failed to provide; and/or

(b) the Investment Management Company's conduct in relation to the underlying facts of Claims Two to Six gives rise to claims against it for breach of contract by Port Link on behalf of the Fund and/or enforceable by the Limited Partners for sums in excess of the fees claimed, such that Port Link had

a complete defence of set-off and/or circuity of action to any claim for the fees made by the Investment Management Company.

(b) alternatively, the sums due to the Investment Management Company fell to be reduced in accordance with clause 4.3(f) of the LPA and clause 6 of the IMA by an amount to be the subject of expert quantum evidence in due course.

364. The Plaintiffs are entitled to and claim equitable compensation and/or damages to compensate them for their loss. Particulars of the amount by which the assets have been reduced and the loss suffered by each of the Plaintiffs thereby are set out in Section M below.

365. Further or alternatively, Port Link is obliged to account to the Plaintiffs for the amount by which the assets have been reduced as set out in Section M below and Mr Williams and Wellspring are obliged to account as constructive trustees therefor.

L. CLAIMS FOR AN ACCOUNT

366. As stated above:

366.1 Port Link held all rights and property of the Port Fund of every description upon trust as assets for all the Limited Partners of the Port Fund. Until 2 July 2014, it did so in equity and/or at common law. From 2 July 2014 it did so pursuant to section 16(1) of the ELP Act.

366.2 Port Link accordingly owed duties to each of the Limited Partners of the Port Fund, including the Plaintiffs, to account to them in respect of its dealings with the trust property.

367. In the premises of Sections A-K above:

367.1 The wrongdoing particularised in Claims One to Seven above demonstrates that Port Link has thoroughly mismanaged the Port Fund, and the monies it received and held on trust for (among others) the Plaintiffs;

367.2 The facts and matters pleaded in support of Claims One to Three, Six and Seven demonstrate that Port Link and those standing behind it have an established *modus operandi* of siphoning off monies of the Fund for the benefit of the KGL Group and its principals that ought to be available for distribution to the Limited Partners via transactions on vague terms with entities and pursuant to arrangements which appear to be but are not in fact arm's length.

367.3 The existence of this serial, widespread wrongdoing and established *modus operandi* give rise (at least) to a reasonable *prima facie* inference that Port Link has committed other breaches of trust not yet known to the Plaintiffs in relation to the dealings with the Clark Asset, payments to third parties and/or other aspects of the Port Fund's business.

368. In further support of the inference that Port Link has committed other breaches of trust not yet known to the Plaintiffs, the Plaintiffs rely on the following payments by Port Link of the monies of the Port Fund which have not been adequately explained so as to enable the Plaintiffs to understand the grounds on which they were or the benefit which the Fund was intended to derive or derived from them.

369. *Payments to Jimeno Cope and David Law Offices (**Jimeno Cope**), a Filipino law firm totalling at least USD 4,825,798.*

369.1 In response to allegations made by the plaintiffs in the KPA Proceedings, on 28 May 2021 Port Link served a "*Due Diligence Memorandum*" in respect of the payments to Jimeno Cope (the **Jimeno Cope Memorandum**). This memorandum stated that:

(a) USD 4,151,569.76 of the payments made to Jimeno Cope was charged under a single invoice (No. 2017-0464), purportedly as a success fee, paid in two tranches on 27 February 2018 and 6 February 2019.

FSD2022-0041 Page 131 of 156 2022-03-03

(b) The only engagement letter Port Link has been able to locate provides for fees to be paid on a time spent basis and Jimeno Cope have failed to explain how the success fee was calculated or agreed, but are purportedly looking for archived back-up information to justify the fee.

369.2 Jimeno Cope is closely connected to the Investment Management Company. The managing partner of Jimeno Cope is Rita Jimeno. Her daughter, Karen Jimeno-McBride (**Ms Jimeno-McBride**), is a junior partner at Jimeno Cope. Ms Jimeno-McBride is married to Evan McBride, who was:

(i) a shareholder of the Investment Management Company until the purported Investment Management Company Share Sale explained at paragraph 153 above);

(ii) director, CFO and Executive Vice President of KGLI Asia ROHQ from April 2008 until an unknown date; and

(iii) an authorised signatory of Port Link as at 13 November 2017 and February 2019.

369.3 In the premises, the evidence (at least) calls for an inquiry as to whether the payments to Jimeno Cope (or at least the payments made under invoice No. 2017-0464) were genuinely arm's length transactions and/or the fees paid represented a reasonable market rate for any legal services provided between 2014 and October 2017.

