



Neutral Citation Number: [2025] CIGC (FSD) 71

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 203 OF 2020 (NSJ)

BETWEEN:

ABDULHAMEED DHIA JAFAR

Plaintiff

and

(1) ABRAAJ HOLDINGS (in official liquidation)

(2) GHF GENERAL PARTNER LIMITED

(in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

(3) THE GHF GROUP LIMITED

(formerly The Abraaj Healthcare Group Limited)

(4) ABRAAJ GENERAL PARTNER VIII LIMITED

(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))

Defendants

Appearances: Lord Falconer of Thoroton and Luka Krsljanin instructed by Christopher Young and Sarah McLennan of Forbes Hare for the Plaintiff

Stephen Atherton KC and Sarah Tresman instructed by Shelley White, Matthew Goucke and Jonathan Turner of Walkers for the Second and Third Defendants

Andrew Ayres KC and Henry Phillips instructed by Jennifer Fox and Rebecca Findlay of Ogier for the Fourth Defendant

Before: The Honourable Justice Segal

TRIAL JUDGMENT – PART 2 – QUANTUM ISSUES

Introduction

1. This is the second part of my judgment dealing with the claims made by Mr Abdulhameed Jafar (*Mr Jafar* or the *Plaintiff*) arising out of loans made by him in 2017 to Abraaj Investment Management Limited (*AIML*) and possibly Abraaj Holdings (*AH*) as set out and pleaded in his Re-Re-Amended Statement of Claim (the *RRASOC*). The first part of the judgment dealt with issues concerning liability (the *Liability Judgment*). In the *Liability Judgment* I dismissed Mr Jafar's claims for the reasons set out therein. This judgment deals with issues concerning the quantum of the defendants' liability if, contrary to my decision in the *Liability Judgment*, Mr Jafar's claims were upheld.
2. The main background to these proceedings is set out in the *Liability Judgment* and I use the same definitions in this judgment as are contained in the *Liability Judgment* (save where terms are defined herein).

3. The main issue arising in relation to quantum is the proper value to be attributed to various assets which Mr Jafar received from Mr Naqvi in partial reduction of the losses suffered by Mr Jafar as a result of the making of the Loans. I consider below the parties' submissions (and the evidence adduced) and then set out my decision as to the value to be attributed to each of these assets. I do not set out here the sum I have found to be attributable to each asset and the amount of costs to be deducted. These amounts can be found below in the relevant paragraphs of this judgment dealing with the particular asset concerned in the section headed "*Discussion and decision.*"

4. I also deal with a further issue relating to liability, as I said I would in the Liability Judgment. This relates to the issue of whether the Third Express Representation and the First Implied Representation were false because of the financial position of AH, AIML and the other Abraaj entities in December 2017 when these representations were made. On Mr Jafar's case Mr Naqvi had represented that he "*believed, and had a reasonable basis for his belief, that the borrower would be able to repay the money to Mr Jafar before the end of January 2018 or shortly thereafter*" (this is what I labelled in the Liability Judgment as the Third Express Representation) and had impliedly represented that "*the finances of the entities for the benefit of which he was seeking to raise monies were essentially sound and proper, and any liquidity issues which they were experiencing were short term*" (this is what I labelled in the Liability Judgment as the First Implied Representation). Mr Jafar relied on the evidence of Mr Conway in Conway 1 to show that AH and AIML were insolvent as at December 2017 so that Mr Naqvi's representations were clearly false and that AIML, AH and the other Abraaj entities were not in a financially sound state when each of the Loans was made. The Fund Parties had argued that since there were various substantial sources of new cash that Mr Naqvi was discussing and which could generate sufficient funds to enable the Loans to be repaid when they fell due, the Court should infer that he believed, or at least the Court should conclude that it was reasonable for him to have believed, that AIML (or AH) would be able to repay the Loans and that their financial position and that of the Defendants and other entities to whom the funds advanced by Mr Jafar were to be passed on was sound, in the sense that they were capable of surviving until after the Loans fell due for payment and to repay the Loans. The Fund Parties did not press this case in their written or oral closing submissions even though Mr Conway had been vigorously cross-examined about

the relevant parts of his evidence. In my view, for the reasons I explain below, the Fund Parties' defence on this issue is without merit and fails.

The Plaintiff's pleaded case as to quantum

5. Mr Jafar's claim was set out in the RRASOC as follows:

"55. The loss of principal which Mr. Jafar contends and alleges he is entitled to recover by way of damages for deceit is US\$232 million, being:

(1) the amount of the First Loan and the Second Loan combined, US\$300 million;

(2) less the money and assets which he has received in relation to the same, that is:

(a) US\$33 million in cash; and

(b) US\$35-55 million, being the value of assets received from Mr Naqvi pursuant to an agreement in writing in or around August 2018, by which Mr. Jafar and Mr. Naqvi agreed in writing as follows:

(i) Mr. Jafar agreed not to pursue certain criminal charges against Mr Naqvi in the UAE; and

(ii) In exchange, Mr. Naqvi agreed to transfer, or procure the transfer of, certain personal assets held by parties or entities associated with him and/or his family. These assets are estimated to be worth between US\$35-55 million.

(3) If it is found or held that AIML's payment of the equivalent to US\$50 million to Mr. Jafar on 4 January 2018 is not to be treated as full repayment of the Third Loan, but as partial repayment(s) of one or more of the other of the Jafar Loans, then paragraph 39 above is repeated. The overall calculation of the principal sums claimed is not altered on this analysis since in any event the total combined sum of the three Jafar Loans (US\$350 million) is reduced by US\$50 million by the payment dated 4 January 2018.

56. The cash and assets which Mr. Jafar has received in connection with the First and Second Loans are to be credited against the sums he has lost in relation to those Loans pro rata. The value of the assets is to be determined as at the date on which Mr. Jafar received them.

57. Mr. Jafar has proven the debt in the Second Loan to AH in the liquidation of AH, by proofs of debt submitted to the Grand Court on 12 July 2018, and, as against AH, Mr. Jafar does not seek to recover the loss he suffered in relation to the Second Loan in deceit.

58. In the premises, Mr. Jafar claims and is entitled to the following relief:

- (1) *As against AH, the sum of US\$70.67-77 million in damages for deceit in respect of the First Loan, being the sum of US\$100 million minus one third of each of (i) the sum of US\$35-55 million representing the value of Mr. Naqvi's assets, and (ii) the sum of US\$33 million representing the payment(s) as pleaded at paragraph 9 above.*
 - (2) *As against the Healthcare GP on behalf of the Healthcare Fund:*
 - (a) *the sum of US\$212-232 million in damages for deceit as pleaded in paragraph 55 above; or*
 - (b) *the sum of US\$108 million in restoration of enrichment without cause or unjust enrichment as pleaded in paragraph 5 above.*
 - (3) *As against AHG:*
 - (a) *the sum of US\$212-232 million in damages for deceit as pleaded in paragraph 55;*
or
 - (b) *the sum of US\$108 million in restoration of enrichment without cause or unjust enrichment as pleaded in paragraph 5 above.*
 - (4) *As against GP8:*
 - (a) *the sum of US\$212-232 million in damages for deceit as pleaded in paragraph 55 above; or*
 - (b) *the sum of US\$124 million in restoration of enrichment without cause or unjust enrichment as pleaded in paragraph 6 above; and*
 - (5) *As against each of AH, the Healthcare GP, AHG and GP8: interest and costs.*
59. *Mr. Jafar is entitled to interest on all such sums until judgment or earlier payment at the rate of 2% per annum or at such other rate then prevailing and/or determined by the Court in accordance with section 34 of the Judicature Law (2021 Revision) and the Judgment Debts (Rates of Interest) Rules 2021, or the Court's equitable jurisdiction."*

The payments received by and assets transferred to Mr Jafar

6. Mr Jafar had claimed that he was deceived into making the Loans to AH and AIML so that his basic loss fell to be calculated by reference to the extent to which he was out of pocket by reason of having advanced the Loans. Mr Jafar argued that he was out of pocket in respect of the full amount of the Loans irrespective of the loss-sharing arrangements with BOS but accepted that (see [55(2)(b)] of the RRASoC quoted above) against the basic loss flowing from his having advanced the Loans, credit must be given for any

value he had received from Mr Naqvi whether in cash or in kind in settlement of the sums owed under the Loans. As Mr Jafar and Mr Singhvi explained, Mr Jafar had received cash payments and assets from Mr Naqvi as a result of settlement negotiations that had taken place before the commencement of these proceedings. As regards the cash payment, there was a dispute as to whether it was made in settlement of the Loans. As regards the assets transferred by Mr Naqvi, it was necessary to determine the proper value of these assets for the purpose of calculating Mr Jafar's recoverable loss. Mr Jafar denied that he had to give credit for any reduction in his liability to indemnify BOS as a result of the BOS loss-sharing arrangements.

7. The parties agreed that credit therefore had to be given to reflect:
 - (a). the US\$ 50 million payment made on 4 January 2018, if it was to be treated as repayment of the Third Loan.
 - (b). US\$33 million of cash repayments made in March 2018. No disputes arise in relation to this payment.
 - (c). the value of the assets = received by Mr Jafar pursuant to the agreements entered into with Mr Jafar, being the agreement entered into in July 2018 (the **Bridge Agreement**) and the Settlement Deed entered into in August 2018. Some of the Settlement Assets have been sold or realised by Mr Jafar while others have been retained.
 - (d). any recoveries Mr Jafar makes in the future in the insolvencies of AH or AIML.

The US\$ 50 million Payment

8. On 4 January 2018, the sum of US\$50 million was paid from AIML's Citibank Dubai account (account number 0201433037) into Mr Jafar's Loan Transfer Account. AH accepted that this repayment was to be treated as repayment of the Third Loan (Conway 1 at [367]) but the Fund Parties disputed this analysis. Mr Jafar's position was that this payment was clearly intended and had always been treated by the parties to it, as a full

repayment of the Third Loan and that it should be treated as such for the purposes of his claim.

9. Mr Jafar argued that the Third Loan was to be treated as having been repaid in full on 4 January 2018 by the repayment of the sum of US\$50 million. Whether this payment was in repayment of the Third Loan was a question of fact judged by reference to objective evidence of the intentions of the paying party. The payment was, as a matter of fact, the repayment of the Third Loan because: (a) it corresponded precisely to the value of the Third Loan; and (b) the date of its payment (4 January 2018) corresponded to the maturity date and deadline for repayment agreed for the Third Loan. As such, it was obviously the intention of the paying party that the US\$ 50 million be treated as repayment of the Third Loan and the payment was also understood this way by Mr Jafar. Accordingly, the starting point for the calculation of Mr Jafar's loss was US\$300 million being the amount of the Loans less the repayment of US\$50 million.

The Settlement Assets

10. During the first quarter of 2018, Mr Jafar with advice and assistance from Mr Richard Ernest, was in active discussions with Mr Naqvi regarding how the Loans were to be restructured and ultimately repaid. It is clear that Mr Jafar looked primarily to Mr Naqvi to secure and take steps to arrange for such repayment to be made. Mr Jafar also clearly regarded it as Mr Naqvi's personal responsibility to arrange for repayment and ultimately to make payments out of his personal resources.
11. During this period Mr Jafar took steps, entirely legitimately, to put pressure on Mr Naqvi to arrange or make repayments of the Loans. On 18 March 2018, Mr Ernest recommended to Mr Jafar that the post-dated cheques signed by Mr Naqvi be presented to the UAE authorities and on the same day Mr Naqvi transferred the sum of AED 121,000,000 (corresponding to approximately US\$ 33 million) to accounts in the name of Mr Jafar by way of four separate wire transfers.
12. In July 2018, without prejudice discussions took place between Mr Jafar and Mr Naqvi, which led to the signing on 11 July 2018 of the Bridge Agreement and on 28 August 2018 of the Settlement Deed.

13. Mr Singhvi said (in Singhvi 1) that negotiations with Mr Naqvi were extremely frustrating and that Mr Jafar's patience finally ran out in mid-June 2018 when he filed a criminal complaint with the Sharjah Public Prosecutor against Mr Naqvi for dishonouring cheque 000997 (the *First Criminal Claim*). Mr Singhvi recalled that there was a need to reach an agreement by 11 July 2018, as that was the date on which judgment would be passed in the First Criminal Claim (with Mr Naqvi facing a prison sentence) at which point it would be too late for Mr Jafar to withdraw it. However, a final agreement on the terms of a settlement had not been reached by that date so an interim agreement (hence a bridge agreement) was entered into in the early hours of 11 July 2018. Mr Singhvi said that Mr Jafar and Mr Naqvi intended to continue negotiating a full settlement agreement which would take into account what was agreed in the Bridge Agreement.
14. The Bridge Agreement provided for: (a) Mr Naqvi to transfer immediately three assets (the *Bridge Agreement Assets*) to Mr Jafar, namely 42% of a development project at Lowndes Square, London (the *40 Lowndes Square Stake*), Mr Naqvi's yacht M/Y Raasta (the *Yacht*) and Mr Naqvi's villa at L24, Lailak Street, Emirates Hills, Dubai (the *Dubai Villa*); (b) Mr Naqvi to issue a personal cheque for US\$ 46 million and sign and deliver a cover letter for the delivery of that cheque (the *Settlement Cheque*) (Mr Singhvi said that the Settlement Cheque had been provided to ensure that Mr Naqvi complied with his obligations to transfer the Bridge Agreement Assets); (c) Mr Naqvi to transfer his carried interest in certain Abraaj funds to Mr Jafar, if requested by Mr Jafar to do so; (d) Mr Jafar to withdraw the First Criminal Claim by 8am on that day; and (e) Mr Jafar to transfer part of the loan he had made to AIML to Mr Naqvi in an amount equal to the value of the Bridge Agreement Assets (to be determined by Mr Jafar within one month).
15. Mr Singhvi said that the Bridge Agreement Assets were transferred from Mr Naqvi to Mr Jafar immediately but perfecting the transfers of the underlying assets took more time, Mr Jafar withdrew the First Criminal Claim, and the Settlement Cheque was signed and delivered to Mr Jafar, but the other obligations under the Bridge Agreement were not performed because they were superseded by the Settlement Deed.
16. Mr Singhvi said that the negotiations with respect to the full and final settlement were not progressing to Mr Jafar's satisfaction and accordingly he filed a new criminal complaint against Mr Naqvi in Sharjah, this time in relation to cheque 00101138 (the

Second Criminal Claim). On or around 26 August 2018, Mr Naqvi was found guilty and sentenced in absentia. Nonetheless, the Settlement Deed was finally agreed and executed on 28 August 2018. Under the Settlement Deed, Mr Naqvi agreed to transfer to Mr Jafar the following further assets (the *Settlement Deed Assets*): (a) certain items from Mr Naqvi's private art collection (the *Artwork*); (b) Mr Naqvi's stake in Wamda, a technology startup accelerator (the *Wamda Shares*); (c) Mr Naqvi's shares in Art Dubai, an annual art fair and talent incubator in Dubai (the *Art Dubai Shares*); and (d) Mr Naqvi's shares and investments in various venture capital entities (the *VC Portfolio*). In addition to the Settlement Deed Assets, the Settlement Deed also facilitated the transfer of an apartment owned by Mr Naqvi in El Gouna, Egypt (the *El Gouna Property*). Mr Singhvi said that owing to an oversight by Mr Naqvi, the El Gouna Property was not listed in the Settlement Deed. The Settlement Deed also required Mr Naqvi to transfer Wootton Place, his country estate in Oxfordshire, England, which at the time was held in a Naqvi family trust (the *Peony Trust*). It was therefore treated separately, and Mr Naqvi agreed to use reasonable endeavours to procure the transfer of the shares in Blondell Assets Limited (*BAL*), the company that owned Wootton Place.

17. Mr Singhvi provided details of the Settlement Assets in Singhvi 1 and the steps that had been taken by or on behalf of Mr Naqvi to manage and realise them.

The experts

18. On 18 August 2022, I gave directions (the *Directions Order*) regarding the expert evidence to be adduced at the trial. [11] of the Directions Order stated as follows (my underlining):

“11. The parties shall be at liberty to adduce expert evidence on the following issues:

...

11.3 The value of the cash and assets that Mr Jafar received from Mr Naqvi, certain of which are referred to in paragraph 55(2)(b) (including any amendment thereto) of the Amended Statement of Claim in the FSD 203 of 2020 Proceedings (the "Naqvi Consideration") as at the date on which Mr Jafar received them...”

19. The Plaintiff instructed Mr Peter Coats. Mr Coats is a partner at Ernst & Young Ltd in Zurich, Switzerland and a qualified Chartered Accountant of the Institute of Chartered Accountants in England and Wales, a member of Expert Suisse and an approved auditor by the Swiss Federal Audit Oversight Authority. Mr Coats prepared two reports. The first was dated 3 May 2023 (*Coats 1*) and the second 6 October 2023 (*Coats 2*).
20. The Fund Parties jointly instructed and relied on the expert evidence of Mr Joel Cohen. Mr Cohen also prepared two reports. The first (*Cohen 1*) was dated 23 June 2023 and his second report was dated 9 October 2023 (*Cohen 2*). Mr Cohen is a Managing Director in the Disputes, Claims and Investigations practice of Stout Risius Ross LLC (*Stout*). Stout is a global investment bank and advisory firm. Mr Cohen is the Managing Partner of Stout's New York office.

The Plaintiff's quantum claim and valuations

21. Mr Jafar relied on Mr Singhvi's evidence in Singhvi 1 for the purpose of determining the value of the Settlement Assets that had been sold or otherwise realised. He claimed that the total amount to be deducted from the total sum claimed in the proceedings (using exchange rates for non-US\$ recoveries on the dates of transactions and after deducting relevant costs and expenses), was US\$ 49,549,235. This sum was comprised of the following net realisations (after accounting for transaction costs):
 - (a). the Dubai Villa: AED 39,199,890 (approximately US\$ 10,672,971).
 - (b). the 40 Lowndes Square Stake: -£34,591 (approximately -US\$ 38,776).
 - (c). the Yacht: €8,959,114 (approximately US\$ 10,505,527).
 - (d). the El Gouna Property: EGP 7,042,753 (approximately US\$ 420,498).
 - (e). the realised Artwork: US\$ 17,439,073.
 - (f). the realised VC Portfolio assets: US\$ 10,569,426 and £70,000 (approximately US\$ 91,000).
22. As regards the value of the unrealised Settlement Assets, Mr Jafar relied on the expert evidence of Mr Coats. Mr Coats' opinion was that the unrealised assets were to be valued as follows as at 31 March 2023 (after accounting for transaction costs):

- (a). the stake in Art Dubai: US\$ 2,958,982.
 - (b). the VC Portfolio: US\$ 16,450,778.
 - (c). Artwork: US\$ 1,686,326 - 2,510,679.
23. Mr Jafar disputed the opinion and evidence of Mr Cohen who had ascribed a total value of US\$108,561,366 to the realised and unrealised Settlement Assets.

The Dubai Villa

24. Mr Jafar valued the Dubai Villa at its net realised sum of AED 39,199,890 (US\$ 10,672,971). In the alternative, Mr Coats valued it as at the date of transfer at US\$ 10,028,077 (see Coats 2 [94]). Mr Jafar argued that he had made reasonable efforts to sell the Dubai Villa, which Mr Singhvi had described as a “*difficult and uncertain task*.” His representatives had engaged two brokers to market the property rather than just one and yet, despite their combined efforts, Mr Jafar had received only six offers, all of which were in a similar valuation range and despite Mr Singhvi’s determination to obtain the highest possible value for it.
25. The Dubai Villa was a 3,800sqm, three-storey, six-bedroomed residence located in the Emirates Hills area of Dubai. Emirates Hills is an upscale gated community known for its luxury residences and high net worth residents.
26. During the original settlement negotiations, Mr Naqvi had provided two valuation reports in respect of the Dubai Villa. First, a report from Savills, with a value of AED92 million and, secondly, a report from Vakson Group with a value of AED65 million.
27. The Dubai Villa was originally held by a company called AC Logistics Holdings Ltd (**ACL**). The shares in ACL were held by AMN Overseas Limited (**AOL**) whose shares were in turn held by Regula Limited (**Regula**). Under the Bridge Agreement, the Dubai Villa was transferred to Mr Jafar as follows. First, on 10 July 2018, 100% of the shares in Regula were transferred to Mr Naqvi. On the same day, 100% of the shares in AOL were then transferred from Regula to Mr Naqvi. On 14 August 2018, Mr Naqvi transferred to Mr Jafar 100% of his shareholding in Compass Holdco Limited (**CH**) a holding company incorporated in the Cayman Islands (it was intended that CH would

hold the Dubai Villa, the 40 Lowndes Square Stake and the El Gouna Property). On 8 October 2018, CH was transferred to a trust managed by NSF Trust Management (the *Colligo Trust*). Mr Singhvi said that he understood that Mr Jafar was the settlor of the Colligo Trust and not a beneficiary. On 11 October 2018, Mr Naqvi (as shareholder of AOL) transferred 100% of the shares in ACL from AOL to CH.

28. Mr Singhvi said that he had ultimate authority to manage the sale of the Dubai Villa but that day-to-day management (such as property maintenance and conducting site visits) had been carried out by Mr Roger Haider (Procurement Manager, Construction Projects, Jafar Family Office). As regards the sale process, Mr Singhvi had been advised by Gulf Sotheby and Luxury Properties.
29. Mr Singhvi said that selling such a large property in the condition of the Dubai Villa (even prior to the COVID-19 pandemic) was a difficult and uncertain task. A report commissioned by Mr Haidar had noted that whilst a sale value of AED 85-90 million was achievable, only five sales had completed within the previous six years. Further, a report had been received from Gulf Sotheby which recommended that the villa be marketed for AED 67,750,888 and that any offer above AED 55 million should be accepted.
30. Mr Singhvi said that in October 2019 a confidential buyer had offered AED 40 million (in cash), by which time supply in Emirates Hills was high and similar properties were being priced substantially lower than the Dubai Villa. Nonetheless, he thought that Mr Jafar would be able to achieve a better price and the offer was rejected. He said that by early 2020 four separate offers had been received between AED 40-42 million. In January 2020 an offer for AED 44 million was received and Mr Jafar's broker (Mr Leigh Borg of Sotheby's) had advised Mr Jafar to accept it. Mr Borg's outlook for the future was pessimistic:

“My professional advice is to take this offer and close this chapter, as we have had 4 separate offers and all have ranged between 40-42m, which tells us the true market for the villa, and the market is still continuing to fall month on month.

I have also attached my initial valuation report on the villa from February 2019, in this report I recommend taking any offer 55 million & above, a year on the market has dropped 18-20%, puts us right on the money at 44 million AED.

I appreciate you wanting to achieve a minimum of 45 million net, and as your agent, I want to get you the highest possible price, however, I would not lose this offer, as if we do not close this offer, in 6 months' time I feel we will be getting offers of 37/38 million AED."

31. Mr Singhvi said that despite the pessimistic outlook, he was confident that a price of AED 55 million could still be achieved and therefore this offer was rejected. Then around April 2020 an offer was received from Mr Guerman Goutorov (**Mr Goutorov**), who Mr Singhvi understood to be the CEO and Chairman of Sreit Group. Mr Goutorov made a cash offer of AED 40,500,000 (the **Villa Sale Price**), which was accepted by Mr Jafar. Mr Singhvi said that this was because it was becoming increasingly clear that the property market was continuing to weaken because of the COVID-19 pandemic.
32. ACL and Mr Goutorov (via a company called AG Hills Limited) entered into a sale and purchase Agreement on 9 July 2020 (the **Villa SPA**) at the Villa Sale Price. The completion date was extended twice, first on 3 August 2020 and then on 9 November 2020, with a view to completing the sale by 15 December 2020. The Dubai Villa was sold on 8 December 2020, with the Villa Sale Price being paid to CH in the form of a "*managers cheque*." As ACL did not hold any bank accounts, CH was permitted to accept the Villa Sale Price on its behalf. Mr Singhvi said that to the best of his knowledge there was and is no connection between Mr Jafar and Mr Goutorov so that the sale was to be regarded as an arms-length transaction.
33. Mr Singhvi said that it had been vital to ensure that the Dubai Villa was maintained in a condition that would make it suitable for resale (by, for example, ensuring that the air conditioning and electrical systems did not fail, ensuring a fully working outdoor pool and maintaining the exterior landscaping) so that various maintenance costs had been incurred in addition to utility costs (which were substantial owing to high cooling costs and municipality fees) and insurance. Relevant contracts which Mr Naqvi had entered into had been continued. A total of approximately AED 820,267 was incurred in respect of maintenance and management costs, broken down as follows: utilities AED 389,037.62; staff salaries AED 123,176.50; maintenance AED 128,313.15; EMAAR community fees AED 119,529.57; furniture relocation AED 23,075.75; water AED 8,032.50; insurance AED 14,981.25 and attestation fees AED 14,121.

34. Mr Singhvi identified the costs related to the sale of the Dubai Villa. He said that the total costs were approximately AED 479,843 comprising the commission paid to the broker in the sum of AED 425,250, bank charges of AED 54,387 and collection charges of AED 206.

The 40 Lowndes Square Stake

35. Mr Jafar valued the 40 Lowndes Square Stake by reference to the net sum realised on its sale, which was a negative figure (-£ 34,591) because related costs exceeded the sale price.
36. 40 Lowndes Square was a residential real estate development in Belgravia, London. The development formed part of a row of stucco terraces, which had been internally converted to provide self-contained units comprising five duplex townhouses and three serviced apartments. Mr Naqvi had owned a 42% share of the company that ultimately owned the project.
37. Mr Naqvi's share in the 40 Lowndes Square Stake was structured as follows:
- (a). MESA Investments Limited (*MESA*) owned 100% of the shares in Steadfast Holdco Limited (*SHL*).
 - (b). SHL held 42% of the shares in LSH Limited (*LS Holding*). The other shareholders at that time were Majestix Holding and Finance (*Majestix*) (40%), Lowndes Holdings Limited (10%) (*LHL*) and Mr Ferit Sahenek (8%).
 - (c). LS Holding held 100% of the shares in LS Investments Limited (*LS Investments*). LS Investments owned the 40 Lowndes Square project itself.
38. On 14 August 2018, in accordance with the Bridge Agreement, Mr Naqvi transferred the shares in SHL from MESA to CH. On 4 January 2021, Mr Jafar transferred the shares in LS Holding from SHL to the Colligo Trust. Mr Singhvi said that as far as he was aware SHL had no other assets or liabilities other than those relating to its share in the 40 Lowndes Square Stake.

39. He also said that realising the 40 Lowndes Square Stake was “*an incredibly complex and taxing process involving substantial time...*” and that despite efforts to market the property/asset, no concrete offers were received.
40. The project for completing the development had financial problems which had to be addressed before the 40 Lowndes Square Stake could be realised. After further funding was arranged, including funding in the sum of £ 2,808,846 advanced by SHL (the entity whose shares were held by CH1 for Mr Jafar) to deal with these problems and allow the completion of the development, a sale of Mr Jafar’s interest did take place in October 2022.
41. On 14 October 2022, the trustee of the Colligo Trust entered into a share sale agreement with LHL for the sale of the 40 Lowndes Square Stake (the ***Lowndes SPA***) pursuant to which LHL purchased all of the Colligo Trust's shares for £ 2,807,300 (representing the approximate value that Mr Jafar had paid into the project by way of shareholder loans) in the following instalments: £ 1 million on 14 October 2023; £1 million on 14 October 2024; and £ 807,300 on 14 October 2025 (together the ***Sale Consideration***). However, the Colligo Trust, subject to certain conditions, indemnified LHL for any losses that LHL incurred as a result of the US Department of Justice taking ownership of the shares (following criminal proceedings brought against Mr Naqvi). Mr Singhvi confirmed that as far as he was aware there was no connection between Mr Jafar and LHL so that the sale of the 40 Lowndes Square Stake was an arms-length transaction.
42. Mr Singhvi said that Mr Jafar had suffered a net loss in relation to the 40 Lowndes Square Stake. Assuming that the Sale Consideration was paid in full, he would lose and be out of pocket as to £ 34,591 being the total costs incurred by Mr Jafar (or for his benefit) associated with ownership of the 40 Lowndes Square Stake of £ 2,841,897 (namely loans advanced by Mr Jafar of £ 2,808,846 together with NWL’s legal fees of £ 21,051 and the costs of a report by Savills of £ 12,000) less the Sale Consideration of £ 2,807,300.

The Yacht

43. Mr Jafar valued the Yacht by reference to the net sale proceeds of EUR 8,959,114 (US\$10,505,528) and in the alternative he relied on Mr Coats' valuation, which adjusted the net realised value of the Yacht as at the date of transfer to US\$ 9,660,669.
44. The Yacht was a 47-metre vessel which was originally owned by Galveston Bay Limited (*GBL*). On 13 July 2018, Mr Naqvi and Mr Jafar signed a Deed of Assignment under which Mr Naqvi agreed to assign his beneficial interest in GBL to Mr Jafar (this would act as a stopgap pending a full legal transfer of the Yacht to Mr Jafar). On 10 October 2018, a new holding company, Tamam Ltd (*Tamam*) was incorporated and its shares were transferred to Compass Holdco 2 Limited (*CH2*). On 20 December 2018, GBL and Tamam signed a sale and purchase agreement for the sale of the Yacht, which attributed a value of US\$ 13 million to the Yacht.
45. To help with the maintenance and operation of the Yacht, Mr Jafar appointed Dynamic Yacht Management LLC. For the sale process, he hired Superyachts Monaco (*SYM*), a specialist yacht broker, to advise on the sale. Mr Jafar also used the services of Camper & Nicholsons International who Mr Naqvi had previously retained for brokerage services.
46. Mr Singhvi said that unfortunately the sale of the Yacht was an arduous 36-month process requiring substantial time and energy from all involved. His recollection was that there were at least 15 enquiries that evolved into substantial offers before the sale of the Yacht was achieved (and he set out at Appendix B to Singhvi 1 a summary of the 14 offers that had been rejected). The Yacht was eventually purchased by Borancilli Maritime Limited for EUR 11,500,000 in June 2021. Tamam received a net sum of EUR 10,500,000, with EUR 1 million being deducted for brokerage fees. Tamam received the money in two payments: EUR 10 million on 22 June 2021 and EUR 500,000 on 23 December 2021. Mr Singhvi once again confirmed that to the best of his knowledge there was no connection between Mr Jafar and the purchaser of the Yacht so that the sale was an arms-length transaction.