370. *USD 2.5 million "Success fee" paid to KGL Kuwait.*

370.1 On or around 3 August 2009, Port Link, purportedly on behalf of the Fund, entered into a letter agreement with KGL Kuwait (a related party of Port Link) pursuant to which it purportedly engaged KGL Kuwait to act as "*financial adviser ... in relation to assisting in the provision of new funds from potential investors and finalizing negotiations for contributions from existing defaulting investors to be invested in*

FSD2022-0041 Page 132 of 156 2022-03-03

the Port Fund" and, in consideration for these services, it would pay a "*Success Fee*" equal to 5% of the financing raised (the **Fundraising Agreement**).

370.2 As stated at paragraphs 62 and 66.1 above, in the period following the Initial Closing Date, KPA agreed to make the KPA Initial Contribution, a further USD 50 million investment in the Fund, and the KPA Initial Contribution was paid on 19 July 2010.

370.3 Pursuant to the Fundraising Agreement, on or around August 2010 Port Link paid KGL Kuwait a sum of USD 2.5 million from the Fund's assets, being 5% of the KPA Initial Contribution (the **Success Fee**).

370.4 It is unclear what assistance (if any) KGL Kuwait provided in securing the KPA Initial Contribution, why Port Link (which also had the assistance of the Investment Management Company) should have required any assistance at all from KGL Kuwait, still less assistance sufficient to justify a payment of 5% of the financing raised.

370.5 In the premises and given Port Link's established *modus operandi* of siphoning off Fund monies for the benefit of the KGL Group referred to at paragraph 367.2 above, the evidence (at least) calls for an inquiry into whether it was in the Fund's best interests to make the Fundraising Agreement and pay the Success Fee, including whether it was necessary in order to obtain the KPA Initial Contribution and whether the Fundraising Agreement was concluded at arm's length on terms at least as good as those available from an independent third party.

371. *Further payments for purported legal and lobbying fees*: In addition to the payments that form the subject of Claim Four above, Port Link made the following further payments which Port Link has failed satisfactorily to justify to date.

371.1 *Payment to Al Haq.* A payment of USD 837,745.46 was paid to Al Haq Group For Law Firms (**Al Haq**) on 11 February 2019. As to this:

FSD2022-0041 Page 133 of 156 2022-03-03

(a) A legal services agreement between Al Haq and the Port Fund dated 24 September 2018 was included in the s.22 Disclosure (the **Al Haq Agreement**). Its stated purpose is to engage Al Haq to assist with the unfreezing of the Noor Bank Account. The Al Haq Agreement provided that Al Haq was entitled to be paid a fee of KWD 250,000 if the Noor Bank Account was unfrozen within the term of the agreement. The term of the agreement was stated to be 30 days from the date on which it was signed, but "*renewable for an additional period, subject to written agreement between both parties*".

(b) As at 9 February 2019 KWD 250,000 was approximately equal to USD 837,745.46. Accordingly, it appears that the entire payment to Al Haq was made on 11 February 2019 in respect of its purported entitlement under the Al Haq Agreement.

(c) Mr Childe's evidence in the KPA Proceedings was that the payment that is now known to have been made to Al Haq was made under a joint mandate "*to provide assistance with (i) the Fund's effort to secure the release of the frozen funds in the Noor Account, and* ***(ii) the Kuwaiti Criminal Proceedings***" (emphasis added). Yet the Al Haq Agreement makes no reference to the Kuwaiti Criminal Proceedings or the provision of services in relation thereto.

(d) In a Due Diligence Memorandum on the payment to Al Haq dated 28 May 2021 (the **Al Haq Memorandum**), Port Link states it is satisfied that Al Haq only supplied services under the Al Haq Agreement and as such the services solely related to the unfreezing of the Noor Bank Account. However:

(i) the sole basis for this statement appears to be a conversation with Crowell & Moring which confirmed that Mr Ali Al Rashid of Al Haq provided strategic advice and his contacts with the Amiri Diwan and Kuwaiti Attorney General were beneficial to that process (Al Haq Memorandum, paragraphs 4.1-4.4);

(ii) Port Link has failed to disclose, presumably because it has not located, a single piece of work product evidencing the alleged "*strategic advice*" provided by Al Haq, despite being required to do so under the Cayman Disclosure Orders.

(e) In the circumstances, and given the evidence of other wrongful payments set out in Claim Four above, Port Link's failure to substantiate the work undertaken by Al Haq to date (at least) calls for an inquiry into what (if any) services were undertaken by Al Haq, whether they were of a value commensurate to the substantial fees charged and whether they were for the benefit of the Port Fund.

371.2 *Payments to Brownstein.* A total of USD 561,500.00 was paid to Brownstein Hyatt Farber Schreck (**Brownstein**), a US lobbying and law firm.

(a) In the 27 February 2020 Letter, Port Link stated that Brownstein were "*[e]ngaged to provide legal and other services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor*".

(b) However, in addition to undertaking lobbying efforts in relation to the lifting of the Noor Bank Freeze, Brownstein has also undertaken work in support of the Lazareva Lobbying Campaign and lobbying efforts in relation to the Kuwaiti Criminal Proceedings. In support of this, the Plaintiffs rely *inter alia* on the letters disclosed by Port Link which were sent by Brownstein (together with SPB and Neil Bush) to the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait dated 14 November 2018 and 26 November 2018 in which they lobbied the Kuwaiti government to withdraw the charges against Ms Lazareva and Mr Dashti.

(c) In its Lobbying and legal fees memorandum, Port Link has admitted that Brownstein lobbied for the release of Mr Dashti and Ms Lazareva but argues in effect that it was justifiable for the Fund to bear the cost of such lobbying because it was only undertaken as part of Brownstein's overall

FSD2022-0041 Page 135 of 156 2022-03-03

strategy to secure the release of the Noor Bank funds and Brownstein considered the issues "*inextricably linked*" (paragraph 12.4). The basis for this statement by Port Link appears to be solely what Crowell & Moring have told Port Link's directors, since Port Link has disclosed no documentary support for it: both the engagement letters Port Link has disclosed post-date the lobbying referred to in 0 above and the Brownstein invoices it has disclosed do not contain any narratives that could support its assertion regarding the scope of Brownstein's lobbying activities.

(d) In the premises, the evidence (at least) calls for an inquiry as to whether the substantial fees paid to Brownstein were in fact entirely for the benefit of the Port Fund or in fact included sums paid for the benefit of Mr Dashti and Ms Lazareva.

371.3 *Payments to Fahmy and ACG.* USD 565,000 was paid to Fahmy Hudome International LLC (**Fahmy**), a law and consulting firm based in Washington D.C. and USD 80,833.33 was paid to American Continental Group (**American Continental**), another consulting group based in Washington D.C., specialising in governmental affairs. As to this:

(a) In the 27 February 2020 Letter, Port Link said that both firms had been "*[e]ngaged to provide services and assist with the Fund's efforts to unfreeze the $496 Million held by Noor.*" Port Link has maintained its position in its Lobbying and legal fees memorandum.

(b) However, despite numerous opportunities to do so and notwithstanding its obligations under the Cayman Disclosure Orders and its Information Obligations, Port Link has provided no work product or other evidence to justify the payment of the substantial fees to these two firms or to enable the Plaintiffs to establish whether the services (if any) that were undertaken were for the Fund's benefit:

(i) The joint engagement letter for both firms is dated 26 June 2018. The services to be provided are described in vague terms as acting

as a consultant to Port Fund and representing it "*on public policy matters*" for the purposes of assisting it "*obtain regulatory approval for certain strategic matters*". In exchange, a retainer and a success fee of USD 500,000 was to be paid to each firm in the event the Noor Bank Account funds were released.

(ii) The only other documents Port Link has disclosed are two invoices for Fahmy and 5 invoices for ACG, all of which are very vague as to the services provided.

(iii) Port Link has disclosed no work product from either firm.

(c) in the premises, and given the evidence of other wrongful payments set out in Claim Four above, the evidence (at least) calls for an inquiry as to whether Fahmy and ACG provided services commensurate to the level of fees paid them and if so, whether they were genuinely for the benefit of the Port Fund.

371.4 *Payments to Jordan Ayoub.* Payment of USD 350,000 is said to have been made to Jordan Ayoub, a law firm based in Lebanon, on 13 February 2019. As to this:

(a) In response to allegations made by the plaintiffs in the KPA Proceedings, Port Link filed a "*Due Diligence Memorandum*" dated 28 May 2021 on the payment to Mr Ayoub (the **Ayoub Memorandum**) which seeks to explain the payments to Mr Ayoub, based on conversations with Mr Ayoub himself. The memorandum characterises his work as having been akin to in-house counsel for the Port Fund and concludes the fees were properly incurred. The memorandum also exhibits an affidavit from Mr Ayoub which states, among other things, that, although one of the retainers Mr Ayoub concluded with the Fund was in respect of assistance with the Kuwaiti Criminal Proceedings, he has never billed or received fees under that head.