47. SHL (and therefore Mr Jafar) was required to incur substantial sums to maintain the Yacht in good order. Mr Singhvi said that he and Mr Jafar had been presented with a substantial list of defects and maintenance items and that it quickly became clear that the Yacht was not in the condition that Mr Naqvi had led them to believe it was and, if left improperly managed, it would require a significant capital outlay to put it into a condition that would maximise its sales potential. Mr Singhvi said that he sought to strike a balance between ensuring that the Yacht was seaworthy and marketable, but also avoiding massive costs which might not increase the Yacht's net value. However, some level of operational cost was inevitable. From receipt of the Yacht to its sale, total operational costs of EUR 2,492,885 were incurred, the most significant expenses being wages (EUR 1,195,397), management fees (EUR 200,000), fuel (EUR 141,448), and docking fees (EUR 276,620).
48. The primary revenue stream for the Yacht was through cash injections by Tamam. Tamam injected EUR 1,615,677 into running and maintaining the Yacht. Mr Singhvi said that while it was a priority to sell the Yacht he had, while waiting for a suitable opportunity to do so, also attempted to generate revenue via charters. Unfortunately, the COVID-19 pandemic had halted all chartering operations. As a result, charter-based revenue was limited to EUR 811,750 (net of a EUR 200,000 payment back to Tamam). EUR 65,457 was received in relation to unused charter fuel.
49. An issue also arose in relation to French VAT. In 2020, the French tax authorities had investigated the VAT status of the Yacht. Mr Jafar, Mr Singhvi said, had been operating the Yacht on the basis that as a commercial yacht it was tax-exempt. However, the investigation found that the Yacht was not tax exempt as it had not completed the required number of commercial charters to qualify as a commercial vessel. In September 2020, Mr Jafar received the tax authority's decision (the *VAT Penalty Notice*) which required Tamam to pay: (a) EUR 3 million VAT on the importation of the Yacht into France, based upon a valuation of the Yacht of EUR 15 million; (b) EUR 16,797 for VAT on fuel that was initially considered VAT-exempt; and (c) penalties and interest, at a rate to be determined. Mr Jafar instructed French tax lawyers to assist and to ensure that he cooperated fully with the authorities (whilst also appealing against the VAT Penalty notice). EUR 2,172,890 of the VAT Penalty Notice was paid in December 2020 but in November 2021 a petition was filed with the tax authorities to reduce the VAT Penalty

Notice based on a lower valuation of the Yacht of EUR 10,780,000. A refund in the sum of EUR 2,156,000 was received by Tamam on 28 January 2022 (representing 20% of the revised value ascribed to the Yacht but no refund was given on the fuel VAT). Tamam had incurred EUR 63,406 in legal fees in relation to the VAT Penalty Notice.

50. Mr Jafar also had to pay both the seller's and buyer's brokerage fees comprising: (a) EUR 600,000 to Edmiston & Company, the buyer's broker; and (b) EUR 400,000 to SYM, Mr Jafar's broker. Mr Jafar also incurred legal fees totalling £ 18,508 and EUR 21,577.
51. Accordingly, the total net value received by Tamam from the sale of the Yacht was EUR 8,959,114. This was the result of the sale price of EUR 11,500,000 less net operation costs of EUR 1,417,460, the cost of dealing with the VAT issues of EUR 80,203, and the sale costs of EUR 1,043,223.

The El Gouna Property

52. Mr Jafar valued the El Gouna Property by reference to its net realised sale price of EGP 7,500,000 (approximately US\$ 420,498) and, in the alternative, relied on Mr Coats' valuation, which adjusted the net realised value as at the date of transfer to US\$ 413,615.
53. This was a second-floor, three-bedroom apartment located in El Gouna, a resort town on Egypt's Red Sea Coast. The El Gouna Property had not been separately identified in either the Bridge Agreement or the Settlement Deed but had been transferred to ACL and Mr Naqvi had agreed that the sale proceeds would be paid to Mr Jafar.
54. The sale of El Gouna was Mr Naqvi's responsibility. Mr Singhvi said that he recalled that Mr Naqvi had received a number of offers and was liaising with real estate agents to work on a sale at the time that it was agreed that the sale proceeds would be paid to Mr Jafar.
55. On 18 January 2019, Mr Naqvi confirmed that he had found a buyer for the property for EGP 7,500,000 and that it should be sold for that price. The buyer was, in fact, a consortium of three individuals, Mr Ziyad Abdel Hamid Ahmed Hamdy, Ms Monia Abdel Hamid Ahmed Hamdy; and Mr Sherif Abdel Hamid Ahmed Hamdy (collectively the *Hamdy Family*). A property sale contract was entered into between ACL and the

Hamdy Family on 18 June 2019 (the *Gouna SPA*). The Gouna SPA recorded a sale price of EGP 7,500,000 and this was paid (less broker and banking fees) to CH. Once again, Mr Singhvi confirmed that as far as he was aware the Hamdy Family had no connection with Mr Jafar.

56. The only costs incurred in relation to the El Gouna Property were EGP 457,247 in respect of broker's fees of EGP 375,000 and banking fees of EGP 82,247. Accordingly, the net value received was EGP 7,042,753.

The Artwork

57. Mr Jafar valued the realised Artwork by reference to its net realised sale price of US\$ 17,439,073 and the unrealised Artwork at between US\$ 1,686,326 and US\$ 2,510,679.
58. The Artwork was held by Frame Holdings Ltd (*FHL*). FHL was held by Compass HoldCo 3 Ltd (*CH3*), which was a company held by Mr Naqvi. On 20 November 2018, FHL and CH3 entered into a Deed of Transfer and Assignment under which the Artwork was transferred from FHL to CH3. On the same day, a Deed of Assignment was executed by Christies, FHL and CH3 under which FHL transferred to CH3 all rights and obligations in relation to the sale of the Artwork. The following day, Mr Naqvi transferred the entirety of his shares in CH3 (and therefore ownership of the Artwork) to Mr Jafar. On 22 November 2018, Mr Jafar transferred his shares in CH3 to the Colligo Trust. The Artwork was assigned to the Colligo Trust on 26 January 2019 and on the following day the rights and obligations of CH3 in respect of the Artwork vis-a-vis Christies were transferred to the Colligo Trust.
59. Mr Jafar obtained a written valuation of the Artwork from Christies (the *Christie's Letter*). The Christie's Letter was received on 12 September 2018. A schedule of the Artwork (over 200 pieces) was attached with individual valuations with an aggregate estimated value of US\$ 25,848,754. Christies had previously been appointed by Mr Naqvi to sell the Artwork.

60. Some of the Artwork was offered for auction (*Auctioned Pieces*) and some was listed for private sale (*Private Sale Pieces*). Whether a piece was listed for auction or private sale was determined by Christie's. Mr Singhvi said that generally the more exclusive pieces were offered for private sale as they could be marketed and sold to a tailored audience in order to maximise the chances of a sale and achieve a better price. In relation to Auctioned Pieces, Christie's held a series of auctions throughout the world. Following the relevant sale Christie's provided a post-sale advice note confirming the Auctioned Pieces that had been sold and unsold together with a settlement statement. In relation to Private Sale Pieces, Christie's included these in catalogues delivered to their clients.
61. Mr Singhvi was responsible for authorising and managing the sales process and said that he sought to balance the wish to sell the Artwork quickly to reduce the balance owing under Loans with ensuring that Mr Jafar received the best market value. Mr Singhvi said that during the sales process he requested the transfer of unsold Private Sale Pieces into the auction sale portfolio (and occasionally vice versa), challenged the frequent requests from Christie's to decrease the reserve price (but ultimately relied on Christie's advice in order to make a proper and informed decision), pursued an aggressive reserve price and ensured that all sales maximised the value of the piece being sold in light of the market conditions at the time and challenged discrepancies in Christie's calculations. He explained that Mr Naqvi and his wife assisted with the sales process, which in his view was important because of the Naqvi family's in-depth knowledge of the Artwork.
62. Mr Singhvi said that the sales process had been challenging for a number of reasons. As early as October 2018, he had been informed that the Middle East market had retracted further than Christie's had anticipated, which had led to lots in rival auctions being sold at an undervalue and advice to lower the reserve value for certain pieces. Following Mr Naqvi's arrest, the Artwork became associated with him and the claims against him. Further, during 2020 and 2021 many auctions were cancelled or postponed due to the COVID-19 pandemic.

The other unrealised Settlement Assets

The Art Dubai Shares

63. Mr Jafar relied on Mr Coats' valuation either as at 31 March 2023 of US\$ 2,474,991 or alternatively, as at the date of transfer of US\$ 2,198,229.
64. Art Dubai is an annual art fair, taking place in the UAE in the spring. Mr Naqvi held an interest in Art Dubai of approximately 20%. Art Dubai was owned by Art Dubai Fair FZ LLC (*ADF*) which was a joint venture, 49% of which was held by Middle East Fairs Ltd (*MEF*). MEF itself was a joint venture, 40% of which was held by Gallery Investments Limited (*GIL*). GIL was held by MESA Investments Limited (*MIL*) which was owned entirely by Mr Naqvi. In accordance with the Settlement Deed, Mr Naqvi transferred the shares in GIL from MIL to CH2, another entity which was owned entirely by Mr Naqvi. On 6 September 2018, Mr Naqvi then transferred the shares in CH2 to Mr Jafar. Accordingly, on 6 September 2018, Mr Jafar owned, through GIL, MEF and ADF, a 20% stake in Art Dubai. On 8 October 2018, Mr Jafar transferred the shares in CH2 to the Colligo Trust.
65. Mr Singhvi confirmed that at the time of Singhvi 1, CH2 had received dividends of US\$ 356,322 from Art Dubai.
66. Mr Singhvi described the efforts to sell the Art Dubai Shares. He said that he had maintained contact with Mr Ben Floyd, the founder and Chief Executive Officer of Art Dubai and the owner of 60% the shares in MEF. He said that in June 2019, MEF received a fresh offer from Mr Elie Khouri (*Mr Khouri*) based on a valuation of five times the company's average earnings for the previous two financial years and the upcoming financial year which valued the Art Dubai Shares at approximately US\$ 2,500,000. Mr Singhvi said that he recommended to Mr Jafar that the offer be accepted (not least because of a weakening market position and Art Dubai's rapidly diminishing reputation following the collapse of the Abraaj Group). In the event, Mr Jafar made a counteroffer with a proposal to value MEF based on one years' EBITDA but this was rejected on 13 August 2019, although Mr Khouri had made a final offer of a five times multiple of the net profit for the 2018/2019 financial year, with 50% to be paid upon the signing of any

agreement, and the remaining 50% after the audited statements for financial year 2019 were released. This valued the Art Dubai Shares at around US\$ 2,200,000 (inclusive of the dividends already received). As negotiations continued through 2019, MEF was required to make a provision for US\$950,000 in its accounts (Mr Singhvi could not recall the reason for this), which meant that Mr Khouri's valuation was no longer viable. By February 2020, the revised sale to Mr Khouri valued the Art Dubai Shares at around US\$ 1,700,000. But eventually, the COVID-19 pandemic caused Mr Khouri to walk away.

67. ADF recorded losses of US\$ 1,375,628 in 2020 and US\$ 455,925 in 2021. Both of these losses were almost entirely attributable to the COVID-19 pandemic and ADF has since returned to profit.

VC Portfolio Assets

68. The VC Portfolio included numerous venture capital investment companies holding a wide portfolio of technology focused, almost entirely on very-early stage, assets and venture capital funds. The VC Portfolio Assets that had been realised as at the date of Singhvi 1 were: (a) Wamda Capital; (b) MENA Venture Investments; (c) First Minute Capital; and (d) Velocity Black (collectively the ***Realised VC Portfolio Assets***).

Wamda

69. Wamda is a MENA-focused start-up venture capital fund. Mr Naqvi's stake in Wamda was held by Wamda MENA Venture I (***WMV***). WMV was owned entirely by MIH 1 Limited (***MIH1***) which, in turn, was owned by MESA. On 6 September 2018, Mr Naqvi transferred the shares in MIH1 from MESA to CH2.
70. Mr Jafar valued Wamda by reference to its net realised sale price of US\$ 5,081,048.
71. On 13 December 2018, CH2 and Crescent Capital Limited (***CCL***) (part of Mr Jafar's Crescent Enterprises Group (***CE***)) entered into a share sale and purchase agreement for the sale of CH2's shares in MIH1. Mr Singhvi said that selling Wamda to CE made sense

because CE already had its own limited partner stake in Wamda. CCL purchased the shares for US\$ 5,081,048, which Mr Singhvi said was equivalent to the total capital contribution by MIH1 (the investment cost) and that Mr Jafar and he considered this to be the most appropriate valuation at the time (the Wamda investments were all early-stage companies, were yet to mature, and there was little information available to enable it to be ascertained whether the companies had or would increase in value over time or fail altogether or have a very limited value). Mr Singhvi said that while the sale of Wamda to CCL was not an arm's length transaction, he believed that the price paid by CCL was objective, fair and reasonable at the time.

MENA Ventures Investments Ltd

72. MENA Ventures Investments Ltd (*MVI*) is a Bahrain-based venture capital investment vehicle that specialises in early-stage startup companies in the MENA region and USA. Its portfolio consists of assets in fintech, consumer tech and software.
73. MVI was a joint venture in which Mr Naqvi's stake was 50%. That 50% stake was held through a company called Mars Investments Limited (*MIL*) which in turn, was owned entirely by MESA. On 6 September 2018, Mr Naqvi transferred the shares in MIL from MESA to CH2.
74. Mr Jafar valued MVI by reference to the net sale price obtained for the sale of the shares in MIL of US\$ 5,365,347.
75. On 13 December 2018, CH2 and CCL entered into a share sale and purchase agreement for the sale of CH2's shares in MIL. Mr Singhvi said that since MVI had a similar portfolio to Wamda, he and Mr Jafar considered MVI to be an asset that was worth acquiring for CE. CCL purchased the shares for US\$ 5,365,347. The shares were valued by reference to the following formula: "base case" unrealised value of portfolio companies and funds + expected profits from the Entertainer investment (US\$10,730,695) x 50% (representing CH2's 50% share in MVI).

76. Mr Singhvi said that he and Mr Jafar considered this to be the most prudent valuation at the time. The base case valuation (the liquidated value of MVI) was presented to them by Wamda (the fund manager) and, therefore, he said, they had no reason to doubt its accuracy. They decided not to value MVI based on the then fair market value of US\$ 13,900,000 as there was no guarantee that such a market value was readily obtainable. Furthermore, the fair market value was calculated based on the valuations of the underlying portfolio companies. Although some of those companies had witnessed upticks in valuation, it had been some time since a funding round had occurred, hence it was unlikely that such valuations remained accurate.

First Minute Capital

77. First Minute Capital (**FMC**) is a seed fund business, with assets located predominantly in Europe in sectors such as gaming, healthcare, fintech, climatetech and e-commerce.
78. Mr Jafar valued First Minute Capital by reference to the net sale price of £70,000.
79. Mr Naqvi's stake in FMC was held by Multi Investments Holdco Ltd (**MIHL**), a company held by Mr Naqvi personally. The sale was concluded in May 2019. Mr Singhvi said that to his knowledge, there was no connection between Mr Jafar and the buyers, Diego di San Giuliano (**DDSG**) and Sapia Partners LLP (**Sapia**).

Velocity Black

80. Velocity Black is a hospitality-based and invitation-only consumer application that acts as a digital concierge for high earning individuals. Mr Naqvi's stake in Velocity was approximately 0.03% of the total share capital of Velocity Mobile Ltd.
81. Mr Jafar valued Velocity Black by reference to its net realised sum of US\$ 119,183 or alternatively, by reference to Mr Coats' valuation which adjusted the net realised value of Velocity Black as at the date of transfer to US\$ 47,989.
82. Mr Singhvi said that in December 2022, a notification had been received from Latham & Watkins (Velocity Black's lawyers) of a proposed acquisition of Velocity Black by Capital One National Association (the **CONA Acquisition**). In March 2023, Velocity

Black notified Mr Jafar that the CONA Acquisition was expected to close on or before 2 June 2023 and that it would result in MIHL receiving US\$ 123,131 (with US\$ 119,183 being paid at closing, with the remaining US\$ 3,947 to be paid nine months thereafter).

Segovia Technologies

83. When MIH1 was transferred to Mr Jafar it held a stake in a fintech company called Segovia Technologies (*Segovia*), an application programming interface for businesses to conduct immediate business-to-business money transfers. In December 2019, MIH1 sold its stake in Segovia to Crown Agents Bank, a UK-based online payment platform, specialising in money transfer and foreign exchange in emerging markets. As part of that sale, MIH1 received the following consideration: (a) a 0.63% share in CAB Tech Holdco, the parent company of Crown Agents Bank; and (b) a 3% share in Taptap Send, a fintech application that allows retail consumers to send money between certain locations globally.
84. Mr Jafar relied on Mr Coats' valuation of Segovia as follows:
- (a). as at 31 March 2023, Crown Agents Bank (US\$ 4,659,546) and Taptap Send (US\$ 9,728,840).
 - (b). as at the date of transfer, Crown Agents Bank (US\$ 1,952,323) and Taptap Send (US\$ 4,076,328).
85. Mr Jafar noted that during his cross-examination Mr Coats had updated the Court on the value of Crown Agents Bank, noting that as on the date of his evidence (7 December 2023) it had plummeted to “*of the order of about \$1 million.*”

King Children

86. King Children is a US technology platform which manufactures and sells custom eyewear, using 3D-printing technology.

87. Mr Jafar relied on Mr Coats' valuation of: (a) US\$ 214,964 as at 31 March 2023; and (b) US\$ 160,187 as at the date of transfer.
88. Mr Naqvi's investment in King Children was in the form of an 8% convertible promissory note in First Technologies BV (the ultimate parent company of King Children), with a principal amount of US\$ 150,000 (the *KC Note*). The KC Note was recorded in a Note Purchase Agreement dated 31 October 2017 (the *NPA*). Under its terms, the KC Note would be converted into equity upon a financing round valued at US\$ 1,500,000 or greater, subject to a maturity date of 31 October 2019. However, on 30 October 2019, First Technologies BV wrote to Mr Singhvi to request an extension of the KC Note to 31 October 2021 and that the conversion option be removed. Mr Jafar agreed to those terms, however the KC Note has not been converted or repaid.

Zignal Labs

89. Zignal Labs is a Silicon Valley-based media monitoring and analytics tool, which allows businesses and individuals to analyse publicly available information on them on a real-time basis.
90. Mr Jafar relied on Mr Coats' valuation of US\$ 100,000 both in relation to the date of his report and as at the date of transfer.
91. Mr Singhvi said that Mr Naqvi's stake in Zignal Labs was originally US\$ 100,000 but he had been informed that the value had increased to US\$ 128,000. CE also holds an investment in Zignal Labs through its ownership of MVI.
92. Mr Singhvi said that it had been difficult to obtain any meaningful information from Zignal Labs in relation to the value of the investment. CE's information rights are limited, making a valuation of Zignal Labs almost impossible.

The Marque

93. The Marque is a digital personal profile management platform for high performing individuals. Mr Naqvi's stake in The Marque was US\$ 32,500. Mr Singhvi said that he had been informed that the value had increased to US\$ 128,000.

94. Mr Coats had valued the stake in the Marque at nil both at the date of his report and the date of transfer.
95. On 31 August 2022, Mr Singhvi was informed that The Marque was being put into administration due to a lack of cash and the inability to scale the business. On 7 September 2022, The Marque Global Ltd passed a resolution for a voluntary winding up. Mr Singhvi said that he understood that The Marque had a deficiency as regards members of almost £4 million. Mr Jafar had therefore written off this asset in its entirety.

Romulus Capital

96. Romulus Capital is an early-stage venture capital fund, focusing on seed and series A rounds for technology companies in the agriculture, construction, energy, retail and deep technology sectors.
97. Mr Jafar relied on Mr Coats' valuation of US\$ 1,624,297 as at 31 March 2023 and alternatively, US\$ 1,288,204 as at the date of transfer.
98. Mr Naqvi invested US\$ 1,500,000 into Romulus via his company Venrom Holding (*Venrom*) pursuant to a limited partnership agreement with Romulus Capital II (US) Feeder LP. Venrom was a subsidiary held entirely by MIHL and, accordingly, was transferred to Mr Jafar at the same time as MIHL. Venrom holds no assets other than the limited partner stake in Romulus. Venrom does not have any independent revenue-generating business.

Wootton Place

99. Wootton Place was Mr Naqvi's English country residence, located in Wootton, Oxfordshire. It is a 17th century Grade II listed house with vast surrounding land, including its own cricket pitch. Mr Singhvi said that during the initial settlement

negotiations, Mr Naqvi had produced a valuation report from Knight Frank which valued Wootton Place at £13,500,000.

100. This asset was never transferred to Mr Jafar. Wootton Place was held by the Peony Trust, which was Mr Naqvi's family trust. Therefore, Mr Naqvi was required to obtain the permission of the trustees of the Peony Trust, Butterfield Fiduciary Services (Guernsey) Limited (*BFS*), in order to transfer the asset to Mr Jafar. Mr Singhvi said that on 25 September 2018, Mr Naqvi's lawyers, Dechert, informed Mr Ernest's team that BFS could not transfer Wootton Place. Dechert shared a letter from BFS which stated that the trustee had no power to distribute Wootton Place to Mr Naqvi (as settlor) as he could not be a beneficiary of the underlying settlement. Mr Jafar asked Dechert to ask BFS' lawyers for certain documents, including the trust deed. However, the process of obtaining any documents or information from Mr Naqvi or BFS ceased almost immediately after receiving the letter from BFS, despite numerous chasers and assertions by Mr Jafar that this constituted a breach of the Settlement Deed by Mr Naqvi. After Mr Naqvi's arrest, Mr Jafar called off the pursuit of the documents.

The valuation evidence – Mr Coats

Mr Coats

101. Mr Coats valued the unrealised Settlement Assets (excluding the Artwork). Mr Coats identified in Coats 1 the information (and its sources) that he had relied on and confirmed that in order to carry out all the work necessary for him to reach his opinions he had been assisted by other employees of his firm who were experienced in dispute services and valuations “*as it would not have been practical or efficient to carry out all the detailed work involved by [himself].*” He said that he had selected the team and supervised their work in accordance with the standard procedures used by his firm and confirmed that all the opinions and views expressed in Coats 1 were his own.
102. Mr Coats explained that he had been instructed to answer the following questions ([15] of Coats 1) (my underlining):

- “i. *Are there are any matters that may prevent or limit the ability of Mr. Jafar to realise the value of those assets?*
- ii. *What are the costs/expenses that would likely need to be incurred by Mr. Jafar in order to realise the value of these assets?*
- iii. *How much value (if any) has Mr. Jafar realised from the assets so far?*
- iv. *Taking into account the matters identified in answer to sub-paragraphs i.-iii. above, what in practical terms is the net value of the assets to Mr. Jafar as at the date of your report?*
- v. *Could Mr. Jafar have realised the assets at an earlier date such that he would have achieved a substantially greater realisable value?*”

103. Mr Coats said that he had taken 31 March 2023 as the reference date for his valuation (the **Coats Valuation Date**). In the Appendix to Coats 1, Mr Coats set out various considerations relating to the methodologies he had adopted for the purpose of preparing his valuation opinions. He said as follows (my underlining):

Basis of Value

- 110. *The present valuation analysis is based on the International Private Equity and Venture Capital Valuation Guidelines 2022 (IPEV 2022) as the guiding principle and considers the information available as of the date of this Report.*
- 111. *The basis of value is the fair market value (FMV). FMV is the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date. A FMV measurement assumes that a hypothetical transaction to sell an asset takes place in the principal market or in its absence, the most advantageous market for the asset.*
- 112. *As per IPEV 2022, transaction costs are generally not considered in the context of deriving a FMV, i.e., the expected sales price is not reduced for transactions costs. Since as per instructions, I was asked to derive net proceeds from a hypothetical realization of the assets subject to valuation, I have reduced the FMV by notional transaction costs, if reasonably applicable. Furthermore, I have also considered costs of holding the assets (actual or notional holding costs) subject to valuation and have reduced FMV by such costs, if reasonably applicable.*”

104. At [1.2.4] in Coats 2, Mr Coats considered further the proper basis of value to be adopted for valuing the Settlement Assets in response to Mr Cohen’s approach in Cohen 1. He said this (my underlining):

- “18 Mr. Cohen applies the principle of Fair Market Value (“FMV”) defined in the Cohen Report paragraph 56 as: “the price at which property would change hands between a willing buyer and a willing seller, when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the relevant facts.”
- 19 *The International Valuation Standards (“IVS”) however, provides key guidance for valuation professionals globally and defines Market Value as: “the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion”. IVS represent Valuation standards that are commonly used by valuation professionals when valuing assets in proceedings such as this one and is especially applicable for the valuation of the Yacht and the real estate properties in an unsold state.*
- 20 *FMV is not a defined basis of value in the IVS. FMV is typically referred to for US Internal Revenue purposes. Therefore, Mr. Cohen’s basis of value is inappropriate for this valuation, as it is not a valuation for tax purposes. Moreover, whilst the two definitions broadly align for the purpose of the valuation, a key difference is the concept of the inclusion in the IVS valuation of the term “after proper marketing” which requires the valuation to take into account costs of “proper marketing”. I consider this to include both direct marketing costs (such as brokers’ or agents’ fees) and any degradation in value during the “proper marketing” period or costs to prevent any degradation. This is sometimes referred to as an “exit valuation” and, in my view, reflects best the cash value that an asset has to a party, like Mr. Jafar, who received the assets so that they could be liquidated, rather than held by him over time.*
- 21 *Mr. Cohen states in paragraph 24 of the Cohen Report that “The value of an asset is based on a determination at a point in time with what was known and knowable at the time. This has no relationship to the costs incurred to realize the value of that asset”, this position thereby ignores the notion of “after proper marketing” as set out above.*
- 22 *I understand that it is Mr. Jafar’s case that the Realised Assets were sold after a “proper marketing” period and therefore, the valuation of the Settlement Assets should reference to the net amount realised (if realised) or an estimate of the current value of the assets (here March 31, 2023) if unrealised. In other words that the net amount of cash realised for each of the Assets is the relevant measure for the valuation.*
- 23 *Mr. Cohen notes throughout his report that as part of a Fair Market Valuation, transaction costs are not considered, as opposed to Coats I, which does consider transactions costs. The reason that I included transactions costs is that I was instructed to do so in order to determine the net amount in cash received from the sale of any of the Settlement Assets. In my view, this was the correct approach in the context of this exercise. Therefore, in this*

report, I reference Market Value (“MV”) including transaction costs incurred or estimated as they represent the net proceeds or ‘exit value’ of the assets.”

105. I would note that the IVS Guidelines refer to and define various bases of value. Bases of value are defined as “*the fundamental premises on which the reported values will be based*” and the IVS Guidelines state at [10.1] that “*it is critical that the basis (or bases) of value be appropriate to the terms and purpose of the valuation assignment, as a basis of value may influence or dictate a valuer’s selection of methods, inputs and assumptions, and the ultimate opinion of value*”. As Mr Coats noted, one of the bases of value used by and defined in the IVS Guidelines is “*Market Value*”, which does include marketing costs. But the IVS Guidelines, as the Fund Parties noted, also acknowledged that other bodies use different bases of value and referred to other bases of value at [20.1(b)] including at [20.1(b)(3)] to “*Fair market value (United States Internal Revenue Service) (section 110)*.”

The Art Dubai Shares

106. Mr Coats valued the Art Dubai Shares as at 31 March 2023 (the Valuation Date) at US\$ 2,474,991 and alternatively as at the date of transfer at US\$ 2,198,229.

107. As I have noted above, Art Dubai was owned by ADF and 49% of ADF was held by MEF, and 40% of MEF was held by GIL. GIL was owned by MIL. Mr Naqvi had transferred the shares in GIL from MIL to CH2 and then these shares were ultimately transferred from CH2 to the Colligo Trust so that Mr Jafar owned, through GIL, MEF and ADF, a 20% stake in Art Dubai.

108. Mr Coats set out his analysis in Coats 1 as follows:

“37. *In line with IPEV 2022 and considering the information available as of the Valuation Date, I have derived 100% of the enterprise value of [ADF] by applying the market approach (see Appendix 1). More specifically, I have applied the guideline public company method (GPCM) as well as the comparable transactions method.*

38. *As a financial performance metric, I have taken into account EBITDA in 2018-2025. I considered the fiscal year 2022 (ending 31 March 2023) which is based on the most recently available unaudited management estimates for*

the actual financials, as the most appropriate basis for the valuation. Forecasted figures for the fiscal years ending March 2024 and 2025 have not been approved by the board of directors as of the Valuation Date and consequently, I have not considered them in the Valuation.