(b) However:

(i) notwithstanding its Information Obligations and its obligations pursuant to the Cayman Disclosure Orders, Port Link has produced only a handful of documents evidencing any work product of Mr Ayoub to which the fees relate and has been unable to reconcile the fees made to the invoices rendered by Mr Ayoub;

(ii) at all material times Port Link had separate counsel to the Fund, Walkers, in addition to engaging Crowell & Moring, and allegedly the six other law firms discussed above, in relation to the unfreezing of the Noor Bank Account;

(iii) Port Link has disclosed an affidavit of Dr Akbar which states that "*from my personal observation, Mr. Ayoub's legal services included but were not limited to overseeing all Port Fund legal matters*" and continues:

> "*Given the numerous and unjustified legal, political, and media attacks on Port Fund in Kuwait and elsewhere, I have no doubt that the Port Fund kept Mr. Ayoub very busy, especially from 2015 – 2019.*"

The implication of the foregoing statements of Dr Akbar are that Mr Ayoub was involved in Port Fund's efforts to defend against what it perceived as unjustified attacks on Mr Dashti's and Ms Lazareva's reputation and conduct and likely also in defending the Kuwaiti Criminal Proceedings;

(c) In the premises, and given the evidence of other wrongful payments set out in Claim Four above, the evidence (at least) calls for an inquiry as to whether Mr Ayoub's work related to legitimate activities for the benefit of the Fund, or to the extensive Lazareva Lobbying Campaign and Kuwaiti Criminal Proceedings for the benefit of Mr Dashti, Ms Lazareva and KGL Kuwait. If and to the extent that the payments to Mr Ayoub related to work otherwise than for the benefit of the Fund and its Limited Partners, they were not made in good faith and in the interests of the Port Fund.

FSD2022-0041 Page 138 of 156 2022-03-03

372. *The market value of the Clark Asset*. There are (at least) grounds to suspect that the market value of the Clark Asset substantially exceeded the consideration paid by CGCC:

372.1 Note 6 to CGCC's audited financial statements for the year ended 31 December 2017 states, under the heading "*Investment in a subsidiary*": "*In 2017, [CGCC] acquired all of the outstanding shares of stock of GGDH [i.e., the Clark Asset] for [Philippine Pesos, ("PP")] 50,179,400,000*". PP 50,179,400,000 equates to just under USD 1 billion. Note 6 notes also records in relation to this acquisition that "*Based on management's assessment, the investment in a subsidiary as of December 31, 2017 is not impaired*"; and

372.2 Note 9 to the financial statements for GGDC (Philippine Branch) for the years ended 31 December 2018 and 31 December 2017 states that the *"Fair value gain"* in respect of leasehold rights and completed building in the year ended 2018 was PP 61,679,997,039 (amounting to approximately USD 1.175 billion at the exchange rates then prevailing). It then states:

> *"The fair value of the investment properties and the land under operating lease (see Note 19.1) based on the latest valuation conducted by an independent appraiser is higher than its carrying value as at December 31, 2018 and 2017".*

373. *USD 55.3 million payment to Udenna:*

373.1 Pursuant to (or purportedly pursuant to) a Deed of Settlement and Release between Port Link and UDEVCO dated 5 February 2019 (the UDEVCO **Settlement Agreement**), Port Link agreed to pay UDEVCO USD 55,343,116 in consideration of UDEVCO relinquishing its "*outstanding rights under the [GGDC] SPA*" and releasing any claim it might have arising (*inter alia*) out of the "*Frozen Funds*" (which are defined in Recital (C) as "*certain funds attributable to the [Clark Asset] Purchase Price [which] were frozen in the [Noor Bank Account]*"). The Deed was signed by Mr Evan McBride for Port Link and Mr Uy for UDEVCO.

FSD2022-0041 Page 139 of 156 2022-03-03

373.2 The sum of USD 55,343,116 was transferred by Port Link from the Noor Bank Account on 10 February 2019 to a bank account with the reference "*UDENNA CORP*". Pending disclosure, the Plaintiffs do not know why this payment appears to have been made to Udenna (the **Udenna Payment**) rather than to UDEVCO..

373.3 Port Link purported to provide an explanation of the UDEVCO Settlement Agreement and the Udenna Payment in its "*Due Diligence Memorandum*" regarding the Clark Asset dated 28 May 2021 at paragraphs 3.13-3.18.

(a) It said that on completion of the sale of the Clark Asset in November 2017, UDEVCO had transferred to the Port Fund USD 497,429,777 which was USD 58,843,115 more than the sum it was required to transfer (USD 437,586,662) and that the Port Fund "*was obligated*" to return this sum (which it referred to as the "*Working Capital Payment*") to UDEVCO.

(b) It implied that this overpayment had (at least in part) been made because UDEVCO had borrowed USD 690 million to fund the transaction rather than USD 655 million.

(c) It also said that:

> "*We understand from Mark Williams that [the Port Fund] and [UDEVCO] had reached an understanding prior to the transfer of the USD 496 Million that in circumstances where issues arose with regards to the transfer of GGDC Holdings, such as local registration or regulatory requirements, that the Working Capital Payment could be used as a reserve of funds. As such issues did not arise, [the Port Fund] was obligated to return the Working Capital Payment to [UDEVCO] following its transfer to [the Port Fund].*"

In its defence to the KPA Proceedings, Port Link has asserted that this "*understanding*" was "*orally agreed between Dennis Uy and his team at [UDEVCO] and [the Port Fund]*": see KPA's Defence, paragraph 9.4.6.