39. *Following valuation practice and in line with IPEV 2022, the value is based on the Art Dubai Fair's EBITDA year ending per March 31, 2023, stated on the Income Statement and current trading multiples of the comparable companies per Valuation Date. Given that the peer group selected, includes international companies with diverse operations, whereas Art Dubai is a regional operator, I derived the applicable multiple based on the first quartile which gives a Multiple of 6.7 (see Table 3). In absence of recent comparable transactions, I did not consider transaction multiples in the value conclusion.*
40. *Based on the different methodologies and performance metrics (see Appendix 1), I have determined an enterprise value amounting to USD 18,285,624. This equates to an equity value of USD 18,285,624 for a 100% stake in [ADF] (see Table 3).*
41. *In deriving Middle East Fair Ltd.'s 49% stake in [ADF] the stake is fair valued at USD8,959,955 as at Valuation Date. I have not considered any discount for lack of marketability or control. Considering a look-through perspective from Gallery Investment Ltd. via Middle East Fairs Ltd., BVI to Art Dubai Fair FZ-LLC, the 19.6% (i.e., 40% of 49%) equity stake is fair valued at USD3,583,982 (see Table 3).*
42. *To sell the share stake in [ADF] an auction process would need to be established. For this process, I have estimated notional transaction costs of at least USD 625,000 which include M&A fees, sell-side financial, and tax due diligence and legal costs.*
43. *Consequently, I derive net sales proceeds from realizing the assets of USD 2,958,982. I was instructed that the different level of holding companies do not have material costs, I consider the cost of holding such asset as negligible."*

109. Mr Coats also concluded (at [44] of Coats 1) that *"Given that the financial year 2022 (ending 31 March 2023) shows the highest financial performance of the company since 2018... and considering the current market environment,... no higher amount could have been realised in earlier years."*

Crown Agent Bank

110. In Coats 1, Mr Coats set out his valuation as follows:

- “53. *I have considered the stake in CAB Tech HoldCo as sum-of-the-parts of CAB and CAB Tech HoldCo USA LLC. In absence of recent financing rounds and no prospective financial information, I have derived 100% of the equity value of CAB applying the Market Approach (see Appendix 1).*
- 54 *For this purpose, I have applied the Guideline Public Company Method (GPCM). Given the regulatory capital requirements for CAB, I have taken into consideration book equity and earnings multiples. I have based my valuation on the fiscal year ending as at December 31, 2022, which is based on the most recently available unaudited management accounts. Forecasted figures were not available.*
- 55 *According to the Balance Sheet of CAB Tech HoldCo as at December 31, 2021, CAB Tech HoldCo USA LLC. was reported at investment book equity (064, p. 23). As CAB makes up most of the entire business of CAB Tech Holdco, I consider this approximation in the absence of any financial information relating to the business of CAB Tech HoldCo USA LLC.*
- 56 *I understand that in April 2023, CAB communicated an anticipated IPO (planned for June 2023) to the A2 shareholders (as referred to in the CAB communication), which requires a previous acquisition of shares from the minority shareholders of CAB Tech Holdco by the parent holding company CABIM Ltd. (078, p.2). However, the valuation range mentioned in that pre-IPO shareholders briefing is of indicative nature only and indicates a large value range, which in my view does not provide an appropriate basis for valuation as of the Valuation Date. Therefore, I did not consider this indicative information in my analysis.*
- 57 *Based on the median Price to Book ratio, I derived an equity value of USD 851,081,454 for 100% of CAB Tech Holdco. Based on the median Price to Earnings ratio, I derived an equity value on a 100% basis of USD 673,888,575. Considering the stake held by MIHL (i.e., 0.63%), I derived a value of Price to Book ratio valuation of USD 5’361’813 and Price to Earnings ratio valuation of USD 4,245,498. Considering equal weight to each method, I value a FMV of USD 4,803,656 as at Valuation Date (see Table 4).*
- 58 *I have estimated transaction costs of 3% of total equity value (i.e., USD 144,110 for MIHL’s equity stake) leading to net proceeds from realising the assets of USD 4’659’546. I assess the cost of holding such asset as negligible.”*

111. In Coats 2, Mr Coats prepared an estimate of value as at the transfer date. His estimate for Mr Jafar’s interest was US\$ 2,012,704 before and US\$ 1,952,323 after deducting his estimate of transaction costs. He said as follows:

102. *In Coats 1 I have valued Crown Agents Bank based on the Market Approach albeit net of transaction expenses as a proxy for net cash received.*
103. *To derive the MV as per the Date of Transfer (September 06, 2018), I discounted the MV per the Date of Realisation presented in Coats 1. The discount rate was defined by the implied rate of return of the respective asset calculated based on the invested amount at the investment date and the MV at Date of Realisation. Then, I calculated the period between the Date of Realisation and the Date of Transfer to determine the present value factor. When discounting the expected proceeds with the implied rate of return to the Date of Transfer, the MV net of transaction cost of Crown Agents Bank [and Taptap Send] amount to USD 1,952,323 [and USD 4,076,328]...”*

Taptap Send

112. In Coats 1, Mr Coats set out his valuation as follows:

- “60. *According to the capitalization table obtained from CARTA (061), Taptap Send had three financing rounds with the latest being closed on September 30, 2021. According to the capitalization table, USD 75m were raised at a price per share of USD 10.25 (rounded). This price of the recent investment indicates a post-money valuation (total equity value, fully-diluted) of USD 661.60m for 100% of Taptap Send.*
61. *I have performed the following valuation steps in deriving the FMV of MIHL’s fully diluted stake of 3.03% in Taptap Send as at the Valuation Date.*
- i. Considered 3.03% of USD 661.6m (post-money equity valuation) as per September 30, 2021.*
 - ii. Taken into account the liquidation preferences of Series A Preferred Shares of Taptap Send. In absence of information about the characteristics of liquidation preferences, I have adopted a provisional discount for the Series A Preferred Shares (MIHL is holding Series A Preferred Shares) compared to the latest Series B Preferred Shares financing round.*
 - iii. As the PRI is outdated, I have considered the development of the company over time (i.e., increasing revenues since 2021 and second profitable year on an after-tax basis, positive cash runway). Further, I considered any publicly available company specific information on Taptap Send for the period between the last financing round and the Valuation Date.*
 - iv. Considered market development (e.g. peer valuations) for the period between the last financing round and the Valuation Date.*

- 62 *Taking into account adverse market movement since the last financing round and considering a discount for holding Series A Preferred shares versus the shares issued in the latest financing round, I have applied a 50% discount to the PRI and fair valued the 3.03% equity stake in Taptap Send at USD 10'029'732 as per Valuation Date (see Table 5).*
- 63 *I have estimated notional transaction costs of 3% of total equity value (i.e., USD 300,892 for MIHL's equity stake) leading to net proceeds from realizing the assets of USD 9,728,840. I consider the cost of holding such asset as negligible."*

113. Once again in Coats 2, Mr Coats prepared an estimate of value as at the transfer date. His estimate, using the same methodology as he applied in respect of Crown Agent Bank, resulted in revised estimates of Mr Jafar's interest of US\$ 4,202,400 before and US\$ 4,076,328 after deducting his estimate of transaction costs.

King Children

114. In Coats 1, Mr Coats set out his valuation as follows:

- "67 As at October 31, 2017, (041, p.1 and p.8) MIHL entered an 8.0% Convertible Promissory Note with First Technologies B.V. with a principal amount of USD 150,000.*
- 68 *According to the Note Purchase Agreement dated October 31, 2017 (041, p.11), I understand that the principal amount invested including accrued interest would convert on a mandatory basis into equity upon a next equity financing round of USD 1.5m. The conversion share price is defined as the minimum value of a) discount of 20% on the price of the next financing round and b) share price resulting from a valuation cap of USD 10m and the number of outstanding shares.*
- 69 *According to the database Crunchbase, the company raised USD 2m in an equity financing round in November 2018, However, I was instructed that the convertible note was not converted in November 2018.*
- 70 *I understand that at maturity date (October 31, 2019), First Technologies B.V. has requested to extend the Agreement until October 31, 2021, with no conversion option prior to that date (067). I was instructed that the extension note was neither signed by First Technologies B.V. nor by MIHL.*
- 72 *... I understand that as per Valuation Date, MIHL, is still invested in the convertible note.*

- 73 *Given that a convertible note has a debt and an equity component, a differentiated approach should be applied, where the two components are valued separately. Thereby, potential changes in the value of the debt and conversion option are assessed appropriately over time. Suggested approaches include the option pricing model or a probability-weighted approach. The valuation of a convertible note typically cannot be performed in isolation from the equity valuation. Due to the absence of financial information resulting in inability to derive a reasonable indication for the equity value as well as absence of qualitative information about the company, I have valued the convertible note at cost including accrued interest.*
- 74 *The accrued interest was calculated as follows (see Table 6):*
 - *I was instructed that the Agreement was issued on October 31, 2017. Given the Valuation Date, there are 1,977 (actual) days up to March 31, 2023.*
 - *Note Purchase Agreement the interest is 8.0% per year on an actual day convention (accrued) (041, p.1). In view of the Conversion Clause, I have not considered compound interest, thereby applying a simple interest calculation.*
 - *With an initial investment of USD 150'000 and applying the 8.0%, the conversion amount is USD 214'964 as of the Valuation Date.*
- 75 *Based on the procedures as outlined above considering the incomplete information available as per Valuation Date, I have calculated a provisional value for the convertible note of USD 214,964 at cost including accrued interest (see Table 6).*
- 76 *Given the limited involvement of MIHL and the nature of the instrument (i.e., convertible note), I did not consider any transaction costs or holding costs as part of my analysis.”*

115. In Coats 2, Mr Coats noted that he had in Coats 1 calculated a provisional value for the convertible note of US\$ 214,964 at cost including accrued interest. He considered that the estimate with accrued interest as at 6 September 2018 would be US\$ 160,187 and noted that he did not consider any valuation of the conversion right as the date for the original conversion had passed.

Zignal Labs

116. Mr Coats in Coats 1 said that he had been instructed that the Plaintiff did not have any information on this investment. In absence of any information he concluded that “*the provisional amount of the MIHL’s stake in Zignal Labs corresponds to the amount of the initial investment, i.e., USD 100,000.*”

Velocity Black

117. In Coats 1, Mr Coats set out his valuation as follows:

- “81 According to Velocity Mobile Ltd’s Statement of Capital, MIHL holds 14,535 Series B preferred shares of Velocity Black. In total Velocity Black has 44,215,728 Share resulting in a fully diluted ownership of 0.03%*
- 82. According to an email sent from Velocity Investor Relations on March 10, 2023, a proposed acquisition of Velocity Black is communicated. The proposed transaction suggests that a New York Stock Exchange listed company Capital One acquires the entire issued share capital of Velocity Black (including options, warrants or other securities that have the right to acquire or convert into shares of Velocity Black) for an estimated aggregate consideration of USD 296,000,000 (net of estimated transaction expenses of USD 10,710,00) paid in two tranches. According to the information received, the transaction closing is expected for June 2, 2023.*
- 83. MIHL is offered estimated sales proceeds (net of estimated transaction costs) of USD 123,131.17 of which USD 119,183.92 would be paid at closing and USD 3,947.25 nine months after closing. I have been informed that MIHL has not signed the Shareholder Undertaking. However, I have been instructed that there are no indications that the transaction has been cancelled, and I understand that MIHL’s consent to the Shareholder Undertaking would not impact the deal due to it holding only a minor stake and related minor voting power.*
- 84 In line with IPEV 2022, I have considered the offered proceeds (binding offer) as a data point for the FMV, albeit net of transaction expenses. The FMV of MIHL stake in Velocity Black is USD 127,586 before transaction costs. The expected sales proceeds are USD 123,131 net of transaction costs [of USD 4,445 giving a grossed up figure of USD 127,586].*

The Marque

118. In Coats 1, Mr Coats attributed no value to MIHL’s stake since, as noted by Mr Singhvi, The Marque Global Ltd had gone into insolvent liquidation on 7 September 2022.

Romulus

119. In Coats 1, Mr Coats valued Romulus Capital. Venrom had, as Mr Singhvi had noted, entered into a limited partnership with Romulus Capital II (US) Feeder, L.P. and was a pass-through entity neither having its own operations nor having an acquisition financing function.

120. In Coats 1, Mr Coats explained his valuation as follows:

90 *In accordance with IPEV 2022, I have valued Venrom Holding's partner capital related to Romulus Capital II, (US) Feeder, L.P. on the reported NAV of the fund. This is due to the fact, that limited partnership stakes are not publicly traded and there is no indicated intention to dissolve the partnership. Further, according to audited financial statements as at December 31, 2021 (035, p. 24), the Master Fund follows fair value accounting policies adhering to the provisions of ASC Topic 820, Fair Value Measurements and Disclosures (US GAAP).*

91 *As at September 30, 2022, the partner's capital was valued at USD 1,624,297.*

92 *As at Valuation Date, I have not been made aware of any intention to dissolve the limited partnership and no transaction costs are considered. Further, since inception, management fees amounting to USD 169,936 have been paid. These management fees (being a proxy for holding costs) are considered in the partners' capital account.*

93. *The interest in the partnership is not publicly traded and the partnership stake are held with a long-term perspective (i.e. more than 10 years). It is my understanding that selling the LP stake is restricted (requiring GP consent) and must be done by the LP. Considering the long-term perspective and the restricted marketability of the LP stake, I do not consider an early exit as a realistic scenario.*

...

94 *Since inception, total Partner's capital fluctuated between USD 37,930,805 and USD 80,824,357 with the highest NAV attributable to MIHL amounting to USD 2,228,878 in Q2 2022 (052), however, given restricted marketability of the LP stake, I do not consider that an exit at a higher valuation could have been achieved."*

121. In Coats 2, Mr Coats discounted his valuations (undertaken as at 31 March 2023), as well as the values obtained for the Realised Assets back to the date of transfer:

(a). as regards the Art Dubai Shares, Mr Coat's estimate was explained as follows:

"99. If I were to adjust my valuation as at 31 March 2023 (which I have taken as a proxy for the net cash received) by applying the same valuation methodology as at Date of Transfer (September 6, 2018), and using 30 June 2018 as the nearest date before the transfer date at which comparable company data is available, i.e. by applying prorated EBITDA for the period from July 2017 to June 2018 and considering

the same peer group multiples, this would result in an equity value of USD 14,404,230 for a 100% stake in Art Dubai Fair (see Table 15).

100 *Middle East Fair Ltd.'s 49% fair value stake in Art Dubai Fair amounts to USD 7,058,073 as at 30 June 2018. I have not considered any discount for lack of marketability or control. Considering a look-through perspective from Gallery Investment Ltd. via Middle East Fairs Ltd., BVI to Art Dubai Fair, the 19.6% (i.e., 40% of 49%) equity stake is fair valued at USD 2,823,229 per 30 June 2018 before transaction costs and USD 2,198,229 after transaction costs (see Table 15).*

(b). as regards Segovia, he said as follows (Coats 2 at [102]-[103]):

“To derive the MV as per the Date of Transfer (September 06, 2018), I discounted the MV per the Date of Realisation presented in Coats 1. The discount rate was defined by the implied rate of return of the respective asset calculated based on the invested amount at the investment date and the MV at Date of Realisation. Then, I calculated the period between the Date of Realisation and the Date of Transfer to determine the present value factor. When discounting the expected proceeds with the implied rate of return to the Date of Transfer, the MV net of transaction cost of Crown Agents Bank and Taptap Send amount to USD 1,952,323 and USD 4,076,328, respectively.”

(c). as regards King Children, Mr Coats said this (Coats 2 at [104]-[105]):

“104. In Coats 1, due to insufficient information available as per Date of Realisation to perform a scenario-based model, I calculated a provisional value for the convertible note of USD 214,964 at cost including accrued interest. When considering the accrued interest at the Date of Transfer (6 September 2018), the provisional value of this asset would be USD 160,187 (see Table 17).

105. *To note, I did not consider any valuation of the conversion right as the date for the original conversion has passed. I further note that the company has not filed its annual financial statement which I interpret as a negative event, and which is likely to indicate a lower valuation.*

	<i>in USD 06.09.2018</i>	<i>in USD 31.03.2023</i>
<i>Principal</i>	<i>150,000</i>	<i>150,000</i>
<i>Interest rate</i>	<i>8%</i>	<i>8%</i>
<i>Value of note at cost</i>		
<i>incl. interest</i>	<i>160,187</i>	<i>214,964”</i>

- (d). as regards Zignal Labs, Mr Coats had in Coats 1 valued the amount of MIHL's stake by reference to the amount of the initial investment and he maintained that sum for the purposes of his estimate as the date of transfer (6 September 2018).
- (e). as regards Velocity Black, Mr Coats discounted the expected proceeds of sale by reference to the implied rate of return to the transfer date (6 September 2018) giving a market value of US\$ 47,989 net of transaction costs.
- (f). as regards Romulus Capital, Mr Coats had valued Venrom Holding's partner capital related to Romulus Capital II, (US) Feeder, L.P. on the reported NAV of the fund. For the purpose of providing his estimate of value as at the transfer date of 6 September 2018, he based his estimate on the capital accounts statement as of 30 June 2018 which was the latest available statement at the transfer date. As of 30 June 2018, the partner's capital was valued at US\$ 1,288,204.
- (g). as regards The Marque, Mr Coats maintained his nil valuation because the company was in an insolvent liquidation.

The valuation evidence – Mr Cohen

122. In accordance with the Directions Order, Mr Cohen was instructed to value the Settlement Assets as at the date on which Mr Jafar received them. Mr Cohen considered that the date on which the Settlement Assets were transferred to Mr Jafar was also the most appropriate date to use for his valuation. He said (at [14] of Cohen 2 – and see also [18] of Cohen 1) that *“The Date of Transfer best represents the value of the asset or share interest received by Mr. Jafar because it is not impacted by other factors that may have increased or decreased the value of the interest or asset after the Date of Transfer, such as changes in market conditions, impairments of the asset(s) or other factors. It is improper to use information after the Date of Transfer to determine the value of the Settlement Assets at the Date of Transfer because this would require the use of hindsight and may result in an inaccurate reflection of Settlement Asset value at the Date of Transfer.”*

123. Mr Cohen was asked during his cross-examination about his statement that it was improper to use information after the date of transfer (Day 20, page 18):

“Q. I'm saying to you that your approach involves excluding from the valuation facts that occur after the date of transfer, obviously to achieve what you have referred to in paragraph 18 that, for example, changes in market should not be allowed to affect the valuation at the date of transfer?”

A. Thank you. Yes, that's correct.

Q. For example, it would plainly be wrong to include, on your approach, any valuation of a comparable property that is after the date of the valuation - the date of transfer?”

A. Right. It would be important to take into account what is known and knowable at the time and the date of valuation.”

124. In Cohen 1, Mr Cohen carried out valuations of the Dubai Villa, the Yacht, the 40 Lowndes Square Stake and Art Dubai as at the date of transfer. Mr Cohen was unable, based on the information available to him, to carry out formal valuations of the remaining assets. However, in Cohen 2 (in the interests of assisting the Court, he said) he provided an estimate of the value of those other assets (excluding the El Gouna Property and the Artwork) as at the date of transfer.

125. In Cohen 1, Mr Cohen explained (at [10]) that in forming his opinions he had been assisted by a number of professionals at his own firm of Stout, working at his direction and under his supervision. He provided biographies of certain colleagues who had assisted him. Mr Cohen said that he had also contracted with two firms that specialise in valuing artwork and marine vessels to assist him in forming his opinions as to the value of the Yacht and Artwork.

126. Mr Cohen noted that for some of the Settlement Assets he had prepared his valuation (or estimate) by reference to the fair market value basis. At [56] of Cohen 1, he noted that *“For purposes of our valuation, the term “fair market value” is defined as the price at which property (the Subject Interest, for the purpose of the report) would change hands between a willing buyer and a willing seller, when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable*

knowledge of the relevant facts.” During his cross-examination, Mr Cohen said that “In the absence of any specific instruction of measuring value, fair market value is taken as a common approach, in addition to the IRS utilising it as well.” (Day 20, page 19).

127. Mr Cohen explained and confirmed his approach to and treatment of relevant costs at [17] of Cohen 2 as follows:

“As described in my Initial Report, I was instructed not to include the costs of realizing the assets in my valuations of the Settlement Assets, and it is my opinion that these costs are not relevant to the value of the assets at the Date of Transfer. The value of an asset is based on a determination at a point in time with what was known and knowable at the time. This has no relationship to the costs incurred to realize the value of that asset. The costs to realize the asset can be subjective based on the method of sale, necessity to sell or requirements of the buyer, and therefore does not have any bearing on the actual value of an asset at a given time. As a result, the costs to realize the value of the Settlement Assets should not be considered when determining the value of the assets at a point in time.”

128. Mr Cohen said (Cohen 1 at [24]) that he had been instructed not to include the costs of realising the Settlement Assets in his valuations and that in his opinion such costs were not relevant to the value of the assets at the date of transfer. He said that the value of an asset was based on a determination at a point in time with what was known and knowable at the time. This had no relationship to the costs incurred to realise the value of that asset. The costs to realise the asset could be different depending on the method of sale, the necessity to sell or the requirements of the buyer, and, therefore, did not have a bearing on the actual value of an asset at a given time. Despite this view, Mr Cohen had been instructed to assess the relevant costs in case the Court decided that they needed to be taken into account.

The Dubai Villa

129. Mr Cohen’s valuation of the Dubai Villa is at [114]-[123] of Cohen 1. Mr Cohen valued the Dubai Villa by reference to market comparables. Mr Cohen concluded that the value of the Dubai Villa as at the date of transfer was US\$ 28,900,000. That valuation he said was comparable with contemporaneous independent valuations by reputable real estate specialists namely Savills (US \$25 million as at 27 May 2018), Vakson Group (US\$ 17.77 million as at 9 April 2018), Luxury Property Group (US\$ 24.5 million as at 26 February

2019) and Gulf Sotheby's (US\$ 18.55 million as at February 2019). Mr Cohen considered that the Savills valuation merited particular attention as a comprehensive and IVS-compliant valuation.

130. Mr Cohen explained his approach at [117]-[119] of Cohen 1:

“117. My colleagues and I determined that the Sales Comparison Approach is the most appropriate method to use to value Emirates Hills, as market participants rely primarily on this approach when purchasing residences. Properties like Emirates Hills are typically owner-occupied or are purchased as second homes. [The Sales Comparison Approach was defined as “Based on the premise that market participants value a property based on the sale prices of similar properties (or comparable sales). In performing a sales comparison approach, an analysis of the degree of similarity between the subject and the comparable properties is made. If the comparables are not exactly like the asset being appraised, adjustments are made to the selling prices of the comparables to equate them to the characteristics of the asset being appraised]. A property the size of Emirates Hills would not be utilized as an investment property that relied upon the generation of income to support its value. Therefore, the Income Capitalization Approach has not been utilized in the analysis [the Income Capitalization Approach was defined as being based on the premise that market participants measure the value of a property by calculating the present value of the future economic benefits associated with property ownership. Because it is based on projected cash flow streams, the income capitalization approach is most appropriate for income-generating properties. There are two methods of income capitalization: direct capitalization and yield capitalization (also known as discounted cash flow analysis)]. Similarly, luxury properties like the Dubai Villa] are not typically purchased based on the replacement cost of such properties. Often, the cost of the property will be dependent on the specific tastes of the owner and may involve extravagant items that do not necessarily contribute to market value. As such, we have also excluded the Cost Approach in the analysis.

118. I reviewed a list of comparable properties within the [Dubai Villa] neighbourhood. [Table 15 listed 9 comparable properties]. The comparables were chosen based upon the Date of Transfer (11 October 2018), size, and location, giving the most weight to the properties similar in size to the subject property located in the subject's sector.

119. When considering where [the Dubai Villa] would fall within the indicated range above, my colleagues and I considered several factors such as location, size, and date of sale, as well as the information available on the comparable properties and the extent to which it could be verified. Of the nine comparable properties considered, primary weight was given to Comparable 2 and Comparable 7. Both of these properties are located within Sector L, which is considered one of the most popular sectors in the

development. Moreover, these two comparable properties are the largest of all the comparables, and closest in size to Emirates Hills.”

The 40 Lowndes Square Stake

131. Mr Cohen’s valuation of the 40 Lowndes Square Stake was at [78]-[110] of Cohen 1. Mr Cohen valued Lowndes Square by reference to the sales comparison approach and an income capitalisation approach. Mr Cohen concluded that the value of Mr Jafar’s interest in Lowndes Square (based on Mr Jafar having a 50% interest in the development) as at 14 August 2018 was US\$ 5,934,000.
132. Mr Cohen concluded that the market value of the 40 Lowndes Square property as at 14 August 2018 was US\$ 87,200,000. That valuation was comparable with a near contemporaneous valuation by Colliers (US\$80 million as at 9 April 2019) and a management report from 2019 which discussed a bid received for Lowndes Square of US\$85 million (see Cohen 1 [81]).
133. Mr Cohen noted that Lowndes Square was purchased for £51,500,000 on 7 February 2014. At the date of transfer, the Lowndes Square property was a comprehensive redevelopment site, following the demolition of the two previous six story inner terrace houses. Lowndes Square provides eight private units or apartments: five units ranging from 1,188 - 4,115 square feet, and three studio units ranging from 507 - 582 square feet. 64 Lowndes Square was to be 20,553 square feet when completed.
134. At [76] of Cohen 1, Mr Cohen set out the facts and assumptions on which his valuation was based, including a management report from 2019 which discussed a bid received for Lowndes Square for £85 million upon completion and the Project Crown 39-40 Lowndes Square, London LS Investments - Business Plan dated April 2019 (the **Business Plan**) which had been prepared by the developer and was, Mr Cohen said, consistent with the marketing brochure for the property.
135. Mr Cohen explained in Cohen 1 the methodology adopted for the income capitalisation approach as follows:

“83. The two most common methods of converting net income into value (as required by an Income Capitalization Approach) are DC and DCF analyses.

In direct capitalization, net operating income is divided by an overall rate extracted from market sales to indicate a value. In the DCF method, anticipated future net income streams and a reversionary value are discounted to an estimate of net present value at a chosen yield rate (internal rate of return).

84. *In my colleagues' and my experience and opinion, the DCF method is generally applicable for net sellout valuations of apartment projects since generation of revenues from sales of the individual units produces varying cash flows. This approach values a property based on the property owner's anticipation of receiving future economic benefits. These benefits can accrue to the property owner both during and at the end of the holding period. During the holding period, the owner receives all cash flows generated from the ongoing operations of the property. At the end of the holding period, the owner receives the cash flow resulting from the sale of the property. The Income Capitalization Approach attempts to value these future economic benefits through a process called capitalization.*
85. *In order to determine the FMV for Lowndes Square, I utilized an analysis which models the expected net cash flows over the period of time that starts when the units are completed and terminates when the last unit is sold. That study period is referred to as the "absorption period" or "sellout period." The inputs required to estimate the net cash flows include the following:*
- *The probable sale price of the units;*
 - *The rate at which the units will sell (the absorption rate);*
 - *The developer expenses over the sellout period; and*
 - *The appropriate discount rate, which is the developer's rate of return.*
86. *The projected net cash flows determined from this analysis are then discounted to the Date of Transfer by applying the selected discount rate. The resulting value is the market value of the subject to a single purchaser at the Date of Transfer.*
87. *The first step in the analysis is to determine the period of time over which the subject property will be sold. For Lowndes Square, I projected a three-year sell-off period based on a review of the market demand.*
88. *The second step is to evaluate the Comparable sales of other properties which were compiled from research of sales of comparable properties within the subject's market. The Comparables were chosen based upon Date of Transfer, size, and location...*
89. *[Table 10 set out ten comparable properties] which were used to determine the appropriate price per square foot of the Lowndes Square units. [Table 11] displays the market value conclusions [based on the price per square foot of each of the apartments] for each unit of the Lowndes Square property and*

the aggregate [Gross Development Value] GDV for the entire property [GDV was defined as the amount the developer ultimately receives on completion or sale of the scheme, whether through open market sales alone or a combination of open market sales and the receipt from a residential small lot for completed affordable homes).

90. *Using the aggregate GDV determined above of £106,108,300 divided by five units (£21,221,660 per unit), I developed the value of Lowndes Square using a DCF method...*
91. *When measuring the expected value of an asset that is dependent on future net proceeds, one must consider the risk and uncertainty associated with achieving these net proceeds. This risk is captured in the present value factor in DCF models. Based on my experience in valuations of this type as well as my analysis of properties similar to Lowndes Square, I concluded to a present value factor of 17%. As shown in Table 12 above, the market value of Lowndes Square at 14 August 2018 is concluded to be \$87,200,000, before consideration of commission costs that would be incurred to realize Lowndes Square.”*

The Yacht

136. Mr Cohen’s valuation of the Yacht is at [137]-[146] of Cohen 1. Mr Cohen valued the Yacht by reference to a blend of the sales comparison approach (90% weighting) and the cost approach (10% weighting). Mr Cohen concluded that the value of the Yacht as at the date of transfer was US\$ 17,375,000.
137. Mr Cohen said that he was assisted in preparing his valuation of the Yacht by Mr Tim Johnston and Captain Casey Herschler. Mr Johnston was the Director of Appraisal Services within the North American Marine Consultants (*NAMC*) group. He had over eight years of appraisal valuation experience, specifically inspecting marine, floating, and land-based assets. Captain Herschler was the Executive Vice President of NAMC and had worked in the marine and construction industries since 1999 and as a Captain and pilot of excursion and towing vessels.
138. Mr Cohen explained his approach in Cohen 1 as follows:

“137. Because [the Yacht] was not physically surveyed, my colleagues and I performed a “desktop appraisal” for RAASTA to determine its FMV at 13 July 2018, the transfer of beneficial ownership of RAASTA to Mr. Jafar. I also performed a “desktop appraisal” for RAASTA to determine

its FMV at 10 October 2018 and 20 December 2018 (valuation at this later date was necessary to determine the value of Tamam Ltd. at 20 December 2018 under the Asset Approach). I performed both valuations using the same methodology which will be discussed in greater detail below. When estimating the FMV, three generally accepted approaches to valuation were considered, including Cost Approach, the Sales Comparison Approach and the Income Approach.

138. *I determined the best method to determine the FMV of RAASTA was to create a blend of the Sales Comparison Approach and Cost Approach because both approaches provide different insights into the potential value of RAASTA at the Date of Transfer. The Sales Comparison Approach provides data on comparable boat sales in the relevant time period and the Cost Approach determines the value to replace the vessel at 13 July 2018 and 20 December 2018. In my opinion the best weighting of each approach was 90% based on the Sales Comparison Approach and 10% based on the Cost Approach because I was able to aggregate and observe more data on boat sales than vessel replacement costs. Generally speaking, it is industry custom and practice to weight the FMV closest to actual sales information.*

(1) *Cost Approach*

139. *To calculate the FMV using the Cost Approach, I determined that the 2018 replacement cost of a Heesen Yacht, comparable vessel to [the Yacht], would be approximately \$35,000,000. We contacted Heesen itself to determine the potential cost to purchase a newly built, comparable Heesen yacht in 2018 and Heesen's Sales Director was able to confirm a 2018 new build cost, for a comparable Heesen yacht, would have been \$35,000,000, which I have used in this Report. The normal useful life of a yacht is estimated to be thirty (30) years and using this estimate, the remaining economic useful life of [the Yacht], in 2018, was twenty (20) years. With continued timely and professional maintenance and the vessel maintaining all class certifications the useful life could be extended.*

140. *Using the Cost Approach, the FMV was calculated by deducting an estimated scrap value of \$50,000 from the replacement cost and then dividing the remaining value over the estimated normal useful life of [the Yacht], resulting in the annual depreciation value for [the Yacht]. The annual depreciation value was multiplied by [the Yacht]'s remaining useful life prior to adding back the \$50,000 scrap value. Using this method, we determined the FMV of \$23,548,050 on 13 July 2018 and \$23,099,525 at 20 December 2018,*

141. *To calculate the FMV using the Sales Comparison Approach, I analyzed comparable vessel sales in 2018. I adjusted the comparable vessels for age, dimensions, and general condition. The sales dates ranged between February 2018 through November 2018. Certain of the sales data was provided in Euros (€) and adjusted for exchange rate*

fluctuations. A summary of the comparables is shown in the table below [Table 19 listed nine comparable vessels].

142. *We determined the FMV of [the Yacht] at 13 July 2018 and 20 December 2018 using the Sales Comparison Approach. We calculated the price per length of the comparable vessels by dividing the Price Paid in Euros (€) by the length in meters using the information seen in Chart 19. We then compared the price per length of the comparable vessel to the age of the comparable vessel at the Date of Transfer to create a trend line as seen in the Charts below. These trend lines estimate the price per length of comparable vessels based on the age of the vessel. These trend lines were prepared based on age of the vessels at 13 July 2018 and 20 December 2018.”*

139. Mr Cohen summarised the results of this analysis in Table 21 of Cohen 1 as follows:

	13 July 2018	20 December 2018
Cost Approach	\$23,548,050	\$23,099,525
10% weighting	10%	10%
Fair Value Based on Cost Approach	<u>\$2,354,805</u>	<u>\$2,309,953</u>
Sales Comparison Approach	\$16,691,422	\$16,263,418
90% Weighting	90%	90%
	<u>\$15,022,280</u>	<u>\$14,637,077</u>
Fair Market Value	<u>\$17,377,085</u>	<u>\$16,947,029</u>
Rounded Fair Market Value	\$17,375,000	\$16,950,000

140. During his cross-examination by Lord Falconer (Day 20, pages 159-160), Mr Cohen confirmed that in preparing his valuation he had not taken into account Mr Singhvi’s evidence as to what had happened when he had sought to sell the Yacht. The following exchange took place:

“Q. *[Mr Singhvi’s evidence] shows it was not possible to sell it at the figures you have identified and he wasn’t able to sell it until 8 June 2021; correct?*

A. *Correct.*

Q. Did those facts make you in any way rethink your valuation?

A. No.

Q. Why not?

A. Because I was instructed to value the yacht at the time of transfer and many factors could have impacted what happened after that date.

Q. So you took - you and Tim and Captain Herschler took the figures from sold yachts, you didn't regard the evidence of the difficulty of sale as an indication you might be wrong, and just stuck with those figures?

A. I had to perform my valuation based on what was known and knowable at the time and couldn't take into account anything that happened after."

The Art Dubai Shares

141. Mr Cohen's valuation of Mr Jafar's interest in Art Dubai is at [193]-[205] of Cohen 1. Mr Cohen valued Art Dubai by reference to the guideline public company method. Mr Cohen concluded that the value of Art Dubai as at the date of transfer was US\$ 3,622,872.

142. The core analysis was set out in Cohen 1 as follows:

"196. I utilized the [Guideline Public Company Method] of the Market Approach to estimate the [Enterprise Value (EV)] (defined as measuring a company's total value, often used as a more comprehensive alternative to market capitalization. EV includes in its calculation the market capitalization of a company but also short-term and long-term debt and any cash or cash equivalents on the company's balance sheet] of Art Dubai [the GPC Method was defined as a principal method used in the Market Approach which determines the value of the subject company based on a comparison to similar publicly traded companies (i.e., "Guideline Companies")]. Criteria for comparability in the selection of Guideline Companies include, but are not limited to, operational characteristics, growth patterns, relative size, earnings trends, markets served, and risk characteristics. Each Guideline Company should be within a reasonable range of the subject company's characteristics to make comparability between the companies relevant. Once

the Guideline Companies were selected, valuation multiples are developed by dividing the EV of the guideline companies by appropriate measures of operating results, such as revenue, EBITDA (earnings before interest, taxes and depreciation), or earnings. After analyzing the risk and return characteristics of the Guideline Companies relative to the subject company, appropriate valuation multiples are applied to the operating results of the subject company in order to develop indications of value.

197. *As described above, the first step in employing the GPC Method to value the Art Dubai asset is to identify potential guideline publicly traded companies. Here we also considered several selection criteria, including (1) the stock of the company must be actively traded, (2) the company must be financially solvent, and (3) the company must operate in a similar line of business as the Company.*
198. *I performed a comprehensive review of publicly available information in order to identify guideline companies for use in the analysis. Although there are few public companies directly comparable to Art Dubai in terms of size, products, and markets served, I identified a group of 11 Guideline Companies for further analysis [set out in Table 22].*
199. *While these companies differ from Art Dubai in terms of specific service offerings and markets served, they reflect economic conditions and business risks for the industry that encompasses the exhibition, promotion, and hosting of performing arts, sports, and related events in general....*
200. *Considering the size of Art Dubai relative to its peers and year-over-year performance, the lower quartile and harmonic mean were used as a benchmark for multiple selection. The harmonic mean is calculated by dividing the number of observations by the reciprocal of each number in the series, which mitigates the impact of outliers (relative to the arithmetic mean). The application of the GPC Method indicated Art Dubai EV to be US\$11,801,603 to US\$14,719,935...*
201. *As EV represents the total invested capital of the Art Dubai asset (e.g., both debt and equity capital), we must subtract Art Dubai's outstanding debt and add cash and cash equivalents as of the Date of Transfer from/to the EV to determine the operating equity value. The audited financial statement of Art Dubai indicates that there was no outstanding debt, but there was \$5,223,273 in cash or cash equivalents at the Date of Transfer. The resulting operating equity value of Art Dubai after these adjustments was \$17,024,876 to \$19,943,208 at the Date of Transfer..."*
143. In Cohen 2, Mr Cohen provided an estimated value of US\$ 2,460,000 (Cohen 2 [58]-[62]). He approach was explained as follows:

- “59. *In the interest of assisting the Court in this matter, I will provide an estimate of the value of Romulus Capital at the Date of Transfer. It is important to note that this is only an estimate and does not represent a full independent valuation of Mr. Jafar’s share of Romulus Capital at the Date of Transfer.*
60. *This estimate is based on the expected growth of the Romulus Capital investment using venture capital fund industry averages. To perform this estimate, I applied a 1.64 [Total Value to Paid-In Capital] [defined as “TVPI” a fund’s overall value relative to the total capital paid into that fund to date. Fund managers utilize its formula to assess a fund’s ongoing performance] on the initial \$1,500,000 invested capital in Romulus Capital from the time of the initial investment on 13 September 2012 to the Date of Transfer on 6 September 2018 to estimate a value of \$2,460,000.*
61. *Based on the composition and diversification of the Romulus Capital II Feeder fund portfolio, I determined that TVPI would be reasonable to use in an estimate of Mr. Jafar’s share of Romulus Capital because the TVPI represents the total value of a fund relative to the amount of capital paid into the fund to date. The 1.64 TVPI I used in this estimate is based on the 2013 vintage fund TVPI from the Cambridge Associates “US Venture Capital Index and Selected Benchmark Statistics” report dated 30 June 2018 (“**Cambridge Studies**”)...*
62. *Pending receipt of additional documentation, a reasonable estimate of the value of Romulus Capital would therefore be \$2,460,000. This estimate is consistent with contemporaneous documentation I have reviewed from relatively close to the Date of Transfer, for example:*
- *A September 2018 presentation of Multi Investments HoldCo Ltd. assets and funds purports to summarize the initial investment and current investment value of Romulus Capital. 41 This presentation indicates the invested capital in Romulus Capital was \$1,500,000 and the September 2018 value of the investment was \$2,550,000.*
 - *Romulus Capital’s Capital Account Statement indicated that the ending partner’s capital at 30 September 2018 was \$1,287,567, a decline from the initial contribution of \$1,500,000 due primarily to net investment losses of \$134,383 and a net realized losses on investments of \$77,362.”*

Signal Labs

144. Mr Cohen estimated the value of Mr Jafar’s interest in Signal Labs at US\$ 232,285 (Cohen 2 [63]-[67]).
145. Once again, Mr Cohen said that he had not been provided with sufficient information to prepare a formal valuation and, therefore, he was only able to give an estimate of value.

He said that his estimate was based on the expected growth of the Zignal Labs investment using venture capital industry averages. To perform this estimate, he applied a 35% ROR (rate of return being the gain or loss of an investment over a period of time) on the initial US\$ 100,000 investment amount in Zignal Labs from the time of the initial investment on 15 November 2015 to the date of transfer on 6 September 2018 to estimate a value of US\$ 232,285. His selection of an appropriate ROR was based on a study relating to venture capital companies. RORs for First Stage Companies and Second Stage Companies had been presented in a 2018 venture capital study prepared by Craig Everett at Pepperdine University (the *Venture Capital Study*), which had concluded that the RORs for First Stage Companies ranged from 25% to 45%, and the ROR for Second Stage Companies ranged from 23% to 38%. Mr Cohen explained his reasoning as follows:

- “66. *Zignal Labs has a SaaS product built, but as most of its current use is still largely dominated by the US, it is thus likely a First Stage Company or a Second Stage Company. I determined, based on my experience in performing similar estimates and based on the stage of the company, that a ROR of 35% would be reasonable to use in an estimate of Mr. Jafar’s share of Zignal Labs. This 35% estimate is consistent with the ROR of First Stage Companies’ and Second Stage Companies’ RORs presented in a venture capital study prepared by Craig Everett at Pepperdine University (“Venture Capital Study”) that concludes the RORs for First Stage Companies ranged from 25% to 45% and the ROR for Second Stage Companies ranged from 23% to 38%.*
67. *Pending receipt of additional documentation, a reasonable estimate of the value of Zignal Labs would be \$232,285. This estimate is consistent with contemporaneous documentation I have reviewed from relatively close to the Date of Transfer, for example, the Multi Investments HoldCo Ltd. September 2018 Presentation summarizing the initial investment and current investment value of Zignal Labs. This presentation indicates the invested capital in Zignal Labs was \$100,000 and the current value of the investment was \$250,000.”*

Velocity Black

146. Mr Cohen estimated the value of Mr Jafar’s interest in Velocity Black to be US\$ 59,814 (Cohen 2 [68]-[72]). Once again, he said that he had not been provided with sufficient information to prepare a formal valuation and, therefore, was only able to give an estimate of value.

147. His estimate was based on the expected growth of the Velocity Black investment using venture capital industry averages. To perform this estimate, he applied a 35% ROR on the initial US\$ 32,250 investment amount in Velocity Black from the time of the initial investment on 15 August 2016 to the Date of Transfer on 6 September 2018 to estimate a value of US\$ 59,814.
148. Mr Cohen considered that Velocity Black, which was at the relevant time not profitable but moving closer towards profitability, was also likely to be considered a First Stage Company or a Second Stage Company, so that the same valuation methodology applied in the case of Zignal Labs could be used. Furthermore, Mr Cohen considered that his estimate was conservative when compared to the contemporaneous documentation he had reviewed from relatively close to the date of transfer, for example, the Multi Investments HoldCo Ltd. September 2018 presentation, which summarised the initial investment and current investment value of Velocity Black. This presentation indicated that the invested capital in Velocity Black was US\$ 32,250 and the current value of the investment was US\$ 129,000.

The Marque

149. Mr Cohen estimated the value of Mr Jafar's interest in The Marque to be US\$ 32,250 (Cohen 2 [73]-[75]). Once again, he said that he had not been provided with sufficient information to prepare a formal valuation and therefore was only able to give an estimate of value.
150. The estimated value was based on the investment capital of US\$ 32,250 as the investment date of February 2018, which was close to the date of transfer so that, in Mr Cohen's view, it was likely that there would have been minimal growth during this time period. He also said that his estimate was consistent with contemporaneous documentation he had reviewed from relatively close to the date of transfer, for example, the Multi Investments HoldCo Ltd. September 2018 presentation summarising the initial investment and current investment value of The Marque Global. This presentation indicated that the invested capital in The Marque Global was US\$ 32,250 and the current value of the investment was US\$ 32,250.

Segovia Technologies

151. Mr Cohen estimated the value of Mr Jafar's interest in Segovia to be US\$ 8,299,911 (Cohen 2 [76]-[80]). Again, since he had not been provided with sufficient information to prepare a formal valuation he was only able to give an estimate of value.
152. This estimate was based on the expected growth of the Segovia investment using venture capital industry averages. To perform this estimate, Mr Cohen applied a 30% ROR on the initial US\$ 2,800,000 investment amount in Segovia from the time of the initial investment on 15 July 2014 to the date of transfer on 6 September 2018 to estimate a value of US\$ 8,299,911.
153. Mr Cohen considered that Segovia, which was present in over ten countries in Africa and had explored potential M&A options, was likely to be characterised as a bridge/IPO Company. He determined, based on his experience in performing similar estimates and based on the stage of development of the company, that a ROR of 30% would be reasonable. This was consistent with the bridge/IPO companies' RORs presented in the Venture Capital Study that concluded that the ROR for bridge/IPO companies ranged from 20% to 35%.
154. Mr Cohen said that his estimate was higher than the estimate shown in the contemporaneous documentation he had reviewed from relatively close to the date of transfer, for example, the Multi Investments HoldCo Ltd. September 2018 presentation summarising the initial investment and current investment value of Segovia. This presentation indicated that the invested capital in Segovia was US\$ 2,800,000 and the current value of the investment was US\$ 5,600,000 (Mr Cohen had not been provided with the detail supporting the US\$ 5,600,000 figure and so did not know the assumptions and inputs used to determine this value and how it may differ from his estimate).

King Children

155. Mr Cohen estimated the value of Mr Jafar's interest in King Children to be US\$ 260,986 (Cohen 2 [81]-[85]). Again, since he had not been provided with sufficient information to prepare a formal valuation he was only able to give an estimate of value.

156. This estimate was based on the expected growth of the King Children investment using venture capital industry averages. To perform this estimate, Mr Cohen applied a 35% rate of return on the initial US\$ 150,000 investment amount in King Children from the time of the initial investment on 15 September 2017 to the Date of Transfer on 6 September 2018 to estimate a value of US\$ 260,986.
157. King Children had launched a beta app and just started aggressively building out its consumer launch so that Mr Cohen considered that it was likely that it would be characterised as a First Stage Company or a Second Stage Company. An ROR of 35% was therefore appropriate. Mr Cohen said that this estimate was broadly consistent with the contemporaneous documentation he had reviewed from relatively close to the date of transfer, for example, the Multi Investments HoldCo Ltd. September 2018 presentation summarising the initial investment and current investment value of King Children. This presentation indicated that the invested capital in King Children was US\$ 150,000 and the current value of the investment was US\$ 262,500.

First Minute Capital

158. Mr Cohen estimated the value of Mr Jafar's interest in First Minute Capital to be US\$ 138,975 (Cohen 2 [86]-[90]). Again, since he had not been provided with sufficient information to prepare a formal valuation he was only able to give an estimate of value.
159. This estimate was based on the expected growth of the First Minute Capital investment using venture capital industry averages. To perform this estimate, Mr Cohen applied a 17.2% ROR on the initial US\$ 112,000 investment amount in First Minute Capital from the time of the initial investment on 26 April 2017 to the date of transfer on 6 September 2018 to estimate a value of US\$ 138,975.
160. Mr Cohen said that there were no TVPI for a 2017 vintage fund provided in the Cambridge Studies, therefore he used the 1-year pooled ROR of 17.2% provided for in the Cambridge Studies. In his view, this ROR provided the best indication of the 1-year return. He also considered that this estimate was broadly consistent with the contemporaneous documentation he had reviewed from relatively close to the date of

transfer, for example, the Multi Investments HoldCo Ltd. September 2018 presentation summarising the initial investment and current investment value of First Minute Capital. This presentation indicated that the invested capital in First Minute Capital was US\$ 112,000 and the current value of the investment was US\$ 112,000.

MVI/MIL

161. Mr Cohen's approach to preparing his estimate of value for Mr Jafar's interest in MVI (held through MIL), which I discuss in more detail when considering the Plaintiff's submissions as to the reliability of Mr Cohen's estimate, was summarised at [47]-[50] of Cohen 2:

- "47. Of the documents I have reviewed, the "MVI Portfolio Overview & Valuation Assessment, dated 5 September 2018" ("MVI Assessment"), is likely to represent the best available information to assess FMV of Mars Investments Ltd [MIL] at the Date of Transfer, 6 September 2018, because of its proximity to the Date of Transfer. While I am unable to comment on the accuracy of the valuation indications provided in this document due to the level of data provided and the lack of underlying information, I indicated in my Initial Report that I would consider the FMV scenario reasonable, but would suggest lower discounts for more junior investments.*
- 48. For the purposes of assisting the Court and in the absence of the documents necessary to provide an independent valuation at the Date of Transfer, I have prepared an estimate of the value of Mr. Jafar's shares in Mars Investments Ltd. using the FMV scenario presented in the MVI Assessment, adjusting certain discount rates as shown in the color blue in Table 2 below. For comparison purposes, I include the original FMV calculations and discount rates identified in the MVI Assessment.*
- 49. In Table 2 above, I reduced the discount rates that were uncharacteristically high to 32%, which is generally considered the maximum, and therefore the most conservative, discount rate for more junior equity securities, as identified in the Finnerty Model. The Finnerty Model is one of the most widely used quantitative methods for determining the discount for lack of marketability. In my opinion, this is a reasonable adjustment given the companies are still operating. The table indicating the maximum discount rate of 32% is shown in the bracketed box in Figure 1 below:*
- 50. After performing this adjustment, the analysis shows a FMV for Mars Investments Ltd.'s 50% equity interest in MENA Venture Investments Ltd. of \$6,993,467 before and \$9,889,181 after the discount rates adjustments discussed above, as shown in Table 3 below."*

Wamda Capital

162. Mr Cohen noted that Wamda Capital had been purchased by CCL, an entity controlled by Mr Jafar, and considered that since this transaction was not at arm's length the price paid needed to be carefully tested to see whether it was equivalent to or below the market price. At [54] of Cohen 2, Mr Cohen had said as follows:

“The sale of [Wamda] should also be evaluated [by] considering an offer for the defaulted interest of MIH 1 Ltd. received on 17 September 2018, in which Wamda Capital stated that there was an offer made:

“...for the defaulted interest of MIH 1 Limited which represented aggregate Capital Contributions of \$5,081,048 (the “MIH Defaulted Interest”), in an amount equal to \$5,800,000 (the “Existing Offer”), corresponding to the value of the MIH Defaulted Interest by reference to the Fund’s net asset value as set out in the most recent report of the Fund. Any offer in respect to the MIH Defaulted Interest must equal or exceed the Existing Offer.”

163. Mr Cohen concluded as follows (at [55] of Cohen 2):

“I have not reviewed any documentation that identified the basis and/or rationale for selling MIH 1 Ltd. at less than the \$5,800,000 identified in the 17 September 2018 Wamda Capital communication described above. An estimate of value of MIH 1 Ltd. at the Date of Transfer could be based on the offer received to purchase the shares of MIH 1 Ltd.”

The Artwork

164. In Cohen 1, Mr Cohen provided a valuation of 72 pieces of Unrealised Artwork as of the date of transfer and in Cohen 2, he confirmed that his opinions on these pieces had not changed (there were 77 unsold pieces of artwork but five pieces were not valued due to lack of information or insufficient image quality). Mr Cohen said as follows in Cohen 1:

“212. To perform the appraisal of the unsold Artwork, on-line databases, public information, such as Christie’s website and catalogues and websites with market information were relied upon in my analysis. I applied a Sales Comparison Approach to arrive at the appraised FMV for the 72 pieces of Unrealized Artwork. The Sales Comparison Approach analyzes sales of comparable articles at major international and regional auction houses, private and public sales, shows and exhibitions, as well as prevailing prices at retail shops and galleries where the article may normally be traded.

213. *In the analysis, we reviewed the market for Middle Eastern modern and contemporary art during the time period of 2018 to 2023 to assess the impact on prices for the Unrealized and Realized Artwork. In the 2017 and 2018 time period, there was a mild slowdown in the market. According to Deloitte's Art & Finance Report, there was negative growth of -19% on the year (2019). 187 The geopolitical risks of the region and overall global economic status were noted as likely downward influences, as well. This scenario reliably played out in early 2019 sales when contemporaneous protests and riots against the Lebanese government were cited by auction house experts as directly contributing to the unsold results for certain works by Lebanese artists.*
214. *There were similar geopolitical influences for Iranian artists...*
215. *Additionally, the ArtNet review of Art Dubai in 2018 was mixed with reports of sluggish Modern section. According to ArtNet, "Although the overall mood was optimistic, one Dubai-based dealer bemoaned the absence of major international blue-chip galleries and a prominent Lebanese collector, Basel Dalloul, derided the general standard of the booths at the opening night. "The selections of the various galleries were kind of weak both for the contemporary and the Modern," Dalloul told ArtNet. "Some galleries in the contemporary [section] were showing the same tired art in the same booths! That was kind of disappointing."*
216. *The COVID-19 pandemic impacted Artwork being sold in the 2020-2023 time period. Christie's cancelled a March 2020 Dubai auction. In the early stages of the pandemic, Middle Eastern sales across auction houses were challenging with unsold rates as high as 45% but seemed to improve by the end of 2021.*
217. *Amidst these factors, I determined that the value of 72 pieces of Unrealized Artwork transferred to Compass HoldCo 3 Ltd. on 21 November 2018 is \$3,643,100. If additional information is provided, a reassessment can be performed for the five other pieces of Artwork and the value of the unsold Artwork would increase.*

165. As regards the Realised Artwork, Mr Cohen set out the position as follows in Cohen 1:

"218. I also performed an analysis to identify the realized amounts for the 180 allegedly sold pieces of Artwork by reviewing Christie's settlement statements. I relied on the Client Reference, Item Number, and Description listed on Christie's schedule of the transferred Artwork that corresponds to the Client Reference number and Description listed on Schedule 1 to the Deed of Transfer and Assignment to identify the Artwork in Christie's settlement statements. I was unable to identify sales data for 17 pieces in the Christie's settlement statements... The status of 17 pieces of Artwork is unknown, therefore a Realized Amount for Artwork cannot be determined without additional documentation. If additional documentation is provided

regarding the sold Artwork, I can supplement my opinion as to the value of the sold Artwork as of the Date of Transfer.

219. *Based on geopolitical events and the COVID-19 pandemic, there is an indication that sold prices for the Artwork transferred to Compass HoldCo 3 Ltd. in November 2018 had lower values in 2019 to 2022. Therefore, it is my opinion, based on the research and analyses performed by me and my team that the sold values of the Realized Artwork were less than the values as of the Date of Transfer.”*

166. In Cohen 2, Mr Cohen said:

“99. *While I have not prepared an independent valuation of all Artwork at the Date of Transfer, Christie’s prepared an estimate of the Artwork’s value for auction and private sale purposes and may represent the best available information to value the Artwork because of its proximity to the Date of Transfer. I understand that Christie’s is world-leading in art services. Christie’s estimate, in September 2018, was of “mid auction estimates and private sale net to vendor figures” for the 257 pieces of Artwork transferred by Frame Holdings Limited totalling \$25,848,754. According to Christie’s, “with existing market conditions and a schedule over a number of different auction dates during the next 18 months, mid-auction estimates are not unrealistic.” For the purposes of assisting the Court and in the absence of the documents, these Christie’s estimates prepared in September 2018 provide an estimate of the value of all of the Artwork around the Date of Transfer, which was 21 November 2018.*

100. *If additional information is provided to me, and requested by counsel, I can update my analysis and opinions.*

167. Mr Cohen’s evidence during his cross-examination was as follows (Day 20, pages 171-173) (my underlining):

“A. *This Christie's estimate of value is best to assist the court. It's comprehensive, it includes – presumably they have taken a wholesome look at the entire portfolio. We have had difficulty with documentation, we have valued the unsold art and we have attempted to begin a valuation of the sold art. So it's best for the court at this point to, in my opinion, accept an estimate of value for what Christie's has put forward. So I am not abandoning the valuation that was done before, but rather informing the court that in absence of documentation, it's okay in my opinion to accept an estimate of value done by Christie's, as identified in paragraph 99.*

Q. *Would you agree that it is likely to be more accurate for the date of transfer than the estimate that you have put before the court?*

- A. *I cannot answer that without the documentation or information. I feel I have made it clear as to why I have taken the position in paragraph 99.*
- Q. *[Christie's valuation is] an individualised valuation of each piece of work. Your valuation of the unsold items was also an individualised estimate of each item of work that you presented to the court as a valuation. What do you mean when you say it's an estimate?*
- A. *That Christie's has offered an estimate for what the value of each of these pieces is worth. ... And it's comprehensive. It encompasses many of the pieces of art. We have been unable to do so for the entire population of the pieces of art that have been sold or realised. So I think it is best for the court to accept the estimate of the wholesome estimate of value for which Christie's has performed.*
- Q. *I take it from that that even though what you have provided is a specific estimate for pieces, you are inviting the court to prefer Christie's valuation over yours?*
- A. *Correct.*

The Plaintiff's submissions

The values to be attributed to the various assets

168. Mr Jafar's position was summarised at [883] of the Written Closing Submissions as follows:

"The values which Mr Jafar invites the Court to find, in respect of Realised and Unrealised Assets are as follows.

The Dubai Villa: AED 39,199,890 (c.US\$10,672,971)

The 40 Lowndes Square Stake: a loss of £34,591 (-c.US\$38,776)

The Yacht: €8,959,114 (c.US\$10,505,527)

The El Gouna Property: EGP7,042,753 (c.US\$420,498)

The realized Artwork: US\$17,439,073

MENA Venture Investments: US\$5,365,347

Wamda Capital: US\$5,081,048

First Minute Capital: £70,000 (c.US\$91,000)

Velocity Black: US\$119,183

Art Dubai Shares: US\$2,831,313

Segovia Technology: US\$14,388,386

King Children: US\$214,964

Zignal Labs: US\$100,000

The Marque: US\$0

Romulus Capital: US\$1,624,297

The unrealized Artwork: US\$1,686,326 - 2,510,679

Total US\$70,501,157.”

The law applicable to the assessment of damages for deceit

169. Mr Jafar submitted that the principles of law to be followed could be summarised as follows.
170. Commercial fraud was to be condemned. A plaintiff was entitled to be compensated for all the losses flowing from the fraud (*Smith New Court Securities Ltd v Citibank NA* [1997] AC 254 (HL) (**Smith New Court**) at 266-267 per Lord Browne-Wilkinson).
171. The courts will generally value benefits which are received as a result of the fraud at the date they are received though that rule is not inflexible and should be departed from where it would deprive the claimant of full compensation (*Smith New Court* at 265A-B; 266-267 and 284A-F per Lord Steyn, noting that “*the valuation method is only a means of trying to give effect to the overriding compensatory rule*”). As Mr Justice Flaux (as he then was) said in *Parabola Investments v Browalia* [2009] EWHC 901 (Comm) at [133], which was cited at [169] in *OMV Petrom SA v Glencore* [2015] EWHC 666 (Comm) (**OMV Petrom**), “*there are no hard and fast rules in determining damages recoverable in deceit, beyond the overriding principle that the court should strive to award damages which compensate the claimant fully for loss flowing directly from the fraud.*”

172. Mr Jafar submitted that the flexibility of the modern law was intended to operate in favour of a claimant and not in favour of a defendant (citing *OMV Petrom* at [169] where it was noted that “*the purpose of the flexibility of approach about the valuation date was to ensure that the person deceived should not suffer an injustice by failing to recover full compensation. There was no need to adopt such an approach in order to relieve the fraudster from the general rule as to damages...*”).

Mr Jafar’ position in summary – the application of the principles to the facts of this case

173. Mr Jafar argued that applying these principles to the issue of the Settlement Assets, the correct approach was as follows:

- (a). the value of the Settlement Assets as at the date of their transfer is the value for which they could be sold pursuant to reasonable efforts and within a reasonable time. In order to do justice and provide full compensation, it was appropriate for the Court to recognise the cash values actually received by Mr Jafar in reduction of his losses. The Settlement Assets were received with the clear intention of realising them for cash to offset the losses from the un-repaid portions of the First and Second Loans. That was the sole purpose for which the Settlement Assets were both transferred and received. In such circumstances, the approach advocated for was appropriate.
- (b). to the extent that any of the Settlement Assets had been realised (the Realised Assets), Mr Jafar should: (a) give credit for the amounts realised less the costs of realisation, including expenses of marketing, fees and cost of keeping fit for sale; and (b) also give credit for any loss of realised proceeds as a result of a failure to mitigate, with the burden of proving failure to mitigate lying with the Fund Parties (where the standard is to be a non-fire sale within a reasonable time from transfer).
- (c). to the extent that this proposition relating to the Realised Assets had not been fully or properly pleaded, leave to amend the RRASOC to plead a case on this basis should be given. The Fund Parties would not be prejudiced. All parties had proceeded on the basis that Mr Jafar was advancing his case by reference to the

realised values of assets and that the Fund Parties were advancing their case on the narrow position that the valuation should be conducted as at the date of transfer.

- (d). it was unnecessary for there to be an expert valuation of the Realised Assets. Mr Jafar had recovered the Settlement Assets against a money debt and as the Plaintiff and the victim of a deceit was entitled to the benefit of the fair wind principle. The question was what benefit, in tangible, cash in hand terms, had he actually received. Subject only to the question of mitigation, the realisations set out in *Singhvi 1* were therefore the values to be adopted.
- (e). as regards the correct valuation date, while that should be treated as the date of transfer, the value to be ascribed to each asset (as at that date) should be commensurate with the amount that Mr Jafar would reasonably realise, following a reasonable period of time using a reasonable method of sale after proper marketing. The Fund Parties were wrong to argue that the valuation of the Settlement Assets had to be fixed solely and rigidly by reference to the date on which the assets were transferred to Mr Jafar. This approach was predicated on the practically unrealistic notion that Mr Jafar could have realised those assets at a higher price by a sale at an earlier date than the one on which the assets were in fact sold. Mr Jafar's approach was, he argued, consistent with the definition of "*Market Value*" in the International Valuation Standards Guidelines: "*The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*"
- (f). as regards costs, Mr Jafar's position (as supported by Mr Coats) was that he was entitled to deduct from the value of the Settlement Assets the net costs (actual or notional) of realising them in order to determine the net sales proceeds received by or due to Mr Jafar. The Fund Parties' claim that such costs cannot be recovered should be rejected. In the context of this case, Mr Jafar should not be deprived of any costs that he incurred as a result of receiving, maintaining, marketing and selling the Settlement Assets. Mr Jafar did not want the Settlement Assets and he had no time to value them before receiving them, and it was his intention to realise

them for as much as possible and as quickly as possible. As Mr Coats stated, the deduction of, for example, marketing costs, was entirely dependent on the type of valuation being done. The following exchange took place when Mr Coats was being cross-examined by Mr Atherton (Day 18, pages 30-31):

“Q. Would it be fair to say that if you had been conducting a valuation by reference to IPEV 2022 guidance to determine, using your abbreviation, the FMV, you would not have deducted the transaction costs, actual or notional; is that correct?”

A. That would obviously depend on the valuation. But if it was simply an instruction to follow the IPEV 2022, that's correct, yes.

Q. I accept there may be aspects or situations where transaction costs or other costs may be deducted from a valuation but the valuation in general terms that you were conducting or being asked to conduct here, leaving aside the question of costs, wouldn't have involved that type of valuation; would that be fair?

A. If you are referring to marketing and costs generally, yes, you are correct.

Q. You say there that you have reduced the FMV by reference to notional transactional costs. Can you just explain the basis upon which you alighted upon, in general terms, what those notional costs would amount to and their nature?

A. These would be -- if you would see in the individual transactions, we have generally listed out the type and nature of those costs and an indication of the amounts, either in the case of quantum of an amount or in the case of a percentage.”

The Loss-sharing Issue

174. A question had arisen as to whether the loss-sharing arrangements between Mr Jafar and BOS were relevant to the assessment of Mr Jafar's basic loss. The Fund Parties said that they were relevant and did reduce Mr Jafar's loss but Mr Jafar argued that they were not relevant and did not affect his basic loss. Mr Jafar's position was that the risk-sharing agreements with BOS did not change the fact that Mr Jafar had sustained a loss of the full amount of the Loans he had made. Mr Jafar asked whether if a representee took out a bank loan of £55 million to enter into a contract procured by deceit worth £10 million, did that mean that the representee could only claim £55 million? Mr Jafar argued that,

the Fund Parties' position were correct that would seriously undermine the law. A large amount of money paid over pursuant to a deceit could never be recovered (because the risk-sharing party may not have been induced by the deceit).

Mr Cohen's evidence

175. Mr Jafar challenged Mr Cohen's reliability and various aspects of his evidence, as well as the Fund Parties' approach on a number of key issues.
176. The Plaintiff submitted that Mr Cohen's expert evidence should be rejected in its entirety since his cross-examination had established that he was not a reliable expert witness. The Plaintiff said that Mr Cohen had appeared barely familiar with his own report and had consistently struggled with even simple questions about the factors on which he relied to express opinions. For example, in relation to the Dubai Villa, when asked "*At paragraph 122 of your report, I am right, am I not, in saying the key factor in your valuation at \$28.9 million is the AED 2,900 per square foot, correct?*" Mr Cohen's revealing response had been "*I would be reluctant to use the word "key" but it is a pivotal point of the calculation, a very important point. Is it the one? I don't know. I don't think so.*" The Plaintiff argued that it was clear that Mr Cohen did not even have a basic understanding of the assets that he was instructed to value. For example, the Plaintiff's counsel had been required to assist Mr Cohen in confirming what First Minute Capital did as a business (Day 21, page 7) and, even more embarrassingly, Mr Cohen's inability to recall King Children's business was badly disguised as an outright refusal to do so (Day 21, pages 26-27). Mr Cohen was visibly uncomfortable answering questions without re-reading large sections of his report and many of his answers were simply regurgitations of what had already been said in his reports. His cross-examination had revealed that he had done very little valuation work of his own, other than that he expressed several bare assertions that "*in [his] judgment*" the valuation he had put forward as correct. Mr Cohen plainly had been heavily reliant on other individuals and it was apparent that he had not performed adequate checks to verify the appropriateness of his various opinions.