(d) It said that the Port Fund had been unable to return the sum to UDEVCO due to the Noor Bank Freeze and UDEVCO had subsequently agreed, by the UDEVCO Settlement Agreement, to the Port Fund repaying the lesser amount of USD 55,343,116. Port Link said that: "*We understand from Mark Williams that this discount was agreed to as [UDEVCO] acknowledged the extraordinary efforts and associated costs involved in unfreezing the funds in the Noor Account.*"

373.4 As to this:

(a) Port Link and UDEVCO knew the purchase price was USD 437 million before UDEVCO paid USD 496 million on 14 November 2017: the price of USD 437 million was agreed by the parties in the Closing Memorandum dated 13 November 2017 and UDEVCO made the payment of USD 496 million on 14 November 2017.

(b) The GGDC SPA was signed on 31 July 2017, the transaction was due to close on or before 31 August 2017 and, as noted, the purchase price was adjusted upwards by the Share Purchase Price Adjustment Agreement. Payment of the purchase price by UDEVCO was conditional on Port Link obtaining the necessary registration and regulatory approvals for the transfer to UDEVCO. The transaction ultimately closed on or around 15 November 2017, on which date the sum of ca. USD 496 million was paid by UDEVCO to the Noor Bank and (it is to be inferred) the share in GGDC Holdings was transferred to UDEVCO. In the premises, it is not credible for Port Link to suggest that Port Link and UDEVCO agreed the Fund should retain the sum of ca. USD 58 million from the ca. USD 496 million paid on or around 15 November 2017 in case of registration or regulatory issues regarding the transfer of GGDC Holdings to UDEVCO: as Port Link and UDEVCO knew, any such issues would have been resolved before the payment was due from UDEVCO.

FSD2022-0041 Page 141 of 156 2022-03-03

(c) No registration issue or regulatory requirement regarding the transfer of GGDC Holdings could ever have (legitimately or lawfully) required the Port Fund to disburse USD 58 million and it is to be inferred that Port Link and UDEVCO knew this.

(d) Port Link has failed to explain how Port Link and UDEVCO are alleged to have arrived at the specific figure of USD 58,843,115 as the amount allegedly to be paid to the Port Fund for "*working capital*" purposes.

(e) No explanation has been provided for why or how UDEVCO could (lawfully) have borrowed USD 35 million more than it required for the transaction from the lenders who were financing the transaction.

(f) It is inherently implausible that Port Link and UDEVCO would have agreed to the payment of an additional USD 58 million to the Port Fund pursuant to an alleged undocumented oral agreement, unless one or both parties had some improper and/or unlawful purpose for transacting informally such as avoiding generating a paper trail and/or deceiving third parties (such as UDEVCO's lenders, Udenna's shareholders and/or the Limited Partners) regarding the true purpose and terms of the payment.

(g) Despite its Information Obligations and its obligations under the Cayman Disclosure Orders, Port Link has disclosed no correspondence or other documents evidencing UDEVCO's efforts to obtain repayment of the USD 58 million, whereas it has disclosed correspondence relating to a purported breach of warranty claim by UDEVCO in relation to the GGDC SPA.

(h) Although Port Link has claimed, in its "*Due Diligence Memorandum*" dated 28 May 2021 regarding the engagement of KGLI Asia, that KGLI Asia negotiated a settlement with Udenna regarding the repayment of the "*Working Capital Payment*", it has disclosed no correspondence or other documents evidencing these negotiations or KGLI Asia's involvement in them, notwithstanding its Information Obligations and its duties under the Cayman Disclosure Orders.

(i) When Mr McBride signed the UDEVCO Settlement Agreement on behalf of Port Link he was (and had been since May 2018) the CFO of UDEVCO. This was an acute and irresolvable conflict of interest which prevented him making a genuinely independent assessment of whether entering into the UDEVCO Settlement Agreement was in Port Link's best interests.

(j) The source of Port Link's directors' information regarding the alleged oral agreement in relation to the "*Working Capital Payment*" appears to be exclusively or primarily Mr Williams, against whom the Plaintiffs make serious allegations of fraud and dishonesty in this Statement of Claim.

373.5 In the premises, it is to be inferred that the explanation provided by Port Link for the Udenna Payment in its "*Due Diligence Memorandum*" is not accurate or complete and the evidence (at least) calls for an inquiry into:

(a) why UDEVCO made an apparent overpayment of ca. USD 55.8 million on 14 November 2017;

(b) why the UDEVCO Settlement Agreement and Udenna Payments were made; and

(c) whether by receiving and/or agreeing to receive the ca. USD 55.8 million, entering into the UDEVCO Settlement Agreement and/or making the Udenna Payment, Port Link acted in the best interests of Port Fund and in accordance with its other duties to the Plaintiffs as Limited Partners.