177. As regards Mr Cohen's methodology:

- (a). the Plaintiff argued that Mr Cohen's application of Fair Market Value completely ignored the Market Value approach in the IVS which, when dealing with assets such as real estate and superyachts, in the context of proceedings such as these, was a more accurate (and indeed fair) methodology, as it accounted for marketing costs. The Fund Parties' rigid literal interpretation of the IVS, to the effect that the recoverability of marketing costs was limited to those assets that are explicitly referenced within the IVS itself (see Day 18 page 57) should be rejected. As Mr Coats had pointed out in cross-examination, the context of the valuation process (in this case the realisation of assets against monies due) required flexibility.
- (b). the Plaintiff argued that Mr Cohen's decision rigidly to take into account only facts or factors that were known or knowable at the time of transfer was far too simplistic. Events after that date, including but not limited to sales of any assets, were obviously relevant to valuation. This was especially so where the issue under consideration was the true value of assets transferred against a money debt. The unacceptable inflexibility of this approach was shown by the fact that Mr Cohen had been required in various cases to ignore this principle. For example, in valuing the Dubai Villa, Mr Cohen had placed great weight on the value of a comparable property that was sold after the date of transfer.
- (c). the Plaintiff challenged the reliance by Mr Cohen on US data. Mr Jafar noted that Mr Cohen's valuations of Romulus and First Minute Capital were based on actual returns of investment from the Cambridge Studies (the Cambridge Associates US Venture Capital Index and Selected Benchmark Statistics Report) but this consisted entirely of data derived from historical US venture capital funds whose relevance and application to the Settlement Assets, few of which had any connection to the USA, was questionable. Mr Cohen's valuation of the remaining Venture Capital Portfolio assets was also based on theoretical rates of return derived from a US venture capital study (prepared by Dr Everett of Pepperdine University).

178. The Plaintiff also argued that Mr Cohen's estimates (in Cohen 2) should be rejected as inadequate. They were not valuations and should be treated as having no probative weight. They were also unreliable.

Marketing and other costs

179. The Plaintiff argued that the Fund Parties' approach to marketing and other costs was overly simplistic and artificial. The Fund Parties were insistent that Mr Coats should accept that, "generally" "Fair Market Value", which had been used by Mr Coats and acknowledged sub-paragraph 3 of [20.1(b)] of the IVS Guidelines as being another proper basis of valuation, and which did not include costs, could be an appropriate definition to apply in this case (notwithstanding Mr Coats' position that it was typically applied in the context of US tax matters). The Plaintiff argued that Mr Coats had been equally insistent that "[while] generally it might be appropriate [to use the Fair Market Value basis of value relied on by Mr Cohen] but there is a fundamental difference between the...valuations of market value under fair value and fair market value...and that is the question of marketing costs. And that is...here, for certain assets, that has a fundamental relevance in this particular matter" (Day 18, page 36). Mr Coats had accepted that Fair Market Value could apply to the Venture Capital Portfolio and the Art Dubai Stake, however, he had said that it would not be appropriate to apply the same approach to tangible assets such as the Yacht or the Dubai Villa where marketing was clearly required. He said as follows during his cross-examination by Mr Atherton (Day 18, pages 37-38):

"The issue being here, where you are dealing with the asset which is the venture capital and where you are dealing with the investment in Art Dubai, by their nature there is limited holding costs or marketing costs. When we move to more of the tangible assets of the properties and the yacht, there is [are] costs to maintain to place the asset in the best marketable position and their associated marketing costs. So in those instances here it would seem to me that a fair market value United States Internal Revenue Service is not applicable because it omits those costs."

Dubai Villa

180. As regards the Dubai Villa:

- (a). the Plaintiff argued that net sale price (AED 39,199,890/US\$10,672,971) or Mr Coats' very similar valuation (US\$ 10,028,077) were appropriate and justified.

- (b). Mr Jafar had expended reasonable efforts to sell the Dubai Villa, which Mr Singhvi had described as a “*difficult and uncertain task*” but despite the efforts of the two brokers he had employed only six offers had been received all of which were in a similar valuation range.
- (c). the Plaintiff said that much had been made in cross-examination of the high valuations initially attributed to the Dubai Villa in 2018 and 2019 but the criticism of Mr Singhvi for having failed to rent-out or mothball the Dubai Villa was unjustified.
- (d). the Plaintiff also submitted that the criticism of Mr Singhvi for what was said to be an unjustifiable delay in selling the Dubai Villa should be rejected. Such delay as there was had not been attributable to or the fault of the Plaintiff. There had been issues with Mr Naqvi refusing to accept liability to pay transfer fees to the Dubai Land Department which were not resolved until early 2019; the Plaintiff had been required to engage various maintenance contractors to continue to ensure the Dubai Villa was kept in a marketable condition; the Plaintiff had reasonably rejected offers of AED 40,000,000 in October 2019 and AED 44,000,000 in January 2020 in an effort to maximise the return on the asset and the COVID-19 pandemic had had a very real effect on the property market by causing supply to outstrip demand.
- (e). Mr Cohen’s valuation of US\$ 28,900,000 was grossly exaggerated and could not be justified. It was based on a series of comparable sales transactions and property listings in the Emirates Hills neighbourhood which had been given an artificial weighting and then inappropriately manipulated further to produce a higher valuation (for example by making adjustments to “*account for the fact that the trends in the market are moving upward.*”). Mr Cohen’s methodology was flawed and unreliable.
- (f). Mr Cohen had had access to raw data from the broker that sold the Dubai Villa but chose to disregard it on the basis of an unspecified error. Instead, he obtained his comparables from two sources, a report from Gulf Sotheby and a report from Core

Savills. Mr Cohen had purported to select his comparables on the basis of size, location and transaction date but the comparables taken from the Core Savills report had no published location data.

- (g). two of Mr Cohen's comparables (L25 and L15) had been on the market for over 18 months including a comparable valued at AED 90,000,000 which Mr Cohen had then conveniently omitted to mention was eventually sold for AED 59,500,000. Further, Mr Cohen had chosen to ignore certain relevant comparables from his analysis, for example plot L50 which was sold in 2018 for AED 40,000,000 and then again in March 2019 for AED 29,000,000. Mr Cohen had been unable to confirm why this comparable was ignored and failed to acknowledge that this data indicated a decline in property values in Sector L of Emirates Hills.
- (h). Mr Cohen had also failed to report that the Gulf Sotheby report had explicitly stated that there were three sales in same sector (Sector L) in 2018 with highest sale being AED 40,000,000 all of which Mr Cohen had ignored in his weighting. Mr Cohen's market trends analysis was also unreliable having been based exclusively on only two sources (Mr Cohen had confirmed that he had referred to nothing else; Day 20 pages 80-81). In addition, Mr Cohen had relied on the expertise of Mr Torzewski whose experience in valuing Dubai properties was insufficient (his experience was in rural and agricultural properties including ranches, farmland and orchards).

40 Lowndes Square Stake

181. As regards the 40 Lowndes Square Stake:

- (a). the Plaintiff submitted that he had acted reasonably in relation to realising this property. He had endured the ownership of the development for as long as he reasonably could (even to the point where he invested £2,841,897 of his own money in the form of shareholder loans) before realising that a sale (at a value that allowed him to break even) was the lesser of two evils.
- (b). Mr Cohen's valuation was flawed and should be rejected.

- (c). the valuation had four key components or elements. The likely sales proceeds from the development; the costs to complete the development; any applicable discounting; and the size of Mr Jafar's stake in the development. The Plaintiff challenged the reliability of Mr Cohen's approach to each of these elements.
- (d). Mr Jafar , said that Mr Cohen's calculations of sale proceeds were based exclusively on data copied from a valuation by Colliers in 2019 without any credible analysis to justify reliance on that data. The Plaintiff submitted that Mr Cohen's answers to questions from Lord Falconer during cross-examination revealed only a limited and weak understanding of the underlying data and an inability to justify the analysis and judgments (in particular as regards the selection of suitable comparable properties) on which the sale proceeds analysis had been based. Mr Jafar submitted that the cross-examination revealed that Mr Cohen had relied almost completely on Mr Torzewski and that there was no real evidence that Mr Torzewski had any relevant expertise in valuing properties in Central London. The Plaintiff referred to the cross-examination on Day 20, pages 51-56. The following extracts from this part of Mr Cohen's cross-examination gives an indication of Mr Cohen's answers:

“Q. What is it in your expertise that makes you able to judge whether or not the location of a property in Lowndes Square makes it - the location of a property in the comparables list makes it a good comparable with Lowndes Square? Let me help you, so you understand the question. Go to your table 10. You have told us that Clarges in Mayfair, comparable 2, is a good comparable. What made you select that one? Tell his Lordship what makes that a particularly good comparable in terms of location?”

A. As I'm sitting here right now, I would need to look at its location in relation to the subject –

Q. Is it proximity, is it type?

A. I looked at size and location.

Q. I'm asking about location?

A. I have said, if I look at a location, to sit here right now and tell you exactly where it's located in relation to

Q. Could you tell his Lordship what steps you took in order to determine whether or not Clarges Mayfair W1 was a good comparator?”

A. *There was a judgment made on –*

Q. *Who made the judgment?*

A. *I did in consultation with [Mr Joseph Torzewski] ...*

Q. *You describe him as having 20 years' experience in commercial property. So his expertise is not in residential property; is that correct? Look at paragraph 10 of your report.*

A. *Yes, he does have experience in residential.*

Q. *Could we look at - tell me where that is mentioned in paragraph 10? ... It's not mentioned at all. You would have thought, Mr Cohen, if the only thing that Mr Torzewski is doing is valuing residential property, which is all he is doing in this, you would have mentioned that. Why wasn't it mentioned? The answer it wasn't mentioned is because he doesn't have any experience in residential property?*

A. *I disagree with that.*

Q. *Explain to his Lordship why it wasn't mentioned?*

A. *I'm not sure why it wasn't mentioned but he has experience in residential properties.*

...

A. *Thank you, my Lord. I'm a bit chopped up in my thoughts, but Joe has experience in residential real estate valuation as well as, as mentioned here, rural - commercial real estate is a term of art, perhaps maybe in the US more so than in the Cayman Islands or in the UK. But he has experience covering a broad range of property types.*

- (e). Mr Cohen had been unable to confirm the source of or justify his asserted total development costs of £11,750,714. The following exchanges with Lord Falconer dealing with the development costs issue are relevant (Day 20, pages 58-64) (my underlining):

“Q. ...If you go to your analysis, at {E/2/38}, you talk about expenses and development costs... In order to work out what the value of this development is, you have to work out how much it's going to cost to do the development; correct?”

A. *Correct.*

Q. *If you look at the Colliers figure, which is {F/373/9}, they say in "Changes Since Last Report": "The result is that the remaining construction costs of around £15.5 million as confirmed by the bank is materially lower than the figure reported in our 8 September 2018 Report, at £19.5 million."...Did you take the higher figure?*

A. *No.*

Q. *Which figure did you take?*

A. *I would like to refer to my report.*

Q. *Certainly. Could I help you?*

A. *I'm okay...*

Q. *And the answer is?*

A. *Can you ask the question again?*

Q. *Did you take the 19 million or the 15 million?*

A. *I relied on the business - the development report, the business plan from 2019... So is it possible to pull that up?*

Q. *You can't have done that because that's after the transfer date.*

A. *As far as –*

JUDGE *Is there a part of your report that it would be helpful to go to? Would that assist you to deal with this?*

A. *No, I'm okay. We can ask the question again.*

Q. *You can't have relied on the 2019 development report that is because after the transfer date and you have told us repeatedly that you don't rely on anything after the transfer date. And you agree that the transfer date of the development here was August 2018, so it can't have been that?*

A. *Right. I'm relying on that for the square footage. But as far as the cost to completion, you are asking which figure of the Colliers report I have taken.*

Q. *Could we go back to the Colliers report at {F/373/9}. There is a figure of £15.5 million, which is the April 2019 figure and there is a September 2018 figure where the costs were higher, £19.5 million, and I was in effect asking you, which figure did you take? When we went into the silence, you were looking in your report to tell us which figure you had taken. You then came back and said it was a 2019 figure, which it obviously couldn't [be]. Do you agree it couldn't be?*

- A. Right.
- Q. Do you agree it couldn't be a 2019 figure?
- A. I was referring to 2019 for the square footage, not the cost.
- Q. Tell his Lordship where you took the cost from?
- A. As I sit here, I can't tell you.
- Q. Neither can we. We can't find it in your report and you can't either.
- A. This is a sales comparison, so we are looking at the - we are not deducting costs, we are looking at the value at a date and time based on comparable sales.
- Q. What you are doing, Mr Cohen, is valuing the stake in the property development. Are you telling his Lordship that you valued it only on the basis of what the gross values, i.e. what would be obtained when you sold the property? That wouldn't be a valuation of the stake in Steadfast, would it?
- A. I disagree. Yes, I'm valuing it on the price that would be paid by two willing parties at a point in time. The gross value at that point in time, not deducting costs.
- Q. Hold on, I'm losing you at this point. There is a gross value that will be obtained when you sell the properties in the Lowndes Square development. You understand that?
- A. Yes.
- Q. There will be money that needs to be spent, because as you keep telling us, completely correctly, these properties are being developed; correct?
- A. Correct.
- Q. The value of the stake which we have to value on a market basis - what would a willing buyer pay to a willing seller of the stake - has to take account of the costs of completion, because you don't just say its value is what you are going to get in the market for the flats because there is going to be a cost in building them. Nobody in their right mind is going to pay the gross costs, the gross sales proceeds, they are bound to want to know how much it is going to cost to complete it?
- A. I would say when you are transferring an asset, you are aware of the costs associated with the asset at the time and that is built into the price that the asset is transferred to, the value I should say, that the asset is transferred for.

Q. I don't understand what you are saying, Mr Cohen. What we have just gone through, you and I, before the break, was that the market would pay for the flats once they were developed. That's what the comparables are about. Is that correct?

A. Correct.

Q. There is a cost to completing them. Do you understand that?

A. Yes.

Q. Nobody is going to buy a stake in a property development which does not take account of the difference between the gross value of selling the flats and what is the cost of completing it. Do you understand that?

A. Yes.

Q. And do you understand as well that Colliers valued the gross receipts to be received from the flats at £101 million and the value of the development at £61 million, for this very reason? I'm asking you, Mr Cohen, what in your calculation is - where do you get the figure for the cost of completing the developments? If you don't know, say you don't know.

A. In table 12, we have the development costs listed as £5.79 million and the net sales proceeds would be below that in this chart.

Q. Explain to his Lordship what deduction you have made and how it has been calculated from the figure that you calculated in paragraph 89.

A. As I sit here right now, I would have to go back to the calculations to understand where the development costs came from in this chart."

- (f). Mr Cohen's application of a 17% present value discount was also unjustified. Mr Cohen had confirmed that the 17% was purely a matter of his judgement despite the fact that by his own admission, he had no experience of the London residential real estate by which to exercise such a judgment (and Mr Torzewski's purported experience was unproven). When asked by Lord Falconer about his experience of calculating a risk percentage in relation to a London property development Mr Cohen confirmed that he had "not done it before" and, as regards Mr Torzewski's experience, Mr Cohen said that he believed that Mr Torzewski had done it before but he could not speak to the specifics. Further, Mr Cohen had been unable to confirm the sources he used to make the calculation and assessment of the appropriate discount rate.

- (g). Mr Cohen's valuation of Mr Jafar's interest in Lowndes Square had been improperly based on Mr Jafar having a 50% interest in the development. Mr Jafar had in fact only received a 42% interest in the Lowndes Square development with the remaining 8% belonging to Mr Sahenk. Even if the Court determined that the appropriate date for the valuation of the 40 Lowndes Square Stake was 14 August 2021, it should nevertheless determine the valuation on the basis of a 42% stake in LSH Limited, rather than a 50% stake. Whilst Mr Sahenk was not legally the holder of an 8% shareholding in LS Holding at the time (as appears from the shareholder register of LS Holding, being the company that owned the Lowndes Square development, Mr Jafar owned 50% of the shares in LS Holding, through SHL, until 29 May 2019, when 80,000 shares were transferred to Mr Sahenk) his convertible loan note in SHL (LS Holding's parent company), which entitled Mr Sahenk to a 16% stake in SHL had, in effect, the same status. As Mr Singhvi noted during his cross-examination (Day 16, page 113): *"But what Mr Naqvi had explained is the ownership in Steadfast was 8% owned by Ferit Sahenk and 42% by himself ... and that's how the investment also happened at the time they invested. So Ferit Sahenk had invested through him and it was not fully reflected in the share register. And from what I understood is because Ferit Sahenk was a friend of Mr Naqvi and they had some sort of an understanding. But when Mr Naqvi was transferring it to Mr Jafar, Ferit Sahenk wanted his shareholding to be directly reflected in the share register. And it took some time for that to happen."* It was clear that, once Mr Sahenk was aware of Mr Jafar's ownership of Mr Naqvi's share, he sought to formalise his 8% share in the project.

The Yacht

182. The Plaintiff submitted that:

- (a). the net sale price was a proper basis for assessing the value of the Yacht at the relevant date. There had been no unjustified delay in selling or unwillingness to sell the Yacht. Mr Singhvi had made it clear that realising the Yacht could only (and reasonably) be possible until the transfer of the Yacht had been perfected. The fact that Mr Jafar may have had an equitable interest in or the benefit of the Yacht was

irrelevant. It was entirely reasonable for Mr Jafar to wait until he was completely comfortable as to his ownership of the Yacht before seeking to sell it. The evidence showed that Mr Singhvi (advised by his brokers) did everything he could to realise the Yacht for a reasonable price and within a reasonable time, against a backdrop of name tainting, substandard physical condition and the COVID-19 pandemic.

- (b). the deduction of the costs related to the VAT Penalty Notice was reasonable and justifiable. Those costs were incurred to preserve the tax status of the Yacht and should be offset against the sale price. Had this not been done, the sale price of the Yacht might have been adversely affected.
- (c). Mr Cohen's valuation as at the date of transfer of either US\$ 17,375,000 or alternatively US\$ 16,950,000 was unreliable and should be rejected.
- (d). Mr Cohen was unable to justify his use of the blended valuation methodology. When asked if he had made the decision with the assistance of Captain Herschler and Mr Johnston, Mr Cohen said "*I think it's too black and white to be able to say it that way*" (Day 20, page 120). He also confirmed that he had no experience himself of using a blended rate to value superyachts and had no examples of Captain Herschler or Mr Johnston doing so. He was also unable to produce evidence to support the estimated replacement cost of US\$ 35 million used in his calculations.
- (e). Mr Cohen was also unable to justify his approach to depreciation and the use of a straight-line basis, which was inconsistent with the American Society of Appraisers' analysis, of which Captain Herschler and Mr Johnston were members. Mr Cohen had no real answer for this during his cross-examination save to say that it was Mr Johnston's opinion. The relevant part of Mr Cohen's cross-examination is as follows (Day 20, pages 143-147):

"Q. ...If we go to the way you calculate the loss, you take \$35 million, do you not, as the cost of rebuilding?"

A. Yes.

- Q. You then take 10% of that; correct?*
- A. Correct.*
- Q. And you then make a reduction for depreciation?*
- A. Yes. 9.83. But yes, roughly 10%, each year.*
- Q. You are assuming that the condition of the yacht was what you would expect after 10 years –*
- A. Correct.*
- Q. - from 2008 to 2018. You knew nothing presumably about the condition of the yacht?*
- ...*
- A. Well, I mean, there are reports that are in the record and there are various things that we've reviewed in consultation or in preparation for the valuation, so we had some idea of the condition of the yacht.*
- Q. What assumption were you making about the condition of the yacht? That it was just as you would expect the condition of a yacht after 10 years?*
- A. Right. The assumption is that there is depreciation of 10 years, as you see, 1.165 per year.*
- Q. Just a straight line depreciation?*
- A. That's correct.*
- Q. It's right, is it not, in relation to the depreciation of yachts, normally it's not done on a straight line basis?*
- A. I think there are differing opinions on that. We obviously feel it is straight line.*
- Q. I assume you have no expert opinion of your own as to what was the right way to deal with depreciation of superyachts?*
- A. Right. That's where the importance of the consultation with the marine vessel colleagues is.*
- Q. Which of the two, was it Mr Johnston or was it Captain Herschler?*
- A. Mr Johnston was the one.*

- Q. Mr Johnston was the one who provided the expertise in relation to depreciation?*
- A. Yes.*
- Q. If you go to {E/9/17}, this is Mr Coats' second report. Look at paragraph 55. It's not a straight line. Tell me when you've read it. If you go on paragraph 55 and over the page, tell the operator when you want to turn it over....What Mr Coats is saying in his second report is that it is not done on a straight line basis, it is done on a reduced balance curve, producing a balance type depreciation curve... What did Mr Johnston say about that what you put that to him?*
- A. That it was incorrect.*
- Q. Did he give you a reason for that? Did he explain? Because we don't have the benefit of having Mr Johnston here. You are the person who speaks on his behalf.*
- A. That's correct.*
- Q. Tell us what he said.*
- A. He said it's inappropriate to do so and a straight line depreciation is appropriate; it's not the same as other assets, it's unique and it would be following a straight line depreciation.*
- Q. Does he agree that yachts typically are to be depreciated according to the American Society of Appraisers on a reducing balance curve rather than a straight line?*
- A. It was his opinion that this yacht should be done on a straight line.*
- Q. I'm sorry, you didn't listen to my question or I didn't put it clearly enough. Did he agree that the American Society of Appraisers stipulate that yachts typically depreciated on a reducing balance curve rather than a straight line?*
- A. Yachts or superyachts?*
- Q. This says "yachts."*
- A. Right. So –*
- Q. That distinction, presumably, is one that he drew with you?*
- A. Exactly.*
- Q. What did he say was the difference between yachts and superyachts?*

A. *He didn't. He looked at this yacht and said that straight line depreciation is the appropriate method.*

Q. *I'm asking you a slightly more detailed question.*

A. *I understand that and I wish that I had more detail for you, other than it was his expert opinion that straight line depreciation in relation to this superyacht was appropriate."*

- (f). in addition, Mr Cohen was also unable to justify his use of and reliance on the Yacht's length rather than gross tonnage, especially after he admitted that the application of a gross tonnage calculation to the Yacht would immediately reduce the value of the Yacht by 10%. He was unsure whether any of his team had spoken with superyacht industry experts whereas Mr Coats' team had contacted Mr Alex Banning of SuperYachts (the broker of the Yacht) who had confirmed that gross tonnage was the appropriate metric for measuring a superyacht. The following is an extract from the relevant cross-examination of Mr Cohen by Lord Falconer on Day 20 (pages 152-154):

"Q. If you go over the page, {E/2/58}, figure 3, you have two charts, do you see those?

A. *Yes.*

Q. *Am I right in saying that what you have done in relation to those two charts is calculate the price per square metre by taking the cost of selling the vessel and dividing it by the square meterage of all the vessels?*

A. *Correct.*

...

Q. *We agree, do we not, that the gross tonnage of the vessel is 491 gross tonnes?.... And the length of the vessel is 47m?*

A. *Yes.*

Q. *It is right, if one does it on a gross tonnage basis rather than a length basis, it produces a 10% lower figure; correct?*

A. *I believe so.*

Q. It is right, is it not, that length is not the main feature in determining the value of superyachts, that gross tonnage is a much better guide? If you go to paragraph 56 of Mr Coats' second report, {E/9/18}?

A. Yes. I disagree with his –

...

Q. Do you disagree because this is what either Captain Herschler or Mr Johnston has told you?

A. ...Yes, in consultation with those that are versed in marine vessels, I feel that it's not measured - that the best way to measure a superyacht is not gross tonnage but length....”

- (g). Mr Cohen sought to inflate artificially the value of the Yacht by downplaying its condition despite performing only a desktop appraisal. In reality there was a substantial amount of work that needed to be done to the Yacht, as noted by the extensive works list in winter 2018/2019 and certain prospective buyers who had rejected it (for example the prospective buyer whose surveyors confirmed that the Yacht was not ready to cross the Atlantic).

The El Gouna Property

183. Mr Jafar valued the El Gouna Property, as I have noted, at its net realised sum of EGP 7,042,753 and argued that the value that he had received was in reasonable mitigation of his losses. In the alternative, he relied on Mr Coats' adjusted net realised value at the date of transfer of US\$ 413,615.

MVI

184. Mr Jafar valued MVI at its net realised sum of US\$ 5,365,347. Mr Jafar submitted that this sum (based on the “base case” unrealised value of the underlying portfolio companies and funds) represented the most prudent valuation at that time and what MVI's fund manager could have sold the asset for at that time. Whilst Mr Singhvi had noted that a higher fair market value had been ascribed by MVI's fund manager there was no guarantee that the asset was marketable at a higher value than the sum that was paid and Mr Jafar had offered his MVI stake to the other limited partners in the fund but

no offer had been received. Therefore, and against the backdrop of Mr Jafar's reasonable mitigation efforts (to obtain a reasonable value in a reasonable period of time), Mr Jafar had obtained a reasonable value for the asset.

185. Mr Jafar argued that Mr Cohen's estimate of value was unreliable and should be rejected. Mr Cohen's approach and the issues arising can be seen from the following exchanges between Mr Cohen and Lord Falconer during Mr Cohen's cross-examination (Day 20, pages 175-180) (my underlining):

“Q. The price paid by Crescent was the base price, which is the value of the whole enterprise based on the base price values of the companies into which MVI had invested, divided by two to get to the 50%, because ... Mr Naqvi only owned 50%?”

A. Correct.

*Q. And that can be seen at {D1/6829/2} [the Fund Manager's document “MVI Portfolio Overview and Valuation Assessment” dated 5 September 2018 (**the MVI Assessment**)]. Do you see the base case, that's where the figure is taken from? It is right, is it not, that the fund manager had done the assessment of the base case?”*

A. I believe so.

Q. You see how the respective cases are calculated. Do you see the base case - do you see what's happening in relation to this document - let me see if I have got this right. What this document describes is the 33 companies into which MVI has invested, and they are all startups, early-stage startups; correct?”

A. Correct.

Q. It says - when it says "Cost", that means the original investment in that company?”

A. Correct.

Q. In relation to - when you look at the base case, some of them are discounted to nil, some of them are discounted by other amounts, and some of them are increased. Is that correct?

A. You are referring to the red or the yellow discount?

Q. The red.

A. Yes.

Q. It's the base case, is it not, which funded [formed] the basis of the valuation?

A. Agree.

Q. If you go over the page, {D1/6829/6}, you see ... eight other ones, which are I think write-offs?

A. Okay. I see them.

...

Q. In your second report, at {E/10/15}, what you do is you don't take the base case and you don't take the fair market value case; what you do is you take the fair market value and then reduce the discounts that have been made. Is that correct? And what is happening there is that the person doing this calculation is discounting the cost figure by a particular percentage to get to what he or she thinks is the fair market value.

A. Correct.

Q. If you then go to your [second] report, {E/10/15} ...what you have done is taken that fair market value figure, taken the discounts and then reduced them. So one can see that from your table 2. Take the first one, "Presented Discount" 90%, and then you have adjusted that discount to 32%, thereby increasing the value of each investment. That's correct, isn't it?

A. Yes.

Q. If you go to the bottom of the page, you have said \$9.5 million, which was the presented FMV done by the person who did the fair market value valuation, and because you have dramatically reduced the discounts, the value goes up to \$15.386 million; correct?

A. Correct. It was my opinion that the presented discounts in this valuation were high. And needed to be adjusted... to be more reasonable based on the facts of these investments and [as] early-stage VC companies.

Q. If you go to {D1/6829/5}... you see a rationale is given for each discount.... So this was not some across the board evaluation of what the right discount would be, it was addressed on a case by case basis, was it not, in relation to each of the investments; correct?

A. ... It appears that each one has commentary regarding why the discount was made. I don't know who made the comment, why they made it or what would support it, so that's why I say "appears so." But, as I was saying, these discounts seem high to me and given the fact that it's not an arm's length transaction and the discounts are high, based on other facts, for example, to put certain discounts above 50% for companies that have just recently received funding I think could call into question the level of discounts included in this yellow discount column."

186. Mr Jafar said that Mr Cohen's estimate was based on taking the fair market value as identified by MVI's fund manager and adjusting (reducing) the discounts which had been applied against each of the underlying portfolio entities, on occasions by as much as 63%. Mr Jafar argued that Mr Cohen had no proper basis for doing so. The result was that Mr Cohen had artificially inflated the fair market value from US\$ 9,595,311 to US\$ 15,386,739. Mr Cohen's stated basis and justification for reducing the discounts was a combination of: (i) Mr Jafar's sale to Crescent Capital constituting a non-arm's length transaction; (ii) his view that a 32% discount is "*generally considered the maximum*" discount in respect of lack of marketability; and (iii) more generally that the discounts simply "*seem[ed] high*" (Day 20, page 179). The discounts used in the fund manager's MVI Assessment had been assessed by MVI's fund manager (a party completely unconnected to Mr Jafar's sale to Crescent Capital) and should be taken as independently assessed and reasonable. MVI's fund manager had provided notes as to why those discounts were justified and applied going beyond taking account of the mere lack of marketability and tailored to the position of each investment. Thus, for example, in relation to QBeats, the fund manager had applied a 95% discount, citing the inability "*to secure institutional capital, has not generated revenue since launch 5 years ago.*" Despite this considered and investment specific discount, Mr Cohen had reduced the discount to 32% (see Table 2 of Cohen 2) based on his generic and generalised assessment of what an appropriate discount should be. Mr Jafar submitted that the Fund Manager's discounts should be preferred and that Mr Cohen had failed to justify his modifications.