374. *Payments to Star Advisory:*

374.1 The following payments were made from CGIC to Star Advisory DMCC (**Star Advisory**):

(a) USD 450,000 on 2 August 2016;

FSD2022-0041 Page 143 of 156 2022-03-03

(b) USD 650,000 on 21 August 2016;

(c) USD 781, 145 on 26 August 2016 (the **Star Advisory Payments**).

374.2 Star Advisory was a company established in the Dubai Multi Commodities Centre (**DMCC**). Its licensed activity is recorded in the DMCC registry as management consultancy and its "*License Manager*" is recorded as Dr Akbar, the chairman of KGL Kuwait at all relevant times who was closely connected to the Port Fund and KGL Kuwait, as stated at paragraph 239 above.

374.3 Star Advisory was registered on 18 April 2016, a few months before the Star Advisory Payments were made, and it is therefore to be inferred that when the payments were made it had no track record or established reputation in management consultancy (or any other business) and that it was a vehicle established by Dr Akbar and/or others connected to Port Link and KGL Kuwait for the purpose of its engagement by the Port Fund. It has since been dissolved.

374.4 In the premises and in light of Port Link's established *modus operandi* referred to at paragraph 367.2 above, the evidence (at least) calls for an inquiry into the services provided by Star Advisory and whether the fees were properly incurred.

375. Accordingly, the Plaintiffs claim an account of administration on the footing of wilful default, alternatively a common account, as to

375.1 payments made to the Investment Management Company, members of the KGL Group and/or other connected individuals and entities;

375.2 dealings with the Clark Asset and the terms of its sale in 2017; and/or

375.3 the affairs of the Port Fund generally,

and consequential orders for Port Link to make restitution to the Port Fund of any monies found to have been disposed in breach of trust and/or to pay equitable compensation to the

Plaintiffs to make good the loss resulting from the unauthorised disposals and/or Port Link's breach(es) of trust.

M. PARTICULARS OF LOSS

376. This Section sets out particulars, so far as the Plaintiffs can currently give them, of the total amounts claimed by the Plaintiffs as equitable compensation and/or damages in respect of each claim other than Claims Three and Four and such other aspects of the claim as are specifically identified below (the **Calculated Maximum Sum**), on the assumptions that:

376.1 Subject to paragraphs 376.2 and 376.3, the Plaintiffs succeed on all their claims and on their primary case for each claim.

376.2 In respect of the losses pleaded at paragraph 380 below and the Plaintiffs' losses under Claims Two and Five to Seven:

(a) GIC's Interest in the Fund at all material times was 10.63% (see paragraph 7 above);

(b) GRSIA's Interest in the Fund at all material times was 5.236% (see paragraph 8 above);

376.3 In respect of Claims One, Two, Five and Six, the Investment Management Company's breaches of the IMA disentitled it to any fees from Port Link (see paragraph 363.2(a) above).

377. The Calculated Maximum Sum is exclusive of interest and costs.

378. Pending disclosure and the provision of further information, the Plaintiffs are not able to quantify the loss they have suffered as a result of the facts and matters set out in Claim Three: the Petrolink Payment and Claim Four: the Elite Payments. Accordingly, the loss particulars set out below exclude Claims Three and Four from the analysis.

379. In respect of Claims One, Two and Five to Seven, it is only possible to provide limited information about the total sums claimed by the Plaintiffs on the assumptions set out above. The losses suffered by the Plaintiffs under the seven claims in Sections E-K above are mutually interdependent and, under different assumptions from those set out above, the Plaintiffs' loss will or may be different. Accordingly, the full quantification of the compensation and/or damages due to the Plaintiffs will depend on all the findings made by the Court in due course, in light of the documentary and witness evidence, and on expert evidence on the issue of quantum.

Claim One: KGL Kuwait's late capital contributions and GIC's Additional Contributions

380. By reason of the matters set out at paragraph 76.1 above, GIC's loss is USD 658,858 and GRSIA's loss is USD 458,393.