Wamda Capital

187. Mr Jafar valued Wamda by reference to its net realised sum of US\$ 5,081,048 resulting from the sale to CCL.

188. Mr Jafar submitted that Mr Cohen's value estimate as at the date of transfer of US\$ 5,800,000 was unreliable and should be rejected. Mr Jafar said that Mr Cohen had relied on two factors. The first was that the transaction with CCL was not at arm's length. But, Mr Jafar said, the fact that Wamda was not sold as part of an arms-length transaction did not have any bearing on whether Mr Jafar had obtained fair value for it. The second factor was the communication from Wamda in September 2018 (set out above). That

communication referred to an offer of US\$ 5,800,000 for Mr Jafar's eventual interest having previously been made and presumably rejected and requiring future offers to equal or exceed that earlier offer. Mr Jafar said that Mr Cohen had inferred that US\$ 5,800,000 was the minimum applicable value. But the communication post-dated the transfer to Mr Jafar and therefore, on Mr Cohen's own methodology, should not form the basis of his valuation. All Mr Cohen could say in response when asked about this during his cross-examination was that "*What makes me doubt the ability to perform a valuation is the fact that it is not arm's length and we don't have the documents and so I'm making an estimate of value in the best way that I can*", which Mr Jafar submitted showed how speculative and unreliable Mr Cohen's estimate was. In any event, Mr Jafar argued, the communication was not a reflection of the marketability or, indeed, the true value of shares in Wamda. As Mr Singhvi had noted, Mr Jafar did not receive any offers for his stake in Wamda, despite it having been offered to the other limited partners (Day 17, page 34) and if he had received an offer at a higher price he would have accepted it (Day 17, page 26). The Abraaj Group itself had been seeking to offload its stake in Wamda for a price below its own investment cost and as Mr Cohen admitted, if the transfer from Mr Jafar to CCL was insufficient in terms of value, the General Partner would have sought competing bids from Wamda's other limited partners and then, if necessary, rejected CCL's offer (which it did not) (Day 21, page 3).

First Minute Capital

189. Mr Jafar submitted that First Minute Capital should be accounted for at the net price that he realised, namely £70,000. He said that the sale was effected in reasonable mitigation of his losses and that it was necessary to sell the asset prior to the capital call of £313,157 (which Mr Jafar did not wish to make). Furthermore, the buyer of First Minute Capital was identified by its general partner and Mr Naqvi, who were best placed to source a buyer as they knew the asset and wanted to maximise its value.
190. Mr Jafar argued that Mr Cohen's estimate as at the date of transfer of US\$ 138,975 was once again unreliable and should be rejected. It was based on a theoretical industry return from the date of investment by Mr Naqvi (26 April 2017) to the date of transfer to Mr Jafar (6 September 2018). Mr Cohen's theoretical return was based on the 1-year pooled rate of return as set out in the Cambridge Studies fund year 1 return. As First Market Capital is an English limited partnership the applicability of the Cambridge Studies data

was questionable. Mr Jafar also argued that Mr Cohen's cross-examination had revealed that he had only a very limited understanding of this asset. He had been unable to confirm what First Minute Capital did as a business (Day 21, page 7) or what its performance was like (Day 21, page 7), let alone justify his approach to determining his estimate.

Velocity Black

191. Mr Jafar valued Velocity Black by reference to its net realised sum of US\$ 119,183 or, alternatively, Mr Coats' adjusted net realised value as at the date of transfer of US\$ 47,989.
192. Mr Cohen gave an estimate of value as at the date of transfer of US\$ 59,814. This was based on a theoretical industry return from the date of investment (15 August 2016) to the date of transfer to Mr Jafar (6 September 2018) and was speculative (and less reliable than the actual net sale price).

Art Dubai Shares

193. Mr Jafar relied on Mr Coats' evidence. Mr Coats valued the Art Dubai Shares as at 31 March 2023 for US\$ 2,474,991 and, alternatively, as at the date of transfer for US\$ 2,198,229.
194. Mr Jafar argued that the Fund Parties had not challenged, during their cross-examination of Mr Jafar and Mr Singhvi, their attempts to sell the Art Dubai Shares. The Court should therefore assume that the Fund Parties accepted that Mr Jafar and Mr Singhvi had done everything they reasonably could to sell the shares as part of Mr Jafar's mitigation efforts.
195. Mr Jafar submitted that Mr Coats' valuation should be preferred to that of Mr Cohen. Mr Cohen had valued Mr Jafar's stake in Art Dubai as at the date of transfer at US\$ 3,389,210. Mr Coats and Mr Cohen agreed on the appropriate methodology to apply to valuing Art Dubai but not on its application. The Court was invited to adopt Mr Coats' methodology and to apply his estimated transaction costs, which were not challenged by Mr Cohen.

Segovia Technologies

196. Mr Jafar relied on Mr Coats' valuation. As at 31 March 2023, Mr Coats valued Crown Agents Bank at US\$ 4,659,546 and Taptap Send at US\$ 9,728,840 and, as at the date of transfer, he valued Crown Agents Bank at US\$ 1,952,323 and Taptap Send at US\$ 4,076,328.
197. Mr Cohen had provided an estimate of value as at the date of transfer of US\$ 8,299,911. Mr Jafar submitted that this was, once again, unreliable. Once again, it was based (only by reference to his own experience) on a theoretical industry expected return from the date of investment (15 July 2014) to the date of transfer to Mr Jafar (6 September 2018). Throughout Cohen 2, Mr Cohen was heavily reliant on an investor presentation of September 2018 to justify the valuations for the Venture Capital Portfolio assets such as Zignal Labs, Velocity App, The Marque and King Children. However, for Segovia Mr Cohen had without explanation or justification departed from this approach, stating *"given that I have not been provided with the detail supporting the \$5,600,000, I do not know the assumptions and inputs used to determine this value and how it may differ from my estimate."*

King Children

198. Mr Jafar relied on Mr Coats' valuation of US\$ 214,964 as at 31 March 2023 or US\$ 160,187 at the transfer date.
199. Mr Jafar submitted that Mr Coats' valuation methodology was pragmatic and uncontroversial. Mr Jafar's investment in King Children was a US\$ 150,000 promissory note with an interest rate of 8%. The borrower has not converted and the original deadline for doing so has passed. It was therefore logical to take the initial investment and apply the interest rate up until the date of valuation.

Zignal Labs

200. Once again, Mr Jafar relied on Mr Coats' valuation. Mr Coats had valued Zignal Labs at US\$ 100,000 both in relation to the date of his report and as at the date of transfer. As Mr Singhvi had confirmed, Mr Jafar had been unable to obtain any meaningful financial information as to its value. In the absence of any information, it would be artificial to construct a valuation that was not the last-known value of the investment.
201. However, Mr Cohen, had, Mr Jafar submitted, once again relied on a speculative and theoretical methodology to justify his estimate as at the date of transfer of US\$ 232,285. In the complete absence of information, he had applied a speculative rate of return from the date of the investment (15 November 2015) to the date of transfer to Mr Jafar (6 September 2018).

The Marque

202. Mr Jafar submitted that Mr Coats' nil valuation (both as at the date of his report and the date of transfer) should be accepted. The Marque had been placed into insolvent administration and then voluntary winding up with no prospect of any recovery being made. Mr Cohen's estimate as at the date of transfer of US\$ 32,250 was therefore flawed and to be rejected.

Romulus Capital

203. Once again, Mr Jafar relied on Mr Coats' valuation. Mr Coats valued Romulus Capital as at 31 March 2023 at US\$ 1,624,297 or, alternatively, as at the date of transfer for US\$ 1,288,204.
204. Mr Jafar argued that Mr Cohen's estimate of value of US\$ 2,460,000 should be rejected as speculative and unreliable. He had once again applied a purely theoretical industry return from the date of the investment by Venrom in Romulus Capital (13 September 2012) to the date of transfer to Mr Jafar (6 September 2018).

The Artwork

205. Mr Jafar valued the realised Artwork by reference to the net amount obtained on its realisation in the aggregate sum of US\$ 17,439,073 and the unrealised Artwork at between US\$ 1,686,326 and US\$ 2,510,679 based on the estimate provided by Christie's, a world-leading auction house with a team of industry experts in the art that Mr Jafar owns.
206. Mr Jafar argued that, as regards the realised Artwork, Mr Singhvi was obviously right, and it was obviously reasonable, to rely on the valuations and sales processes of Christie's. However, and even under the guidance of Christie's, Mr Jafar and Mr Singhvi had taken steps to maximise returns in relation to the Artwork for example by pushing for higher reserves. There was little that either Mr Singhvi or Mr Jafar could do in relation to the speed at which the Artwork was sold, since, as Mr Singhvi confirmed in his evidence, the Artwork was affected by market retractions, the COVID-19 pandemic and general tainting as a result of the connection to Mr Naqvi.
207. Mr Jafar submitted that Mr Cohen's valuations were wholly unreliable and should be rejected. He had, in his capacity as expert, valued only 72 of the approximately 250 pieces of the Artwork, citing a need for more information and "*a time constraint.*" However, it appeared that Mr Cohen accepted that Christie's valuations were reliable and should be accepted by the Court (see [99]-[100] of Cohen 2).

Mitigation

208. Mr Jafar submitted that the duty to mitigate required that a plaintiff act reasonably. It was not enough to show that more could have been done or greater amounts recovered. Citing from Mumford and Grant, *Civil Fraud* (1st ed. at [21-043]), Mr Jafar submitted that "*The burden is on the defendant to establish not only that the claimant acted unreasonably, but that if he had acted reasonably his loss would have been reduced.*"
209. Mr Jafar said that in a deceit claim, no duty to mitigate can arise prior to the discovery of the fraud. As Mr Justice Green (as he then was) said in *Khakshouri v Jimenez* [2017] EWHC 3392 (QB) at [185], "*Much will depend upon '...what the court regards, in the circumstances, as being reasonable. Judges are reluctant to impose excessive demands*

on claimants' (ibid). Court[s] do not, for instance, require a claimant to "...risk capital in a speculative venture' (citing Jewelowski v Propp [1944] KB 510)."

210. Mr Jafar argued that the Court's approach was summarised well by Mr Justice Leggatt in *Thai Airways Int'l Public Co Ltd v KI Holdings Co Ltd* [2015] 1 C.L.C. 765 at [38]:

"The standard of "reasonableness" is, however, applied with some tenderness towards the claimant having regard to the fact that the claimant's predicament has been caused by the defendant's wrongdoing... Thus, the claimant is not expected to take steps which would involve unreasonable expense, risk or inconvenience... In addition, the burden of proof is on the defendant to show that there was a course of action which it was reasonable to expect the claimant to adopt that would have avoided all or an identifiable part of the claimant's loss... Furthermore, there is often a range of responses available to the claimant which will be regarded as reasonable. As stated by Potter LJ in Wilding v British Telecommunications Plc [2002] EWCA Civ 349; [2002] ICR 1079 at para 55:

"If there is more than one reasonable response open to the wronged party, the wrongdoer has no right to determine his choice. It is where, and only where, the wrongdoer can show affirmatively that the other party has acted unreasonably in relation to his duty to mitigate that the defence will succeed."

211. Mr Jafar argued that he had behaved reasonably in dealing with and seeking to realise the Settlement Assets.
212. Mr Jafar said that the Fund Parties' case in relation to mitigation appeared to be based on three complaints. First, an allegation that Mr Jafar was required to pursue Mr Naqvi further or should have accepted other assets offered to him by Mr Naqvi. Secondly, that Mr Jafar should have realised more for the Settlement Assets which he had sold or realised. Third, the claim that Mr Jafar should have mothballed certain assets until the market for those assets improved. Mr Jafar said that each of these complaints was unjustified.
213. As regards the first complaint, Mr Jafar argued that the evidence demonstrated that he had pursued not only Mr Naqvi but also AH and AIML legitimately and relentlessly and had recovered substantially more than could have been expected given Mr Naqvi's position and the fact that AH and AIML were in insolvent liquidation. It was clear that Mr Naqvi is now an empty target. He has no assets and is awaiting extradition to the United States, and even if he did have any remaining assets they would be susceptible to

a claw back by the US Department of Justice and/or the Securities and Exchange Commission.

214. GP8 had argued that had Mr Jafar accepted 4 Palace Gate as part of the settlement arrangements, his loss under the Loans would have been reduced by a further £6.3 million (or approximately US\$ 8.1 million). But Mr Jafar had been told and believed that Mr Naqvi's elderly mother was living there and it was reasonable for him to have decided that he should not take a property occupied by an elderly lady and have to seek to have her ejected from her home. It was also the case that the evidence did not indicate the actual equity value that Mr Naqvi held in the property.
215. As regards the second complaint, the claim that Mr Jafar should have realised more for the assets that were sold or realised and that he had acted unreasonably in relation to the sale process, was unjustified.
216. The GHF Parties had claimed that Mr Jafar had acted unreasonably in not accepting earlier and higher offers for the Dubai Villa. But, Mr Jafar argued, it was reasonable for Mr Jafar, assisted by Mr Singhvi, to sell the property when they did in December 2020. The sale to Mr Goutorov was made following earlier advice from the estate agents overseeing the sale of property that offers in the region of AED 44 million were "*right on the money*" and "*the sale price of AED 40,500,000 is a fair reflection of market value at this time.*" This was better than the values of "*37/38 million AED*" that Mr Borg advised would be received if Mr Jafar held on much longer. The Fund Parties contended that Mr Jafar sold substantially lower than the initial valuations provided by Gulf Sotheby, Luxury Properties and Savills. However, the reality, as Mr Singhvi confirmed, was that Mr Jafar did not receive offers anywhere near those figures.
217. As regards the third complaint, Mr Jafar said that the Fund Parties' repeated complaint that Mr Jafar should have mothballed assets, aside from not having been pleaded or argued in correspondence, was fundamentally artificial and did not come close to meeting the high burden of unreasonableness. As Mr Singhvi had confirmed, mothballing an asset such as the Dubai Villa, with its substantial maintenance and staffing contracts would have inevitably required incurring extra costs as well as foregoing revenue and potential sales. Equally, mothballing the Yacht (and, by extension, suspending its crew) would

have led to its degradation. Instead, and as was entirely reasonable, Mr Jafar chose to generate revenue by chartering the Yacht. Reasonableness did not require that a party in Mr Jafar's position, who had received assets in partial discharge of a money debt, sit on such assets for years, incurring costs in their upkeep, in the vain hope that some years in the future they may be capable of being sold at a higher value, and in direct contradiction of the advice provided by Mr Jafar's brokers.

The Fund Parties' submissions

The Fund Parties' position in outline

218. The Fund Parties' position can be summarised as follows:

- (a). Mr Jafar's basic loss was US\$ 255 million (US\$ 300 million – US\$ 45 million).
- (b). Mr Jafar's loss after credit is given for US\$ 33 million of cash repayments was therefore US\$ 222 million.
- (c). the value of the Settlement Assets as at the date of transfer was between US\$ 105,429,372 and US\$ 109,274,526. Mr Cohen's valuations and estimates of value should be accepted by the Court.
- (d). Mr Jafar's loss after credit was given for the Settlement Assets was, therefore, between US\$ 116,670,628 and US\$ 112,725,474.
- (e). Mr Jafar had failed to mitigate that loss to the extent of at least US\$ 8.1 million.
- (f). accordingly, the quantum of Mr Jafar's claim in deceit was between US\$ 104,625,474 and US\$ 108,570,628.

The impact of the BOS loss sharing on the quantification of Mr Jafar's loss – the Loss Sharing Issue

219. The Fund Parties argued that Mr Jafar's basic loss, which was the starting point for assessing the damages to which he was entitled, was the amount of the First Loan and Second Loan less the share of those loans for which BOS had agreed to be responsible.
220. The Fund Parties said that Mr Jafar had funded the Loans by borrowing US\$ 300 million from BOS pursuant to the cheque discounting facilities constituted through post-dated cheques issued by AIML (which was secured against bank deposits held with BOS in the name of Mr Jafar and his wife) and pursuant to that arrangement, Mr Jafar had assumed a liability to BOS in the event that the post-dated cheques were not honoured. However, instead of Mr Jafar having a liability for the whole amount, he and BOS had agreed that his exposure and liability would be for the amount advanced (i.e. US\$ 300 million) less US\$45 million (BOS's exposure). That agreement had initially been recorded in a memorandum of understanding dated 21 December 2017, which provided that BOS would have a US\$45 million exposure to the First Loan. The agreement was, however, subsequently revised pursuant to a 1 July 2018 amendment agreement to comprise a US\$45 million exposure on the part of BOS in respect of both the First Loan and the Second Loan. The overall effect of those arrangements had been summarised at [76] of Nerguizian 1: "*Accordingly, the Bank and Mr Jafar entered into a letter agreement, dated 1 July 2018, by which the Bank agreed that, should Mr Jafar fail to recover the amounts due to him under the cheques obtained from AH and AIML, the Bank would bear 15% of those eventual losses.*" The Fund Parties said that in practical terms the effect of the arrangements between Mr Jafar and BOS was that, if Mr Jafar had made zero recoveries on the Loans, he would only be required to repay US\$255 million to BOS. As a result, they submitted, that figure represented the extent (and the highest possible amount) of Mr Jafar's loss. Mr Jafar had exposed himself to a liability of US\$ 255 million. He has never been exposed to a liability or loss of US\$ 300 million.
221. Mr Jafar was wrong to claim that this risk-sharing with BOS did not reduce his loss for the purpose of claiming damages. Mr Jafar had relied on the fact he had been the sole party that had agreed to provide all of the Loans, which were made in his name and paid from his bank account, and which would be repaid to him per the post-dated cheques,

and that BOS's agreement was a matter only between Mr Jafar and BOS. This argument conflated Mr Jafar's contractual claim against AH and AIML (the face value of the Loans) with his tortious claim for damages (measured by reference to the actual loss to which Mr Jafar was exposed by reason of having advanced the Loans).

222. Accordingly, the maximum extent of any tortious claim in damages from Mr Jafar was US\$ 255 million which then had to be reduced by the US\$ 33 million of cash repayments in March 2018 reducing the balance of his loss to US\$ 222 million, and then by the value to be attributed to the Settlement Assets.

Mr Coats' evidence

223. The Fund Parties criticised Mr Jafar's instructions to Mr Coats. His instruction not to value the assets as at the date of transfer appeared to have been a deliberate attempt to manipulate the value of the assets *ex post facto*, so that Mr Jafar would be required to credit the lowest possible amount against the Loans.

224. The result was that (with the exception of one asset) Mr Jafar had adduced no expert evidence as to the value of Settlement Assets at the date on which each asset was transferred to him, which is the date provided for in the Directions Order setting out the scope of permitted expert evidence. Mr Jafar's instruction to Mr Coats resulted in valuation evidence which was contrary to Mr Jafar's own pleaded case and to that order. No attempt had been made by Mr Jafar to vary that order or to explain why he has not complied with it. Save with respect to Art Dubai, the only evidence before the Court as to the value of the Settlement Assets as at the relevant date was therefore that provided by Mr Cohen on behalf of the Fund Parties.

225. There were also a number of reasons why Mr Jafar's evidence on valuation should be treated with considerable scepticism and disregarded almost in its entirety. First, Mr Jafar had never explained or justified his instruction to Mr Coats to assess the net value of the assets by reference to the (arbitrary) date of his report, instead of the date on which the assets were received. What the assets were worth, some five years later, was both irrelevant and inadmissible. Secondly, Mr Jafar gave his expert instructions not to value the realised assets at all, despite the fact that his expert accepted that he would have been

able to perform a full valuation of some of the assets as at the date of transfer, had he been so instructed. Mr Jafar had asserted, with no expert evidence to support that claim, that the realisation price is the best indicator of value as at the date of transfer (irrespective of how much later the asset was sold). The obvious and only inference was that Mr Jafar was concerned that a proper valuation of each of the assets as at the date of transfer would yield a materially higher figure than that for which the assets were ultimately sold. Thirdly, Mr Jafar had included, and instructed his expert to include, the costs to maintain, operate, market, and realise the relevant assets, which had the effect of further depressing their apparent worth. In cross-examination, Mr Coats had gone to great lengths to try to defend the inclusion of costs but was ultimately forced to concede that by reference to the IPEV 2022 guidance, but for the instructions under which he was operating, he would not have taken account of costs if he were applying the IPEV 2022 guidance to his valuation (unless otherwise required to do so in accordance with that guidance) and that as regards the IVS guidance, his interpretation of certain elements of the valuation principles was simply wrong, such that it was not appropriate to include costs in the circumstances of a valuation applicable in this case. Mr Jafar's approach was not only unprincipled in including the costs of selling the assets, but also in attempting to include costs that were clearly unrelated to any transfer or sale of the asset or that were incurred solely because of improper conduct by Mr Jafar or his authorised representatives after receipt of the asset. One of the most egregious examples was Mr Jafar's attempt to include in the net value of the Yacht the legal costs of defending a fraud perpetrated by his yacht management company (which he appointed) against the French customs authorities, which even Mr Singhvi agreed was not "*a happy turn of events.*"

226. Between Coats 1 and Coats 2, Mr Coats' view of the inclusion of costs in the value of the assets shifted. The starting point was, as already noted, that Mr Coats was instructed to include costs in his valuations. However, in Coats 2, Mr Coats sought to justify the inclusion of costs on a principled basis and defended his analysis on cross-examination, relying primarily on a strained interpretation of "*market value*" under the guidance provided by the IVS. Whilst Mr Coats accepted that the IVS did not expressly refer to costs in the definition of "*market value*", his view was that these were implied within the term "*after proper marketing.*" Having been taken at length in his cross-examination through the relevant provisions of IVS (and IPEV 2022), Mr Coats' reasoning then collapsed and Mr Coats conceded that his interpretation of "*market value*" (as including

costs) was a “*wide definition*” which would not be correct if the provisions of the IVS were given a “*strict definition*.”

227. In Coats 2, Mr Coats had purported to provide estimates of assets at the date of transfer, in an attempt to provide a comparison to Mr Cohen’s valuations and estimates for the benefit of the Court. This gave the misleading impression that Mr Coats’ adjustments were capable of comparison and were the equivalent to Mr Cohen’s valuations, which was not the case. Mr Coats sought to make it clear in cross-examination that these adjustments were not in fact valuations or estimates performed at the date of transfer, and were not intended to be treated as equivalent to Mr Cohen’s valuations. He said that he had been “*just trying to give the Court the benefit of trying to show what the cash equivalent would have been of cash proceeds received or an internal rate of return applied to give effectively rebase our valuations at the valuation date, without attempting to do an independent valuation as at the transfer date.*” He had provided in his own words “*simply a discount of the money market rate off the net proceeds received*” reached by performing a *discount back from the sale or current value.*”

228. The Fund Parties said that the process of valuing an asset at a particular date necessarily excluded any factors that would not have been known or knowable as at that date. Mr Cohen had been careful in his valuations to ensure that he only relied on information that would have been available as at the date of transfer. Mr Coats had accepted that the IVS reflected the fact that knowledge after the fact should not be considered in order to rule out the potential application of hindsight in a valuation at a specific date. This was fatal to Mr Jafar’s valuation evidence which relied almost entirely on facts and events arising after the applicable and appropriate valuation date, both in relation to the value of the assets (at the wrong date) and in the criticisms of Mr Cohen’s evidence.

Mr Singhvi’s evidence

229. In addition, there were obvious irregularities with the sale of certain assets, which had not been adequately explained. Mr Singhvi and Mr Coats both accepted that the sales of MIL and MIH Limited to CCL were not arms-length transactions, yet the Court was expected to take Mr Singhvi’s word that the value at which these assets were sold was

“*objective, fair and reasonable*”, despite the fact that Mr Singhvi was unable to recount what steps Mr Jafar had taken to ensure the sales prices were fair and appropriate.

The Valuation Date Issue

230. The Fund Parties argued that it was common ground on the pleadings that the value of the Settlement Assets fell to be determined as at the date on which Mr Jafar received them. That was the basis on which Mr Jafar had advanced his case on the pleadings and that was the basis on which the Fund Parties had prepared their expert evidence for trial. It was, therefore, not open to Mr Jafar to contend that the value of the Settlement Assets fell to be determined as at any date other than the date on which Mr Jafar received them. If Mr Jafar had wanted to advance a case at trial that the Settlement Assets should be credited against the sums lost in relation to the Loans by reference to their value on some other date, or (where relevant) by reference to the amounts for which those assets had been realised, it was incumbent upon him to plead it. He had not done so and it was far too late for him to try to change this after the expert evidence had proceeded on a different basis.
231. Further, and without prejudice to their case that it was not open to Mr Jafar to take such a position, Mr Jafar was misguided in his contention that the value of the Realised Assets should be taken as at the date when they were realised for cash because that represents, in tangible terms, the actual value that Mr Jafar has been able to derive from them. The date of receipt was clearly the correct date for assessing the value of assets transferred in part-settlement of the Loans. If the assets were valued at some other date, then difficult questions of causation were bound to arise since, in the period between the date of transfer and the date of realisation, market factors would have influenced the value of the asset.
232. In addition, the Settlement Assets were all transferred to the Colligo Trust shortly after they were received by Mr Jafar. The Colligo Trust is a Jafar family trust in respect of which Mr Jafar is a settlor, not a beneficiary (see Singhvi 1 [78(d)]). Mr Jafar therefore divested himself of any interest in the Settlement Assets when he transferred them to the Colligo Trust. Mr Jafar was therefore wrong to say that the value obtained for the Realised Assets represented the actual value that Mr Jafar had been able to derive from

them. In fact, it represented the value that the Colligo Trust had derived from Mr Jafar's gift to it of the Settlement Assets. The value of the Settlement Assets to the Colligo Trust after Mr Jafar disposed of his interest in them was evidently irrelevant to the issues before the Court.

The Costs Issue

233. As regards the Realised Assets, Mr Jafar sought to deduct costs and expenses amounting to approximately US\$ 5,720,221.41. In particular: (a) as regards the Dubai Villa, Mr Jafar sought to deduct costs and expenses totalling AED 1,245,517 (approximately US\$ 339,029), comprised of AED 820,267 incurred in “*managing the asset*” and sales costs of AED 425,250 (Singhvi 1 [89] – [90]); (b) as regards the 40 Lowndes Square Stake, Mr Jafar sought to deduct costs and expenses totalling £2,841,897 comprised of loans made by Mr Jafar totalling £2,808,846 to support the development of the property, solicitors' fees of £21,051 and the costs of commissioning a report by Savills of £12,000 (Singhvi 1 at [127]); (c) as regards the Yacht, Mr Jafar sought to deduct costs and expenses totalling EUR 2,540,886 comprised of operation costs of EUR 1,417,460, “*VAT issue*” costs of EUR 80,203 and costs of sale of EUR 1,043,223 (see Singhvi 1 [152]); and (d) as regards the El Gouna Property, Mr Jafar sought to deduct broker and banking fees of EGP 457,247 (approximately US\$ 14,819.38) (see Singhvi 1 at [161]).
234. As regards the Unrealised Assets, Mr Jafar sought to deduct costs and expenses amounting to US\$ 1,074,457 based on estimates in Coats 1 of the costs associated with realising Art Dubai (Coats 1 at [42]), Segovia (Coats 1 at [58]) and Velocity Black (Coats 1 at [84]).
235. The Fund Parties submitted that there was no basis for the valuation of the Settlement Assets to be reduced by reference to actual or anticipated costs incurred in holding, maintaining or realising them. The Settlement Assets fell to be valued as at the date on which Mr Jafar received them and in those circumstances there was no basis for Mr Jafar to seek to deduct any costs associated with holding or maintaining the assets arising after that date. This was particularly so in circumstances where the Settlement Assets were transferred to the Colligo Trust before any of those costs were incurred. Mr Coats had accepted in cross-examination that costs incurred by a third party recipient of assets in

circumstances where Mr Jafar no longer had any interest in them were irrelevant to the valuation exercise including where those assets are held by a third party recipient on trust (Day 19, page 60). At [20]-[21] of Coats 2, Mr Coats had advanced the position that the definition of “*Market Value*” in the IVS “*requires the valuation to take into account costs of ‘proper marketing’*”. Mr Coats had, as already noted, also adopted (Coats 2 at [20]) a broad interpretation of “*proper marketing*” costs, expressing the view that it included both “*direct marketing costs*” (which he identified as including brokers’ fees and agents’ fees) as well as “*any degradation in value during the ‘proper marketing’ period or costs to prevent any degradation.*” Mr Coats’ view was based on his interpretation of the definition of “*Market Value*” in the IVS guidelines [20.14] namely “*The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*” But Mr Coats’ view was clearly unsustainable. “*Market Value*” was a key concept in the IVS guidelines. If they required a valuer, before he or she could certify an IVS-compliant “*Market Value*” valuation, to deduct the costs of “*proper marketing*” from the consideration paid for an asset, it would say so in clear terms. The reality was that the phrase “*after proper marketing*” in the context of the definition of “*Market Value*” was simply directing the valuer to make an assumption that the asset has been properly marketed. The reason for that was because the definition of “*Market Value*” was concerned with identifying a price for the exchange of an asset in the context of a hypothetical transaction. As Mr Coats had accepted in cross-examination (Day 19, pages 53-54) because the transaction is a hypothetical one, the valuer needs to know whether to proceed on the basis that the asset has been properly exposed to the market or not (e.g. in the case of a fire sale, which might lead to a lower price). The IVS definition of “*Market Value*” tells the valuer to proceed on the assumption that the asset has been properly marketed. Ultimately, as already noted, the Fund Parties argued that Mr Coats had accepted that his interpretation of the meaning of “*Market Value*” was not correct (Day 19, page 54) and that there was no principled basis for his view that transaction and marketing costs were to be taken into account for the purposes of the IVS definition of Market Value but were not to be taken into account for the purposes of the IPEV definition of Fair Value.

The use of and challenges to Mr Cohen's valuations

The Yacht

236. Mr Coats had criticised certain aspects of Mr Cohen's valuation, in particular, his use of blended methodologies and his focus on the length rather than gross tonnage of comparables. However, Mr Jafar chose not to instruct Mr Coats (or anyone else) to perform a valuation of the Yacht in either of his reports. As such, Mr Coats' criticisms should be given little weight and Mr Cohen's assessment remained the best (and only) evidence of the Yacht's value as at the date of transfer.

The 40 Lowndes Square Stake

237. The Fund Parties argued that Mr Coats' evidence and criticisms of Mr Cohen's valuation should be given little weight. Mr Coats had not performed a valuation of the interest in Lowndes Square and admitted that he only engaged to a "*limited extent*" with personnel specialising in real estate (although no such individual was identified in Coats 1) whereas Mr Torzewski had assisted Mr Cohen with his valuation.

238. The Fund Parties also submitted that the documentary evidence showed that interest had been expressed in the 40 Lowndes Square Stake for a significant period after Mr Jafar's acquisition of it at a considerably higher value than the sale price achieved. A document prepared by Mr Singhvi dated 28 September 2020 had listed the estimated value of Lowndes Square at US\$ 6,250,000. In cross-examination, Mr Singhvi had described this document as a summary which was "*maintained in terms of the realised values versus the estimated values and it was periodically updated*". As such, it was to be treated as representing a contemporaneous review by Mr Singhvi of the value of the 40 Lowndes Square Stake.

239. There were also material and unexplained discrepancies in Mr Jafar's evidence which reduced the weight to be attached to it. In June 2022, Mr Jafar had engaged EY to conduct an accounting exercise to summarise the net amounts received from any sold assets and an indicative value of any unsold assets. In that document EY had indicated that, as at the date of the report, Lowndes Square had a negative equity value of US\$ 3,641,382.41.

But Mr Singhvi had stated in Singhvi 1 and it was Mr Jafar's case that when it was sold in October 2022 the 40 Lowndes Square Stake had a negative equity value of only £34,591. No attempt had been made to explain the discrepancies in Mr Jafar's evidence, or how the 40 Lowndes Square Stake had purportedly depreciated by more than US\$ 9 million between 2020 and 2022 and then appreciated by almost US\$ 3.6 million in four months (between June and October 2022). These inconsistencies suggested that Mr Jafar's evidence was unreliable and supported the GHF Parties' position that there was no correlation between the price at which the interest was sold and its value at the date of transfer. The contention that the net realised value of the 40 Lowndes Square Stake in October 2022 was the best evidence of the value of the asset at the date of transfer was therefore plainly wrong.