381. By reason of the matters set out at paragraph 76.2, GIC's loss is USD 24,366,402.

Claim Two: the Apache Payments

382. The Apache Payments reduced the assets available for distribution to the Limited Partners by USD 66,208,399.

383. Accordingly, under Claim Two, GIC's loss is USD 7,037,757 and GRSIA's loss is USD 3,466,799.

Claim Five: the Placino Payment

384. The Placino Payment reduced the assets available for distribution to the Limited Partners by USD 2.72 million.

385. Accordingly, under Claim Five, GIC's loss is USD 289,128 and GRSIA's loss is USD 142,424.

FSD2022-0041 Page 146 of 156 2022-03-03

Claim Six: the Golden Shahin and KGLI Asia Payments and PR, lobbying and legal fees

386. The Golden Shahin Payment (Appendix 1, item 1) reduced the assets available for distribution to the Limited Partners by USD 14.07 million. Accordingly, as a result of the Golden Shahin Payment, GIC suffered loss of USD 1,495,599 and GRSIA suffered loss of USD 736,732.

387. The KGLI Asia Payments (Appendix 1, item 2) reduced the assets available for distribution to the Limited Partners by approximately USD 1,948,976. Accordingly, as a result of the KGLI Asia Payments, GIC suffered loss of USD 207,170 and GRSIA suffered loss of USD 102,052.

388. As regards the PR, lobbying and legal fees listed in Items 3-16 of Appendix 1:

388.1 Port Link has admitted that all or substantially all of the payments listed at Items 6, 7, 11, 14 and 15 of Appendix 1 were not incurred for the benefit of the Port Fund.

388.2 Pending disclosure and the provision of information, the Plaintiffs do not know what if any payments were made to Olko (Item 16) and the Calculated Maximum Sum excludes this item.

388.3 Pending disclosure, the Plaintiffs do not know precisely what proportion of the other payments listed in Appendix 1 were not for the benefit of the Fund and therefore improperly incurred. For the purposes of providing an estimate of the Plaintiffs' losses under Claim Six, the below calculation makes the following assumptions regarding those payments:

(a) It is assumed that all of items 8, 9, 10 and 12 were incurred improperly.

(b) It is assumed that 50% of items 3, 4, 5 and 13 were incurred improperly.

FSD2022-0041 Page 147 of 156 2022-03-03

388.4 On this basis, the improper payments made by Port Link in respect of PR, lobbying and legal fees reduced the assets available for distribution to the Limited Partners by USD 4,885,503.

388.5 As a result, GIC suffered loss of USD 519,314 and GRSIA suffered loss of USD 255,814.

Claim Seven: the DIFC Claim and Payment to the Investment Management Company

389. On the assumption referred to above, reflecting the Plaintiffs' primary case, namely, that the Investment Management Company was not entitled to any of the fees or Carry it claimed in the DIFC Claim:

389.1 the wrongdoing particularised under Claim Six reduced the assets available for distribution to the Limited Partners by USD 59,990,461;

389.2 the net profit from the Fund's exited investments should have been allocated 100% to the Limited Partners (not to the Investment Management Company) *pro rata* to their Capital Contributions;

389.3 accordingly, GIC's loss under Claim Six is USD 6,376,808 and GRSIA's loss is USD 3,141,216.

Total loss claimed as against each Defendant

390. The totals of the sums claimed by GIC against each Defendant are:

390.1 USD 24,366,402 as against the First Defendant in respect of Claims One to Seven;

390.2 USD 13,414,565 as against the Second Defendant in respect of Claims Two and Seven;

390.3 USD 6,376,808 as against the Third Defendant in respect of Claim Seven;

FSD2022-0041 Page 148 of 156 2022-03-03

390.4 USD 207,170 as against the Fourth Defendant in respect of Claim Six (Item 2);

390.5 USD 7,037,757 as against the Fifth Defendant in respect of Claim Two;

390.6 USD 7,037,757 as against the Sixth Defendant in respect of Claim Two;

390.7 USD 7,037,757 as against the Seventh Defendant in respect of Claim Two.

391. The totals of the sums claimed by GRSIA against each Defendant are:

391.1 USD 8,922,799 as against the First Defendant in respect of Claims One to Seven;

391.2 USD 6,608,015 as against the Second Defendant in respect of Claims Two and Seven;

391.3 USD 3,141,216 as against the Third Defendant in respect of Claim Seven;

391.4 USD 102,052 as against the Fourth Defendant in respect of Claim Six (Item 2);

391.5 USD 3,466,799 as against the Fifth Defendant in respect of Claim Two;

391.6 USD 3,466,799 as against the Sixth Defendant in respect of Claim Two;

391.7 USD 3,466,799 as against the Seventh Defendant in respect of Claim Two.

N. INTEREST

392. The Plaintiffs are entitled to and claim compound interest pursuant to the Court's equitable jurisdiction alternatively simple interest pursuant to section 34 of the Judicature Act (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 on such sums as are found to be due to them at such rate(s) for such period(s) and with such rest(s) as to the Court seem fit.

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was issued by Travers Thorp Alberga, Attorneys for the Plaintiffs, whose address for service is Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0720-024).

AND THE PLAINTIFFS CLAIM:

As against the First Defendant

1. Equitable compensation and/or damages to be assessed;

2. Accounts in equity on the footing of wilful default alternatively common accounts and consequential orders;

3. A declaration that it is liable to indemnify the Plaintiffs in respect of any liability arising from the Elite Payments;

As against the Second and Fifth to Seventh Defendants

4. Equitable compensation and/or damages to be assessed;

As against the Third, Fourth and Eighth Defendants

5. Equitable compensation to be assessed;

As against all the Defendants

6. Interest;

7. Costs;

8. Further or other relief.

Dated this 3rd day of March 2022

Travers Thorp Alberga

TRAVERS THORP ALBERGA
Attorneys for the Plaintiffs

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was issued by Travers Thorp Alberga, Attorneys for the Plaintiffs, whose address for service is 4th Floor, Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-004)

APPENDIX 1:
GOLDEN SHAHIN AND KGLI ASIA PAYMENTS AND ALLEGED PR, LEGAL AND LOBBYING FEES

Item	Recipient	Date of payment	Amount paid (USD) from the Noor Bank Account
1	Golden Shahin General Trading and Contracting Company	12 February 2019	14,070,000.00
2	KGLI Asia	6 February 2019, 10 February 2019 and other dates unknown	1,948,976.32
3	Crowell & Moring LLP	n/a	2,576,349.69
4	Squire Patton Boggs LLP	n/a	1,405,930.69
5	Neil Bush	n/a	1,215,589.59
6	Dr Yousef Thaher Al Harbash	4 tranches: 9 November 2017; 5 March 2018, 15 May 2018, 11 February 2019	1,002,189.69
7	Marathon Strategies, LLC	n/a	349,961.85
8	Badr N AlMutairat	3-4 August 2017	167,911.00
9	Baker Tilly, Kuwait	18 February 2019 and other date(s) unknown	149,920.00
10	Triple Canopy Media LLC	n/a	304,267.32
11	Navigant Consulting, Inc.	n/a	129,593.56
12	Trax Marketing Consulting Company	3 tranches: 19 September 2017, 8 November 2017 and another date unknown	105,595.00
13	McKool Smith	n/a	85,641.54
14	diGenova & Toensing, LLP	n/a	23,875.00
15	Covington & Burling LLP	n/a	10,434.00
16	OOO "Olko" Ltd	n/a	n/a
		Total	**USD 23,546,235.25**

FSD2022-0041 Page 151 of 156 2022-03-03

DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

1 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495 GT, George Town, Grand Cayman KY1-1106, Cayman Islands.

2 A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (ie., the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e., a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an Affidavit of his means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance.

This **WRIT OF SUMMONS AND STATEMENT OF CLAIM** was issued by Travers Thorp Alberga, Attorneys for the Plaintiffs, whose address for service is Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/GC0787-004).

Notes for Guidance

1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2 For the purpose of calculating the period of 14 days for acknowledging service on the Defendant, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3 Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition of paragraph 1 of the description "Partner in the firm of _____" after his name.

5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as _____" after his name.

6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.

7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

This **WRIT OF SUMMONS** was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is PO Box 472, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0[illegible]).

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION **CAUSE NO. FSD OF 2022 ( )**

BETWEEN:

(1) GULF INVESTMENT CORPORATION
(2) GENERAL RETIREMENT AND SOCIAL INSURANCE AUTHORITY

Plaintiffs

AND:

(1) PORT LINK GP LTD
(2) MARK ERIC WILLIAMS
(3) WELLSPRING CAPITAL GROUP, INC
(4) KGL INVESTMENT COMPANY ASIA
(5) APACHE ASIA LIMITED (a Hong Kong company)
(6) APACHE ASIA LIMITED (a Macao company)
(7) RONALD HENRY AYLIFFE
(8) ELITE FIRST INVESTMENT LIMITED

Defendants

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

☐ **Yes** ☐ **No**

This **WRIT OF SUMMONS** was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is 2nd Floor, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-004)

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).

☐ **Yes** ☐ **No**

Service of the Writ of Summons is acknowledged accordingly.

_____

Attorneys-at-law for the Defendant
Address for service:

Please complete overleaf
Notes on address for service:

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Indorsement by Plaintiffs' Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Travers Thorp Alberga
PO Box 472
2nd Floor Harbour Place
103 South Church Street
Grand Cayman, KY1-1106
CAYMAN ISLANDS
(Ref: ALP/G0787-004)

Indorsement by Defendant's Attorneys (or by Defendant if defending in person) of his name, address and reference, if any, in the box below.

This **WRIT OF SUMMONS** was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is PO Box 472, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-004).

FSD2022-0041 Page 156 of 156 2022-03-03