240. The Fund Parties submitted that in any event Mr Jafar had assumed the risk of holding the asset (rather than selling it at the date of transfer) so that the Fund Parties could not be held responsible for fluctuations in the price thereafter. Mr Singhvi's evidence in cross-examination was that he was well aware of purported issues with funding the Lowndes Square development as early as September 2018 (although he said he was not aware of the full extent of those issues until December 2018) and yet Mr Jafar had decided to hold on to his interest for four more years, an assumption of risk by Mr Jafar for which the Fund Parties should not be held responsible.
241. Mr Cohen's valuation of Mr Jafar's interest in Lowndes Square was based on Mr Jafar having a 50% interest in the development. Mr Jafar contended that he only received a 42% interest in the Lowndes Square development, with the remaining 8% belonging to a Mr Sahenk. However, as appeared from the shareholder register of LSH Limited (being the company that owns the Lowndes Square development), Mr Jafar owned 50% of the shares in LSH (through Steadfast Holdco) until 29 May 2019, when 80,000 shares were transferred to Mr Sahenk. Since that transfer happened after the valuation date, the Fund Parties argued that it was correct to value Mr Jafar's interest on the basis of a 50% shareholding. If Mr Jafar had a 42% interest then Mr Cohen's valuation of that interest should be adjusted to US\$ 4,984,560.
242. The Fund Parties submitted that it was relevant that no documentation had been produced by Mr Jafar showing that Mr Sahenk, in fact, held an 8% share prior to the date of transfer

(e.g., an agreement between Mr Sahenk and Mr Naqvi). What Mr Jafar had produced were post-transfer emails in which Mr Jafar and Mr Singhvi discussed being told by Mr Naqvi that Mr Sahenk owned 8% of the Lowndes Square development and they appeared to have taken Mr Naqvi at his word (notwithstanding having “*not received any documentation of it*”). Mr Singhvi’s vague recollection was that “*Sahenk was a friend of Mr Naqvi and they had some sort of understanding.*” Mr Singhvi also struggled to recall precisely when he was told what the position was as regards the share of Lowndes Square, although he accepted that it was after the Settlement Deed was executed. When taken through the documents, Mr Singhvi had agreed that it was probably around September 2018 when the apparent interest of Mr Sahenk became known. Mr Singhvi also recalled a discussion at some point with Mr Sahenk, but no evidence had been provided of this conversation. The Fund Parties argued that no evidence had been adduced to establish that Mr Sahenk did in fact hold an 8% interest as at the date of transfer. It was unclear when it arose or how that ownership was structured, but in light of Mr Singhvi’s flawed recollection and the startling absence of evidence, the Fund Parties were entitled to rely on the Register of Members as evidence of the ownership structure as at the date of transfer, unless Mr Jafar could produce evidence proving otherwise (which he had failed to do).

Multi Investments HoldCo

243. As noted above, Multi Investments HoldCo holds stakes in a number of funds and assets. There was insufficient information about those interests for Mr Cohen to perform a formal valuation as at the date of transfer. However, in Cohen 2 in order to assist the Court, Mr Cohen had provided an estimate of the value of those assets as at the date of transfer. Save in respect of The Marque, Mr Cohen had estimated the value of those assets as at the relevant date by taking the investment capital as a starting point and estimating the expected growth by reference to average rates of returns for comparable entities, as published in industry studies (see Cohen 2 at [57]).
244. Mr Coats did not contend that that methodology was unreasonable. Although he suggested that a different methodology (specifically, one which used average actual rates of return rather than average anticipated rates of return) might have provided a more

appropriate approximation, he accepted that that was just an “*alternative view*” and that the approach adopted by Mr Cohen was not unreasonable: “*I think it is one way that it could have been done, yes.*”

245. The Fund Parties submitted that Mr Cohen had done his best in light of the limited information available and the Court should adopt his estimates of the value of these assets (Romulus: US\$ 2,460,000; Zignal Labs: US\$ 232,285; Velocity App: US\$ 59,814; The Marque: US\$ 32,250; Segovia: US\$ 8,299,911; King Children: US\$ 260,986 and First Minute Capital: US\$ 138,975).

MENA Venture Investments

246. The acquisition price was equal to the “*base case*” scenario set out in a “*MVI Portfolio Overview and Valuation Assessment*” produced by the fund manager and dated 5 September 2018. That presentation had also set out the fund manager’s assessment of the “*fair market value*” of the portfolio, which valued Mr Jafar’s interest at US\$ 6,993,467. The Fund Parties said that in cross-examination Mr Singhvi had accepted that if it had been an arms-length transaction, he would have sought to obtain the fair market value for MENA as recorded in the fund manager’s report (Day 17, page 34). Mr Cohen’s evidence (Cohen 1 at [148]) was that it would have been reasonable to use the fair market value scenario to value the asset. In Cohen 2 at [49] Mr Cohen made some adjustments to the assessment of fair market value to reflect the fact that certain discounts applied by the fund manager appeared, in his opinion, to be high. Against that background, the Fund Parties invited the Court to value Mr Jafar’s interest in MENA as at the date of transfer at either US\$ 6,993,467 (the FMV reported by the Fund Manager) or US\$ 9,889,181 (Mr Cohen’s estimated FMV, following the adjustments made in his second report).

Wamda

247. The acquisition price was equal to US\$ 5,081,048, which was equal to the value of the initial investment. In Singhvi 1 at [201] Mr Singhvi had stated that he considered this to be the most appropriate valuation because “*there was little information available to enable us to ascertain whether the companies had or would increase in value over time.*” However, on 17 September 2018, the general partner of the WAMDA fund sent a letter

to the fund's limited partners inviting them to acquire Mr Naqvi's defaulted interest in WAMDA (being the interest transferred to Mr Jafar). The letter explained that: "*An offer has already been made for the defaulted interest of MIH 1 Limited which represents aggregate Capital Contributions of \$5,081,048.00 (the "MIH Defaulted Interest"), in an amount equal to \$5,800,000 (the "Existing Offer"), corresponding to the value of the MIH Defaulted Interest by reference to the Fund's net asset value as set out in the most recent report of the Fund. Any offer in respect of the MIH Defaulted Interest must equal or exceed the Existing Offer.*" The Fund Parties argued that accordingly and contrary to what was said in *Singhvi 1* at [201] there was clear evidence that the value of the WAMDA stake had increased and was worth US\$ 5,800,000 by reference to the fund's most recent NAV reporting. Mr Coats' evidence (Coats 1 at [118]) was that "*In measuring the FMV of an interest in a fund the valuer may base the estimate on the attributable proportion of the last reported net asset value (NAV).*" Mr Cohen's evidence (Cohen 2 at [55]) was that an estimate of the value of Mr Jafar's interest in WAMDA could be based on the offer to purchase the interest. Against that background, the Fund Parties invited the Court to value Mr Jafar's interest in WAMDA as at the date of transfer at US\$ 5,800,000.

Segovia Technologies

248. The Fund Parties argued that Mr Coats had failed to provide a valuation or an adjusted value estimate of Segovia. Instead he had valued two separate entities that were spun off from Segovia long after the date of transfer. As a consequence, Mr Coats' conclusions as to the value of Segovia were of no relevance.
249. The Fund Parties said that in his cross-examination Mr Coats did not seem convinced of his methodology, explaining that "*[t]here is a question about how to reflect a valuation of Segovia at that time on anything other than a theoretical valuation anyway*" and that this was "*an attempt to give a figure that is an approximation of value at that time*" (Day 18, pages 80-81). They said that Mr Coats had accepted that if he had been asked to perform the same exercise as Mr Cohen he would have found himself in the same position and that Mr Cohen's approach was "*certainly one of the methods that you could use*" (Day 18, pages 81-82).

The Unrealised Artwork

250. The GHF Parties noted that Mr Cohen had not resiled from his valuation of the unsold Artwork. Each piece had been carefully valued and explanations as to the provenance and value as at the date of transfer explained for each piece in Exhibit 5 to Coats 1. However, Mr Cohen had accepted that his valuation only represented a portion of the whole portfolio and had recognised and accepted (a view which was now shared by the GHF Parties) that the Christie's estimate from September 2018 was the only reliable evidence before the Court as to the value of the whole portfolio at the date of transfer.

Mitigation*Failure to bring proceedings under the Settlement Deed*

251. The GHF Parties argued that Mr Jafar had unreasonably failed to pursue Mr Naqvi and bring proceedings for his breach of the Debt Shortfall provision (clause 11) of the Settlement Deed. This should be taken to be a failure to mitigate his losses. The right to pursue Mr Naqvi for failure to pay the Debt Shortfall arose on 28 August 2023 and entitled Mr Jafar to US\$ 75 million from Mr Naqvi to cover the shortfall between the amount of the Loans and the amounts recovered by that date. Mr Jafar had relied on Mr Singhvi's evidence to show the extensive steps that he had taken to mitigate his losses but during his cross-examination it became clear that Mr Singhvi had no idea what (if anything) Mr Jafar had done to pursue the Debt Shortfall provision (Day 16, page 79):

"Q. I'm asking you, has Mr Naqvi performed his obligation under clause 11 of the debt shortfall mechanism?"

A. Not that I'm aware of.

Q. Have you been involved in attempts to cause him to perform and honour that obligation?"

A. No, I haven't.

Q. So you have no knowledge about what, if any, attempts have been made to make Mr Naqvi comply?"

A. *I'm not aware."*

252. The GHF Parties argued that, in the absence of any other evidence from Mr Jafar, it could only be assumed that Mr Jafar had deliberately chosen not to take any steps to recover a significant sum of money available to him under the Settlement Deed from the prime actor in the purported fraud against him. This called for further explanation, and in the absence of any such explanation, the inference should be drawn that Mr Jafar had failed to comply with his obligation to mitigate. The Fund Parties should not be liable for loss arising from this failure.
253. In addition, under clause 21 of the Settlement Deed, Mr Naqvi was required to reimburse Mr Jafar for reasonable actual costs and expenses in the amount of US\$ 1.5 million within six months of the agreement (i.e., by 28 January 2019). The GHF Parties argued that Mr Jafar had failed to take reasonable steps to recover under this provision. They said that Mr Singhvi had accepted in cross-examination that Mr Naqvi had not made any payment or performed his obligations under that clause. When asked whether Mr Jafar had sought to make Mr Naqvi perform his obligations, Mr Singhvi asserted that they had “repeatedly” sought settlement of those costs. However, Mr Singhvi was unable to recall any details of how or when these alleged requests for payment were made and, in any event, had failed to make any mention of those alleged steps in his witness statement. The GHF Parties argued that in these circumstances Mr Singhvi’s evidence that such steps had been taken was not credible and should be rejected.

The Yacht

254. The GHF Parties argued that Mr Jafar had failed to consider (or demonstrate that he had considered) reasonable and suitable cost saving in relation to the Yacht. When Mr Singhvi was asked whether he and Mr Jafar had considered drydocking or mothballing the Yacht, Mr Singhvi had claimed that they had relied on the advice of (unnamed) third party advisors about what to do with the Yacht. No mention of whether these factors were considered and the relevant advisors, nor the advice given, was set out in Singhvi 1. Mr Singhvi claimed that the crew of the Yacht had also been reduced to save costs but again was unable to provide details and had raised this for first time in cross-examination.

The 40 Lowndes Square Stake

255. The Fund Parties said that Mr Jafar had failed to try to sell Lowndes Square prior to October 2022 at which point it had become obvious that more funds would be required to complete the project. They argued that Mr Singhvi's evidence as to there having been no interest in the stake before that date was weak and unsubstantiated. He had provided only a vague response when asked about this (Day 16, pages 115-116). His evidence that he and Mr Jafar had had discussions with other shareholders but had received no interest was only first mentioned in cross-examination (it was not referred to Singhvi 1) and so should be given little weight. Furthermore, Mr Singhvi had provided no details to support his account which reinforced the submission that it should be given little weight.

The Dubai Villa

256. Mr Singhvi was asked in cross-examination whether he had considered renting out the villa on a short term basis or temporarily mothballing it while the market recovered. He had said that renting was considered but that most rentals were required to be for one year (but the evidence for this assertion is unclear) and that he did not recall whether mothballing was considered. Mr Singhvi also contended that he and his team had sought to renegotiate the ongoing maintenance contracts where they were able to do so, but was unable to provide details of those negotiations or their result. Most importantly, as regards the Dubai Villa was the fact that Mr Jafar had received an offer of AED 55 million which he had rejected because he thought that a higher offer could be obtained, contrary to the express advice of his advisors. The Dubai Villa was ultimately sold for only AED 40.5 million on 29 December 2020. Mr Singhvi's cross-examination on this issue was as follows (Day 16, pages 108-109):

A. Yes, I consulted with Mr Jafar.

Q. So ignoring the advice given by the experts?

A. Not ignoring. But with a property like this, and this is something that the experts also mentioned, you may find a buyer who - where this villa really fits the requirement and is willing to pay a premium or pay a higher price. With wealthy individuals who may want to have something, that is always a possibility. And this is a conversation I actually had with George Azar [the owner of Gulf Sotheby's]. While Leigh Borg of Sotheby's was trying to push

this particular deal, George also commented at the time, saying, "You can wait and see. There may be other offers that come by".

...

Q. But Mr Borg, as you record, and as we have seen, advised you to accept the offer because he was advising you that in six or so months' time offers of AED 40 million or above were not going to be available; correct?

A. Yes, that was his view.

Q. Then you receive an offer. That's January when you receive an offer for AED 44 million which you reject; correct?

A. Correct.

Q. And then in April you receive an offer of AED 40.5 million, which is accepted; correct?

A. Yes. That was after COVID hit.

Q. You accept, don't you, that with COVID the market was weakening?

A. Yes.

Q. And who decided to accept the AED 40.5 million offer?

A. Mr Jafar did.

Q. In consultation with you?

A. Yes."

MENA Ventures Investments Ltd

257. The GHF Parties argued that Mr Jafar did not appear to have taken any steps to try to sell MIL (and MIH Limited) to CCL at the values set out in contemporaneous documents provided by the fund manager. It was odd and suspicious that the starting point for the pricing of these assets in respect of their sale to Crescent was not the indicative values provided by the fund managers.

Artwork

258. Mr Singhvi had been asked whether he had considered putting the Artwork into storage until the market recovered or liaising with the liquidators, who were selling vast amounts

of artwork in the same market at the same time with a consequent depression of the amounts realisable. The GHF Parties submitted that Mr Singhvi had been evasive in his answers and had claimed that they had simply relied on Christie's to provide guidance, notwithstanding the fact that Mr Jafar had instructed Mr Singhvi to proceed with "early sales" despite express advice that this would result in lower returns. Mr Singhvi was not able to explain clearly why they had not liaised with the liquidators to avoid selling similar pieces, except to say that he had no control or influence over the liquidators, ignoring the fact that he did have control and influence over the sale process involving Mr Jafar's Artwork.

Non-transferred Assets

259. The GHF Parties said that, during the negotiation of the Settlement Deed (and its precursors), there had been a number of assets that Mr Naqvi and Mr Jafar contemplated would be transferred, which were ultimately not included in the Settlement Deed. These assets included 4 Palace Gate, 2 Littleton Road, 24 Princes Gate, and a company called Ceres. It also appeared that a property in Oman was or may have been transferred to Mr Jafar as one of the assets owned by AC Logistics. The value of these assets was unclear, but based on contemporaneous documentation they may have been worth upwards of, in aggregate, US\$ 44 million. Mr Singhvi was unable to provide a clear explanation as to why Mr Jafar and he did not forcefully pursue the transfer to Mr Jafar of these assets, particularly given their potential value, and the impression given is that Mr Jafar simply gave up on them for various unconvincing reasons. This was unreasonable conduct.

260. GP8 submitted that had Mr Jafar accepted 4 Palace Gate as part of the settlement arrangements, his loss under the Loans would have been reduced by a further £6.3 million (or approximately US\$ 8.1 million). During cross-examination (Day 16, pages 42-43) Mr Singhvi had explained that the asset was not transferred to Mr Jafar because Mr Jafar understood that Mr Naqvi's mother was living in it and, in those circumstances, he did not want the asset to be part of the settlement. However, 4 Palace Gate was already on the market for sale by the time it was offered to Mr Jafar (see the letter from Knight Frank dated 27 April 2018) and this was communicated to Mr Jafar in Schedule 6 of the draft "Project Hector Loan Assumption Agreement." In any event, the fact remained that Mr Jafar had decided to forego an asset worth approximately US\$ 8.1 million and the

financial consequences of that election must fall on him, and not on the Fund Parties. In those circumstances, GP8 invited the Court to reduce the quantum of any damages by a further US\$ 8.1 million on the basis of a failure to mitigate by Mr Jafar.

Discussion and decision

The quantification of a claim in damages for deceit

261. The parties agreed that the basic principles for the assessment of damages in a claim for deceit were as set out by the House of Lords in *Smith New Court*. Lord Steyn set out the position as follows (at 282G-H):

“(1) The plaintiff in an action for deceit is not entitled to be compensated in accordance with the contractual measure of damage, i.e. the benefit of the bargain measure. He is not entitled to be protected in respect of his positive interest in the bargain. (2) The plaintiff in an action for deceit is, however, entitled to be compensated in respect of his negative interest. The aim is to put the plaintiff into the position he would have been in if no false representation had been made.”

262. In *McConnell v Wright* [1903] 1 Ch 546 at [554] Lord Collins MR summarised how the victim of deceit’s claim was to be measured:

“an action for a wrong done whereby the plaintiff was tricked out of certain money in his pocket; and therefore, prima facie, the highest limit of his damages is the whole extent of his loss, and that loss is measured by the money which was in his pocket and is now in the pocket of the company. That is the ultimate, final, highest standard of his loss.”

263. Mr Justice Flaux summarised the principles governing the assessment of damages as follows in his judgment in *OMV Petrom* (his decision was upheld by the Court of Appeal) (my underlining):

“168. The following passage [from Lord Steyn’s] speech [in Smith New Court] at 284A-F is also particularly relevant to the issues in the present case:

“It is right that the normal method of calculating the loss caused by the deceit is the price paid less the real value of the subject-matter of the sale. To the extent that this method is adopted, the selection of a date of valuation is necessary. And generally the date of the transaction would be a practical and just date to adopt. But it is not always so. It

is only prima facie the right date. It may be appropriate to select a later date. That follows from the fact that the valuation method is only a means of trying to give effect to the overriding compensatory rule: Potts v. Miller, 64 C.L.R. 282 , 299, per Dixon J.; and County Personnel (Employment Agency) Ltd. v. Alan R. Pulver & Co. [1987] 1 W.L.R. 916 , 925–926, per Bingham L.J. Moreover, and more importantly, the date of transaction rule is simply a second order rule applicable only where the valuation method is employed. If that method is inapposite, the court is entitled simply to assess the loss flowing directly from the transaction without any reference to the date of transaction or indeed any particular date. Such a course will be appropriate whenever the overriding compensatory rule requires it. An example of such a case is to be found in Cemp Properties (U.K.) Ltd. v. Dentsply Research & Development Corporation [1991] 2 E.G.L.R. 197 , 201, per Bingham L.J. There is in truth only one legal measure of assessing damages in an action for deceit: the plaintiff is entitled to recover as damages a sum representing the financial loss flowing directly from his alteration of position under the inducement of the fraudulent representations of the defendants. The analogy of the assessment of damages in a contractual claim on the basis of cost of cure or difference in value springs to mind. In Ruxley Electronics and Construction Ltd. v. Forsyth [1996] A.C. 344 , 360G, Lord Mustill said: “There are not two alternative measures of damages, as opposite poles, but only one; namely, the loss truly suffered by the promisee.” In an action for deceit the price paid less the valuation at the transaction date is simply a method of measuring loss which will satisfactorily solve many cases. It is not a substitute for the single legal measure: it is an application of it. ”

169. As I said in Parbola at [133]:

“The importance of that passage is that it demonstrates that there are no hard and fast rules in determining damages recoverable in deceit, beyond the overriding principle that the court should strive to award damages which compensate the claimant fully for loss flowing directly from the fraud, which brings one back again to Lord Blackburn's statement of principle.”

I agree with Mr Matthews QC that the rationale for the House of Lords departing from the old inflexible rule that damages were to be assessed as at the date of the transaction was to ensure that the claimant who was the victim of deceit was not worse off than he should be, by taking proper account where appropriate of subsequent events after the transaction was concluded. This more flexible modern approach is not designed to provide some benefit to the defendant. As Lord Steyn recognised, the presumption against the deliberate wrongdoer formulated trenchantly by Lord Blackburn in Livingstone v Rawyards remains the law. In my judgment, many of Mr Southern QC's submissions on damages overlooked this point.

The Loss Sharing Issue

264. The issue raised is whether the fact that Mr Jafar's liability to BOS in respect of loans borrowed to fund the advance by Mr Jafar of the First Loan and the Second Loan (totalling US\$ 300 million) to AIML (and possibly AH) is limited to US\$ 255 million means that his loss resulting from being deceived into advancing the First Loan and the Second Loan is to be treated as and also limited to US\$ 255 million. In my view, the Fund Parties are right that the starting point for calculating Mr Jafar's loss is US\$ 255 million and not US\$ 300 million.
265. Mr Jafar advanced the full US\$ 300 million to, and was owed that sum, by AIML (and possibly AH). But he had obtained those sums and funded the First Loan and the Second Loan by borrowing the same amount from BOS. As I have described at length in the Liability Judgment, BOS ultimately agreed to accept the risk of non-payment in respect of 15% of the First Loan and the Second Loan. AIML's cheques were discounted to it, so it was the holder of the cheques and able to present and collect on them (to reduce the liability of Mr Jafar to it). The loss-sharing arrangement with Mr Jafar meant that in substance recoveries from AIML (and possibly AH) were to be shared 85%/15% between Mr Jafar and BOS and that if there were no recoveries Mr Jafar was only liable to repay BOS US\$ 255 million.
266. This is not a case of collateral benefits received by Mr Jafar as might be the case if he had taken out and himself paid for credit insurance with BOS or, if BOS had independently of the First Loan and the Second Loan, agreed to indemnify Mr Jafar for 15% of his exposure for a fee paid by Mr Jafar. Collateral benefits such as insurance or independent indemnities which are earned and paid for by the plaintiff do not need to be brought into account and do not go to reduce the plaintiff's loss in a tort case (see *McGregor on Damages*, (24th ed.) at [41-155]-[41-156]).
267. The question is what is Mr Jafar's loss flowing from the deceit. It seems to me that the position has to be assessed as a matter of substance and not just legal form. The arrangements between Mr Jafar and BOS were inextricably linked to the lending by Mr Jafar. Mr Jafar depended on BOS for the entire funding of the First Loan and the Second Loan. Mr Jafar could not and would not have made these two Loans without the BOS

funding and the limit on his exposure and risk of loss. In substance if not in form BOS was treated as a co-lender as to US\$ 45 million (15%) in respect of these two loans. Mr Jafar's risk and financial exposure was from the outset and at all times limited to US\$ 255 million. As I have said, had there been no recoveries, Mr Jafar would have been out of pocket in that amount. He had in effect passed on the sums (US\$ 300 million) he received from BOS in circumstances where he only ever had to repay (and would be out of pocket by having to pay) US\$ 255 million to BOS. Mr Jafar's loss flowing from the deceit has to be assessed by having regard and taking into account the linked loans from BOS to him and from him to AIML/AH. His loss is the US\$ 255 million owed to BOS that he was unable to repay because of the two loans made and not recovered from AIML/AH. The sum that would put Mr Jafar in the same position as if he had not made the two Loans in reliance on Mr Naqvi's fraudulent misrepresentations is US\$ 255 million since that would result in him not being out of pocket.

The Valuation Date Issue

268. The issue that arises here is how to value property transferred by a defendant (fraudster) to a plaintiff for the purpose of compensating the plaintiff and reducing his loss. This is slightly different from the assessment of the value of property transferred under the transaction affected by the fraud for the purpose of determining the plaintiff's loss (because the impact of the fraud on the assessment of what it was reasonable for the plaintiff to do with the property when seeking to realise it does not arise) although it is closely connected since the purpose of the assessment remains to determine the extent to which the property transferred has affected and reduced that loss.
269. There is a substantial volume of case law as to the proper approach to the assessment of the damages payable where the plaintiff has been induced by a fraudulent misrepresentation to buy property.
270. The approach is summarised well, by reference to Lord Browne-Wilkinson's speech in *Smith New Court*, by Mr Justice Lightman in *Great Future International Ltd v Sealand Housing Corp (In Liquidation)* as follows (my underlining) (this was a case in which it was held that a claimant who had been fraudulently induced into buying shares was

entitled to receive damages equal to the excess he had paid over the market value of the shares at the time they were purchased together with any consequential expenses he had incurred, even where he had chosen to retain those shares and they had subsequently recovered their value):

- “20. *Whilst the general rule is that the proper date for the assessment of damages for breach of warranty, misrepresentation and fraud is the date of the breach of contract or wrong (i.e. the Closing Date), the general rule is not adhered to rigidly where an alternative date for the assessment of damages better achieves the compensatory object of damages.*
21. *Guidance on the application of the general principle is to be found in the speeches of Lord Browne-Wilkinson and Lord Steyn in Smith New Court Ltd v. Scrimgeour Vickers [1997] AC 254 (“Smith New Court”). In that case the House of Lords held that the diminution in value measure would not compensate the claimants for their loss since, having bought the shares at above market price with a view to holding them as a market making risk, the claimants could not have sold the shares on the same date and were effectively locked in. The House of Lords held that in the circumstances a different measure of damages would give better effect to the compensatory object of damages, the measure being the difference between the price the claimants paid for the shares in July 1989 and the amount they subsequently realised on the sale of the shares between November 1989 and April 1990. Selection of this measure involved departing from the usual rule that damages are assessed at the date of breach. This approach did not involve imposing on the valuer the task of valuing the shares at a date after the transaction, but of ignoring those factors which have influenced the price which are collateral and have nothing to do with the defendants' fraud. Lord Browne-Wilkinson said (at pages 265–268):*

“Turning for a moment away from damages for deceit, the general rule in other areas of the law has been that damages are to be assessed as at the date the wrong was committed. But recent decisions have emphasised that this is only a general rule: where it is necessary in order adequately to compensate the plaintiff for the damage suffered by reason of the defendant's wrong a different date of assessment can be selected ...

In many cases, even in deceit, it will be appropriate to value the asset acquired as at the transaction date if that truly reflects the value of what the plaintiff has obtained. Thus, if the asset acquired is a readily marketable asset and there is no special feature (such as a continuing misrepresentation or the purchases being locked into a business that he has acquired) the transaction date rule may well produce a fair result. The plaintiff has acquired the asset and what he does with it thereafter is entirely up to him, freed from any continuing adverse impact of the defendant's wrongful act. The transaction date rule has one manifest advantage, namely that it avoid any question of causation. One of the difficulties of either valuing the asset at a later date or treating the actual receipt on realisation as being the value obtained is that difficult questions of causation are bound to arise. In the

period between the transaction date and the date of valuation or resale other factors will have influenced the value or resale price of the asset. It was the desire to avoid these difficulties of causation which led to the adoption of the transaction date rule. But in cases where property has been acquired in reliance on a fraudulent misrepresentation there are likely to be many cases where the general rule has to be departed from in order to give adequate compensation for the wrong done to the plaintiff, in particular where the fraud continues to influence the conduct of the plaintiff after the transaction is complete or where the result of the transaction induced by fraud is to lock the plaintiff into continuing to hold the asset acquired...

In sum, in my judgment the following principles apply in assessing the damages payable where the plaintiff has been induced by a fraudulent misrepresentation to buy property: (1) the defendant is bound to make reparation for all the damage directly flowing from the transaction; (2) although such damage need not have been foreseeable, it must have been directly caused by the transaction; (3) in assessing such damage, the plaintiff is entitled to recover by way of damages the full price paid by him, but he must give credit for any benefits which he has received as a result of the transaction; (4) as a general rule, the benefits received by him include the market value of the property acquired as at the date of acquisition; but such general rule is not to be inflexibly applied where to do so would prevent him obtaining full compensation for the wrong suffered; (5) although the circumstances in which the general rule should not apply cannot be comprehensively stated, it will normally not apply where either (a) the misrepresentation has continued to operate after the date of the acquisition of the asset so as to induce the plaintiff to retain the asset or (b) the circumstances of the case are such that the plaintiff is, by reason of the fraud, locked into the property; (6) in addition, the plaintiff is entitled to recover consequential losses caused by the transaction; (7) the plaintiff must take all reasonable steps to mitigate his loss once he has discovered the fraud ...

In the circumstances, it would not in my judgment compensate Smith for the actual loss they have suffered (i.e. the difference between the contract price and the resale price eventually realised) if Smith were required to give credit for the shares having a value of 78p on 21 July 1989. Having acquired the shares at 82¼p for stock Smith could not commercially have sold on that date at 78p. It is not realistic to treat Smith as having received shares worth 78p each when in fact, in real life, they could not commercially have sold or realised the shares at that price on the date. In my judgment, this is one of those cases where to give full reparation to Smith, the benefit which Smith ought to bring into account to be set against its loss for the total purchase price paid should be the actual resale price achieved by Smith when eventually the shares were sold."

...

24. Illumination of the law both on the choice of date of assessment and also on the duty to mitigate is provided by the judgments at first instance of Chadwick J Smith New Court [1992] BCLC at 1142–3 and of Toulson J in Standard

Chartered Bank v. Pakistan National Shipping Co [1999] 1 Lloyds LR 747 at 760.

25. *Chadwick J said:*

- “(1) Where a plaintiff has been induced by a fraudulent representation to acquire shares, the object of an award of damages in tort is to compensate him for what he has lost by making the acquisition into which he has been tricked. The basic rule is that his loss will be measured by the difference between what he paid and the true value of what he acquired at the time of the acquisition. To this may be added consequential loss (if any) flowing directly from the acquisition; for example, commissions, brokerage and carrying costs.*
- (2) If the plaintiff has not resold the shares he will not have to give credit for what he might have obtained on a resale; unless, in choosing to retain the shares, he has acted unreasonably or imprudently....*
- (4) In ascertaining the plaintiff's loss under the basic rule events subsequent to the acquisition can be taken into account only if, and insofar as, they are relevant for the purpose of ascertaining the true value of the shares at the time of the acquisition. A subsequent depreciation in the value of the shares caused by events which have no natural or proximate connection with the circumstances existing at the time of the acquisition must be disregarded....*
- (6) Events subsequent to the acquisition may be relevant for one or both of two purposes... Secondly, subsequent events may assist, positively, in ascertaining what the true value of the shares was at the time of the acquisition.*”

26. *Toulson J said [in Standard Chartered Bank v. Pakistan National Shipping Co [1999] 1 Lloyds LR 747 at 760]:*

“Date for assessment of damages

Damages for tort or breach of contract are to be assessed at the date of the breach unless the circumstances are such that the selection of a different date would more justly give effect to the overriding compensatory rule. See County Personnel (Employment Agency) Ltd v. Allan R. Pulver & Co., [1987] 1 WLR 916 at pp. 925–926, cited with approval by Lord Browne-Wilkinson in Smith New Court Ltd v. Scrimgeour Vickers (Asset Management) Ltd., [1997] AC 254 at p. 266.

In assessing the damages, credit must be given for benefits received arising out of the transaction for which damages are claimed. Where the benefits received take the form of property or an interest in property, in many cases it will be just to take the value of the interest at the date of its acquisition. It will normally be just to do so where there is an available market of which the plaintiff has a fair opportunity, if so minded, to take advantage.

Where a person who has been fraudulently induced to buy property thereafter freely decides to retain it, he will have adopted the transaction and so the fair measure of his loss will ordinarily be the excess which he has paid over market value at the date of its acquisition, plus any consequential expenses. If he does not wish to retain the property, whether it is fair that he should give credit for its 'market' value at that date or some other date must depend in particular on its marketability and on his state of knowledge. As to marketability, the reference to a plaintiff who is 'by reason of the fraud locked into the property' is not to be taken as if it were a statutory test but as a vivid description of a person who does not have access to an available market."

271. As can be seen, Lord Browne-Wilkinson treated property received under the impugned transaction as a benefit obtained by the claimant for which he must give credit against his loss and said that the general rule was that the benefit was to be valued and assessed by reference to the market value of the property at the date of its acquisition. In relation to the treatment of property acquired under the transaction affected by the deceit, that general rule could be displaced where its application would prevent the claimant from obtaining full compensation for the wrong suffered because, for example, the fraud affected how the claimant dealt with and his ability to realise the property (the example being given of the claimant having been required by the circumstances surrounding the fraud and its acquisition to hold on to – having been locked into – an asset, because the claimant does not have access to an available market).
272. Where benefits are obtained by the transfer of property by the defendant wrongdoer (or one of a number of wrongdoers) made for the purpose of diminishing the defendant's own liability to the plaintiff and the loss suffered by the plaintiff as a result of the deceit, in a case in which the fraud did not involve the acquisition of property (as in this case), it seems to me that the Court's task is to assess the extent to which the defendant's liability to the plaintiff, thereby the plaintiff's loss, has been reduced. The need to assess the impact of the fraud on the retention and realisation of the property transferred is removed. The task is to assess what the property was worth in the hands of the plaintiff and the extent to which his loss has been diminished and it seems to me that the general rule that value of property received is the market value of the property acquired as at the date of acquisition should apply. The date of acquisition is the date on which the property became available to the plaintiff and could be realised or used for his benefit, at least in the case of an asset which is of a kind or in a state which is readily realisable.

273. As Lord Browne-Wilkinson said in *Smith New Court* “it will be appropriate to value the asset acquired as at the transaction date if that truly reflects the value of what the plaintiff has obtained. Thus, if the asset acquired is a readily marketable asset and there is no special feature (such ... the purchaser being locked into a business that he has acquired) the transaction date rule may well produce a fair result..” And as Toulson J said in the *Standard Chartered Bank* case “Where the benefits received take the form of property or an interest in property, in many cases it will be just to take the value of the interest at the date of its acquisition. It will normally be just to do so where there is an available market of which the plaintiff has a fair opportunity, if so minded, to take advantage.”
274. There is also another general rule applied in the assessment of damages that the price at which a buyer or recipient of property resells the property may be evidence of its value at the date of acquisition. Subsequent events may be used as evidence of the value of the asset at the time that the plaintiff acquired it. See *McGregor on Damages* (22nd ed.) at 50-020 and the passage cited therein from the judgment of Cotton LJ in *Derry v Peak*. But as Mr Justice Chadwick (as he then was) said in *Smith New Court* at first instance, “... events subsequent to the acquisition can be taken into account only if, and insofar as, they are relevant for the purpose of ascertaining the true value of the shares at the time of the acquisition. A subsequent depreciation in the value of the shares caused by events which have no natural or proximate connection with the circumstances existing at the time of the acquisition must be disregarded.”
275. Accordingly, as a matter of principle, the date on which Mr Jafar acquired the Settlement Assets from Mr Naqvi should generally be the date by reference to which their value should be ascertained for the purpose of assessing the benefit received by Mr Jafar and the reduction in his loss. Evidence of subsequent events, including the price at which a Settlement Asset was sold, may be relevant if such events can be shown to be evidence of the true value of the asset at the date of its acquisition.
276. When considering whether the sale price in a post-acquisition sale should be treated as reliable evidence of market value at the date of acquisition, the Court must consider the facts of the case and the extent to which the plaintiff acted reasonably. The existence of a market and the state and marketability of the relevant asset are all relevant

considerations. As Mr Justice Toulson noted, in the passage quoted above from his judgment in the *Standard Chartered Bank* case, “*If [the claimant] does not wish to retain the property, whether it is fair that he should give credit for its ‘market’ value at that date or some other date must depend in particular on its marketability and on his state of knowledge. As to marketability, the reference to a plaintiff who is ‘by reason of the fraud locked into the property’ is not to be taken as if it were a statutory test but as a vivid description of a person who does not have access to an available market.*”

277. As Lord Browne-Wilkinson made clear in his speech in *Smith New Court*, the Court needs to adopt a realistic view having regard to the relevant facts. He said (in a passage already quoted above) that “*It is not realistic to treat Smith as having received shares worth 78p each when in fact, in real life, they could not commercially have sold or realised the shares at that price on the date. In my judgment, this is one of those cases where to give full reparation to Smith, the benefit which Smith ought to bring into account to be set against its loss for the total purchase price paid should be the actual resale price achieved by Smith when eventually the shares were sold.*”

278. By the Directions Order it was ordered that (at [11.3]) (my underlining) the parties were at liberty to adduce expert evidence as to “*The value of the cash and assets that Mr Jafar received from Mr Naqvi, certain of which are referred to in paragraph 55(2)(b) (including any amendment thereto) of the Amended Statement of Claim in the FSD 203 of 2020 Proceedings (the “Naqvi Consideration”) as at the date on which Mr Jafar received them...*”

279. There was no dispute about this direction and the date by reference to which the experts were to produce their valuations.

280. It seems to me that the Directions Order fixed the valuation date and that it is too late for any party to challenge the direction at this stage. By directing what the valuation date should be for the expert evidence, the Directions Order established the valuation methodology and rule to be adopted for the purpose of determining the impact of the acquisition of the Settlement Assets on the calculation of Mr Jafar’s loss. As I have explained that methodology and rule are in accordance with general principle and the

Directions Order should be treated as applying the general principle to the valuation exercise in this case.

281. Furthermore, Mr Jafar's pleaded case is that "*The value of the assets is to be determined as at the date on which Mr. Jafar received them*" ([56] of the RRASOC).
282. As I have noted, in his written and oral submissions, Mr Jafar argued that the valuation date was the date of transfer of the relevant asset but that the sale price should stand as evidence of the market value of the asset on that date where an asset had subsequently been sold by Mr Jafar acting reasonably, within a reasonable period of time using a reasonable method of sale after proper marketing, in the sense of marketing that was suitable for the asset in question and the market in which it was to be sold (and that in the case of assets that had not been sold, their market value as at the date of acquisition should take into account the price that they would realise after the assets were made ready for sale within a reasonable time and assuming that a reasonable method of sale with proper marketing had been adopted). It seems to me that Mr Jafar's case is consistent with the requirement for the valuations to be undertaken by reference to the date of acquisition of the Settlement Assets as understood in the context of the general rule. Mr Jafar criticised the position of the Fund Parties to the extent that they argued that such post-acquisition matters could never be taken into account. In my view, that criticism was justified. Mr Jafar also argued that the Fund Parties' approach was predicated on the practically unrealistic notion that Mr Jafar could have realised those assets at a higher price by a sale at an earlier date than the one on which the assets were in fact sold. Whether there could have been an earlier sale at a higher price and whether failing to sell at such an earlier date and at such price was unreasonable are matters of fact to be assessed by the evidence, recognising that the burden of proof is on the Fund Parties. The party asserting that the plaintiff has received benefits and value in reduction of its loss has the burden of proof in establishing this (see, for example *Midco Holdings Ltd v Piper* [2004] EWCA Civ 276 and Clerk and Lindsell on Torts (24th ed.) at 17-45 footnote 209).
283. Where does this leave Mr Coats' evidence? As I have noted, in Coats 1 he used 31 March 2023 as the reference date for his valuation (which I have labelled the *Coats Valuation Date*). He adjusted his valuations in Coats 2 in order to provide an estimate of value as the relevant transfer date for the assets he had valued, which was 6 September 2018.

While I will need to review and consider the weight to be given to Mr Coats' evidence on an asset by asset basis, I agree with the Fund Parties that Mr Coats' valuations in Coats 1 undertaken by reference to the Coats Valuation Date are to be given little weight save to the extent that he has been able to show that the circumstances existing at that date which he relied on when determining his valuations were in all material respects the same as those existing on the transfer date so that his valuations can be treated as establishing a reliable guide to the value of the relevant asset at the date it was transferred to and received by Mr Jafar. It was a serious error, and unhelpful, for Mr Coats to be instructed to produce his main valuations by reference to a date other than the transfer date. As regards Mr Coats' adjustments and estimates of value as set out in Coats 2, once again these fall to be considered and tested on their merits but once again I must say that I agree with the Fund Parties that estimates which are based on values determined as at the Coats Valuation Date, which was over four years after the transfer dates, and then discounted back to adjust for the difference in the value of money at the earlier date, is unlikely to be reliable or to justify being given much weight.

The Costs Issue

284. It seems to me to follow from the core principle that a deceit plaintiff's loss is to be reduced by the proper value of benefits obtained from the defendant that the plaintiff should be required only to bring into account the net financial benefit where property is transferred to the plaintiff which the plaintiff has to realise and turn into money.
285. To put the point another way, and as Mr Justice Chadwick said at first instance in *Smith New Court*, the costs directly flowing from the acquisition of property are to be treated as part of the claimant's loss: "*To this may be added consequential loss (if any) flowing directly from the acquisition; for example, commissions, brokerage and carrying costs.*"
286. Therefore, costs reasonably and necessarily incurred in monetising and realising the Settlement Assets are to be deducted for the purpose of determining the extent to which the relevant assets reduce Mr Jafar's loss. Where, either because of the nature or condition of the asset concerned or the state of the relevant market, it is reasonable for there to be some delay in selling the asset and to incur costs for the purpose of putting the asset into a condition that will allow it to be sold at the optimal price, and where costs

have to be incurred in relation to the sales process including marketing costs, then in my view a reasonable sum may be deducted and taken into account (depending, of course, on the relevant facts).

Mitigation

287. There was no dispute as to the relevant law. The proper approach is summarised well by Mr Justice Green in *Khakshouri* as follows:

“183. *A claimant is under a duty to mitigate his loss. Damages are not recoverable for losses which a claimant could reasonably avoid by taking action subsequent to the commission of the tortious act. It is a question of fact and evidence in each case whether a benefit which has accrued to a claimant as a consequence of his action is sufficiently closely related to a particular head of damage so as to warrant and justify a reduction: See Clerk & Lindsell paragraph [28-09] and footnote [52]. Not all steps taken to offset loss will invariably count to reduce the damages. The taking out of an insurance policy prior to the loss which would offset it, for instance, may be treated as collateral to the defendant’s liability and will not affect it (ibid).*

184. *The onus is on the defendant to show that the claimant failed to mitigate: Clerk & Lindsell (ibid) paragraph [28-09] page [2012].”*

288. I will deal with the Fund Parties’ submissions regarding Mr Jafar’s alleged failure to mitigate in the context of my discussion of the competing valuations of the individual Settlement Assets.

The expert evidence

289. In view of the parties’ submissions regarding and criticisms of the evidence adduced by the two experts, I should briefly comment on my view as to their credibility and competence.

290. Mr Jafar submitted that Mr Cohen’s expert evidence should be rejected. He said that regrettably he appeared barely to be familiar with his own report and consistently struggled with even simple questions about the factors on which he relied to express opinions. Mr Jafar said that Mr Cohen had been visibly uncomfortable answering questions without re-reading large sections of his report and many of his answers were

simply regurgitations of what had already been said in his report. Under cross-examination, it appeared that he had done very little valuation work of his own, other than that he expressed several bare assertions that “*in [his] judgment*” the valuation he had put forward was correct. Further, Mr Jafar claimed, at times Mr Cohen’s evidence was completely evasive or misleading (and he gave various examples in the Written Closing Submissions). Mr Cohen had also, Mr Jafar said, given the impression of a witness making up answers on the fly in order to get out of difficulty in the witness box, attempting *ex post facto* to offer a sound explanation for his methodology rather than sincere, properly founded explanations for his contemporaneous methodology (the most pronounced example of this being in relation to the Dubai Villa).

291. The Fund Parties said that Mr Singhvi had not suggested that he was in any way an expert in the valuation of assets. Rather he had been entrusted with the task of realising assets received by Mr Jafar because he was familiar with Abraaj and because he was a trusted executive of the group. They accused Mr Singhvi of repeatedly going beyond his remit as a witness of fact by purporting to give opinion evidence on a number of occasions. They gave the example of his statement that the Settlement Assets were “*unique high value assets for which there was (and is) no ready market or readily available market price*”, that “*there are probably only a few thousand people in the world who could ever hope to buy*” the Yacht and the Dubai Villa, and that “*I have no doubt that we would have received only a fraction of the amount that we ultimately obtained.*” In addition, they claimed that there were significant omissions from Mr Singhvi’s evidence that cast serious doubt on his reliability. They gave the example, in relation to the Yacht, of the omission of an offer of US\$ 13 million from the offers listed at Appendix B to Singhvi 1. The Fund Parties also argued that Mr Singhvi’s credibility was heavily damaged by his unreasonable and unsupportable denial that Badr was involved in the Abraaj efforts to obtain financing from investment firms (such as Colony and Cerberus).
292. The Fund Parties said that Mr Coats’ primary professional experience in the last ten years principally concerned investigations, disputes, and large control mandates. Valuation appeared to have played a comparatively small part of his professional life. On his CV at page 35 of Coats 1 only two items (out of eight) given as examples of his professional experience concerned anything approximating valuation (the first two, relating to quantum of damage). They said that, insofar as Mr Coats did have valuation

experience, he agreed in cross-examination that this lay “*very much towards to the valuation of companies and the valuation of securities*” and that he did not profess to have specific expertise in relation to the valuation of real estate assets, marine vessels, or artwork. Whilst Mr Coats had stated that he had enlisted assistance from employees of his firm, he had provided only very limited information as to the identity of these employees. The Fund Parties submitted that, taken together, whilst they accepted that Mr Coats was a professional witness who gave frank answers to the questions put to him, he simply did not have relevant expertise as regards the Yacht, the real estate assets or the Artwork. Nor was there any escaping the fact that the evidence that Mr Coats felt able to give was fundamentally hobbled by the instructions he had received from Mr Jafar as regards the nature of the valuations he had been asked to undertake. Furthermore, it appeared that he did not have such expertise available to him through the people who assisted him. The Fund Parties said that insofar as there was a divergence of opinion between Mr Coats’ views and those of Mr Cohen in respect of these assets, Mr Cohen’s views should be preferred.

293. In my view, these criticisms were exaggerated:

- (a). I found Mr Singhvi to be a straightforward and honest witness. I have only relied on his evidence for the facts relating to the Settlement Assets and those relating to and surrounding the sale and realisation process. I accept that he sometimes strayed into commentary and opinions as to valuation issues but these were innocuous and not deliberately designed to mislead the Court. I also agree that his evidence regarding the role of Badr was unconvincing but I do not consider that this fundamentally undermined his credibility or prevented the Court from relying on and giving weight to his other evidence.
- (b). both experts struggled to provide comprehensive and completely convincing valuations and estimates of value. This was the result of the manner in which they were instructed and in which the valuation evidence was prepared. Because so many assets needed to be valued across a wide variety of asset classes, the exercise often was based only on limited information and limited (high-level and desktop) analyses. Both Mr Coats and Mr Cohen were clearly not experts in all the asset classes covered and were unable to deal convincingly with questions in cross-

examination relating to assets of a kind with which they were not personally familiar and which they did not regularly value. They each also relied on other experts who were not presented for cross-examination and whose expertise was often unclear and untested. I discuss the occasions on which this issue seemed to me to be acute and relevant to my decision but generally both sides' experts suffered from similar problems and deficiencies in these areas and I do not consider that either Mr Coats or Mr Cohen can be said to have failed to establish adequate expertise or major deficiencies that fundamentally undermined their credibility (although as I note below, in some respects Mr Cohen's evidence in the witness box on certain topics indicated a lack of familiarity with the underlying assets and valuation analysis).

- (c). I agree with the Fund Parties' submission that there was a serious failure to instruct Mr Coats properly in relation to Coats 1. Asking him to value the Settlement Assets that he was requested to opine on by reference to the date of his report was seriously misconceived. It has required Mr Coats in Coats 2 to revisit and adjust his valuations and the Court to assess whether these adjustments produce reliable evidence of value at the relevant transfer date. The assessment of the reliability of his adjusted estimates depends on the nature of his original valuation and the methodology he deployed to see whether the discounting and apportionment that Mr Coats applied in Coats 2 produced an estimate that properly and cogently reflected the asset value as at the transfer date. As I explain below, on some occasions in my view it did not with the result that Mr Cohen's valuations or estimates fell to be preferred. But I do not accept the Fund Parties' submission that Mr Coats' evidence could be ignored.

The valuation of the Realised Assets

The Dubai Villa

294. Mr Jafar argued that the value to be attributed to the Dubai Villa should be AED 39,199,890 (US\$ 10,672,971), being the net proceeds of sale (or in the alternative Mr Coats' value estimate at the date of transfer for US\$ 10,028,077). The Fund Parties argued that Mr Cohen's valuation of US\$ 28,900,000 should be accepted.

295. As I have noted, the interest in the Dubai Villa was transferred to Mr Jafar on 11 October 2018 (when Mr Naqvi as shareholder of AOL transferred 100% of the shares in ACL from AOL to CH). A contract to sell the Dubai Villa was entered into on 9 July 2020 with completion taking place on 8 December 2020.
296. The first issue is whether the sale price obtained by the sale in 2020 can properly be treated as strong evidence of the value of the Dubai Villa (and Mr Jafar's interest in it) at 11 October 2018. In my view, Mr Jafar adopted an appropriate strategy with a view to finding a buyer and selling the Dubai Villa as soon as practicable and acted reasonably so that it can be said that it was not reasonably practicable in the circumstances to sell the property at a fair price reflecting its true market value before 2020.
297. Mr Jafar was right to say that the evidence showed that there were problems associated with selling the Dubai Villa, both because of the state of the market for large properties in the area where the villa was located and its condition. I found Mr Singhvi's evidence on this issue to be convincing and I accept it. I also consider that the marketing, maintenance and realisation strategy adopted by Mr Singhvi and his team was reasonable save that in my view it was unreasonable for Mr Singhvi (and Mr Jafar) to reject the offer of AED 44 million made and received in January 2020.
298. In my view, the GHF Parties mischaracterised Mr Singhvi's evidence, which when properly understood demonstrated that a reasonable and rational strategy focussed on maximising the chances of selling the property had been adopted. I also reject the Fund Parties' claim that Mr Singhvi (and Mr Jafar) had acted unreasonably in failing to rent-out the property in the period when it was being marketed for sale but before the sale had been agreed. There were rational grounds that had been identified and considered for not doing so. During his cross-examination Mr Singhvi had said as follows:

"A. I do recall, because rentals in the UAE, as I said, it's a minimum of one year, but even after that, you do need to provide notice and it's a cumbersome process to get any tenant out. So we did - I do recall looking at short-term rental options. But, again, as the marketing process was going on, we didn't want to disrupt it in any way and have the villa available for potential buyers to view, and having a tenant in that would have been disruptive. So it was advice provided by the brokers to not go for that option."

Q. Did you also consider the possibility of mothballing the property?

A. No, I don't recall so. Because that would have - I mean, I'm just saying, it would have devalued the property. When you say "mothballing", this property required maintenance for its upkeep in order for it to be marketable to any potential buyer...."

299. However, in my view, it was in the circumstances unreasonable for Mr Singhvi and Mr Jafar to reject the January 2020 offer for AED 44 million and I do not consider that the Fund Parties should be required to bear the additional loss resulting from the difference between that price and the lower sum ultimately obtained in the subsequent sale a few months later. The offer (and there was no evidence or suggestion that the offer was incapable of being or would not have been consummated and completed) had been received by a reputable broker (Mr Leigh Borg of Sotheby's) who had strongly advised that it be accepted and clearly warned that a refusal to accept it and further delay was likely to result in a lower price and recovery. Mr Borg's outlook for the future was clearly pessimistic. He said as follows:

"My professional advice is to take this offer and close this chapter, as we have had 4 separate offers and all have ranged between 40-42m, which tells us the true market for the villa, and the market is still continuing to fall month on month. I have also attached my initial valuation report on the villa from February 2019, in this report I recommend taking any offer 55 million & above, a year on the market has dropped 18-20%, puts us right on the money at 44 million AED.

I appreciate you wanting to achieve a minimum of 45 million net, and as your agent, I want to get you the highest possible price, however, I would not lose this offer, as if we do not close this offer, in 6 months' time I feel we will be getting offers of 37/38 million AED."

300. This issue was extensively addressed in Mr Singhvi's cross-examination (Day 16, pages 100-109) (my underlining):

"Q. At {D1/6587/1} is an email from Mr Borg to you of 4 February [2020]. He says: "Please find attached the market report for L sector 24 villas." He talks you through what has been happening over the last two years. He refers in the fourth paragraph: "Currently, we have a cash offer for 44 million AED ..." He names the individual who has put the offer in. That would give a net figure of AED 43 million. Then he says: "My professional advice is to take this offer and close this chapter, as we have had 4 separate offers and all have ranged between 40-42m, which tells us the true market for the villa and the market is still continuing to fall month on month." We have seen the

valuations received from the first one, being 30 May 2018, from Savills of US\$25 million and then we have seen lower valuations, there was a higher valuation from Luxury Properties and a lower valuation from Gulf Sotheby and we see the trajectory of the offers reducing since the date of transfer; correct?

A. Correct. I mean, the earlier - what Gulf Sotheby's provided and Luxury Properties provided and Savills provided were valuations. These were offers. So we didn't receive a single offer in that region of all that they were talking about and that was our constant kind of pushback to them, that you would come in saying, you know, AED 85 million to AED 90 million in the case of Luxury Properties, 67, and I would sell it anywhere between 55 from Gulf Sotheby's, so why are we not getting those offers?

Q. ... [the email from Mr Borg]. I have just taken you to the offer. He says his advice is to accept it. In the next paragraph he says he attaches the initial valuation report on the villa from February 2019, which we went to earlier: "In this report I recommend taking any offer 55 million & above, a year on the market has dropped 18-20% ..." That's the view he is expressing to you.

A. Yes.

Q. "... puts us right on the money of 44 million AED. "I appreciate you wanting to achieve a minimum of 45 million net, and as your agent, I want to get you the highest possible price, however, I would not lose this offer, as if we do not close this offer, in 6 months' time I feel we will be getting offers of 37/38 million AED." Again, that's his view expressed to you; correct?

A. Correct.

Q. Again that would indicate a market that has been falling; correct?

A. Correct.

Q. And a market that in his professional view would continue to fall; correct?

A. Correct.

...

Q. But Mr Borg, as you record, and as we have seen, advised you to accept the offer because he was advising you that in six or so months' time offers of AED 40 million or above were not going to be available; correct?

A. Yes, that was his view.

Q. Then you receive an offer. That's January when you receive an offer for AED 44 million which you reject; correct?

A. Correct.

Q. And then in April you receive an offer of AED 40.5 million, which is accepted; correct?

A. Yes. That was after COVID hit.

Q. You accept, don't you, that with COVID the market was weakening?

A. Yes... ”.

301. In my view, the Dubai Villa could and should have been sold for AED 44 million in early 2020. This would have been a sale at the earliest opportunity after the transfer of the interest in the Dubai Villa to Mr Jafar and would have and did represent the market value of the property when that interest was transferred. Mr Singhvi and Mr Jafar chose, in the face of strong and clear advice to the contrary, to take a substantial risk by holding out for a higher offer in seriously unfavourable and worsening market conditions. The adverse consequences of such risk-taking should not be the responsibility of the Fund Parties.

302. I prefer the results of the real-world sale process (which as I have held was properly and reasonably conducted in a reasonable time frame albeit in difficult market conditions) to the desk-top and comparables-based analysis of Mr Cohen, which in my view produced an unrealistically high value for the Dubai Villa. I have carefully reviewed Mr Cohen's analysis and valuation but I accept the challenges and criticisms of Mr Cohen's methodology and valuation made by Mr Jafar which I have set out and summarised above.

303. Accordingly, I consider that the sale price of the Dubai Villa should be treated as AED 44 million.

304. I am satisfied that it is appropriate, for the reasons I have already given when discussing the costs issue, that the costs of maintaining the Dubai Villa in the period before the sale for the purpose of maintaining it in a condition that would make it suitable for resale should be deducted and the categories of cost and their amount identified by Mr Singhvi in his evidence seem to me to be justifiable and should be accepted. I have considered whether only the maintenance costs incurred in the period up to the time at which the AED 44 million sale could reasonably have been expected to complete should be

deducted but have concluded that it is unnecessary and would be unnecessarily complicated to do so. It is difficult to be precise without speculation as to when such completion was likely to occur and, in any event, it would only have been a few months in advance of completion of the actual sale.

305. I am also satisfied that the costs related to the sale as identified by Mr Singhvi (comprising the commission paid to the broker in the sum of AED 425,250, bank charges of AED 54,387 and collection charges of AED 206) should be deducted. These appear to me to have been necessary and reasonably incurred in respect of the Dubai Villa. He said that the total costs was approximately AED 479,843.

The 40 Lowndes Square Stake

306. Mr Jafar valued the 40 Lowndes Square Stake by reference to the net realised on its sale, which was a negative figure (-£34,591) because related costs exceeded the sale price. His interest in the 40 Lowndes Square Stake was acquired on 14 August 2018. On 4 January 2021, Mr Jafar transferred his interest to the Colligo Trust. On 14 October 2022, the trustee of the Colligo Trust sold the 40 Lowndes Square Stake for £2,807,300, which was less than the amount that Mr Jafar had been required to advance for the purpose of completing the development.
307. Mr Cohen determined that the market value of the Lowndes Square property at 14 August 2018 was US\$ 87,200,000 and that the value of Mr Jafar's share in SHL at that date (assuming that SHL held a 50% share in LSH) was US\$ 5,934,000.
308. There are four issues to be considered. The first issue is whether Mr Jafar can rely on the price achieved in the October 2022 sale by the trustee of the Colligo Trust as good evidence of the market value of the interest he acquired in August 2018. In my view, on the facts he can. The second issue is whether Mr Cohen's assessment of the market value of that interest at that date is to be preferred and gives a more reliable valuation and assessment of the market value of the 40 Lowndes Square Stake on the date of acquisition. In my view, Mr Cohen's valuation is not to be preferred and does not displace the valuation derived by reference to the actual sale price. The third issue is what was Mr Jafar's interest as at 14 August 2018 (50% or 42%). In my view, the Plaintiff's evidence

is sufficient to justify the conclusion that he only acquired an interest subject to the rights of Mr Sahenk so that he only had a right to 42% of the shares in LSH. The fourth is whether Mr Jafar is entitled to deduct from the market value of his interest the sums he advanced by SHL. In my view he is.

309. As regards the first issue, the Fund Parties argued that Mr Jafar had made a choice not to sell earlier and could have done so at a higher price than was achieved in October 2022. There is no doubt that the sale was a long time after the transfer of the 40 Lowndes Square Stake to Mr Jafar and that does raise a serious concern as to whether the time lag would have had had a material impact on the state and condition and circumstances affecting the value of the property such that the price obtained in October 2022 cannot stand as evidence of the market value of the interest acquired by Mr Jafar in August 2018. However, it seems to me that the evidence, on balance, shows that the 40 Lowndes Square Stake was incapable of being sold or otherwise realised, and was not sold despite reasonable efforts to find a buyer, before the October 2022 sale. Mr Jafar took reasonable steps to realise the 40 Lowndes Square Stake as rapidly as was reasonably practicable and even invested substantial amounts of his own (or related parties') funds to maximise the value and achieve a realisation of his interest.
310. It seems to me that the nature of the asset acquired and the steps required to put it into a state where it could be realised at a proper market price are important considerations. The 40 Lowndes Square Stake involved an investment in a large and incomplete property development. Mr Cohen said that his understanding was that "*at 14 August 2018, the shell and the core [were] substantially completed or [were] "practically complete" however, interior build-out had not yet begun*" (Cohen 1 at [81]) and that "*[at that date] the Lowndes Square property was a comprehensive redevelopment site, following the demolition of the two previous six story inner terrace houses*" (Coats 1 at [78]). Mr Singhvi's evidence was that the project had serious and substantial financial problems. He said that these had to be addressed before the 40 Lowndes Square Stake could be realised and that resolving these financial problems to facilitate progress with the development required the expenditure of substantial further sums and effort. £2,808,846 was advanced by SHL to deal with these problems and allow progress to be made in completing the development and to allow there to be a realisation of Mr Jafar's interest. Mr Singhvi's evidence was that this was "*an incredibly complex and taxing process involving substantial time...*"

and that despite efforts to market the property/asset, no concrete offers had been received before the offer that produced the October 2022 sale.

311. Mr Singhvi was asked about the action taken and efforts to sell the 40 Lowndes Square Stake before the disposal in October 2022. He gave the following evidence (Day 16, pages 115-121) (my underlining):

“Q. At [101] of Singhvi I at the bottom of the page, you say that there were attempts to market the property but no concrete offers were ever received. You say "no concrete offers were ever received." Were any offers received?

A. To my recollection, no. What I do recall is the gentleman Siraj Dadabhoy, who was the developer, had mentioned certain interest in the property by certain high net worth individuals, who he seemed to suggest [had] a strong interest, but I hadn't seen any offers.

Q. He said there had been expressions of interest but you hadn't seen any formal offers being made?

Y. Yes.

Q. At {D1/6679/1}, is that a document you recognise?

A. Yes.

Q. Could you explain to his Lordship what your understanding of that document is?

A. Yes. My Lord, my recollection is this is a summary or a table of a document in an Excel format which was maintained in terms of the realised values versus the estimated values and it was periodically updated.

Q. If you go to [120] of your witness statement, under "Downward revision in market value", the document that we have just been looking at, is that the document you are referring to in [120]?

A. Yes, I believe so.

Q. Therefore, is it right to say that the document that we were looking at was prepared by you?

A. Yes, me and my team who was assisting me in keeping it.

...

Q. That's the position as you have assessed it in October 2020; correct?

A. Correct.

- Q. Did you consider by reference to that valuation trying to dispose of Mr Jafar's interest in the property?
- A. Yes, my Lord, we had discussions with the other shareholders and expressed our interest to sell out but at that stage no one was willing to acquire the interest.
- Q. Are any of those efforts by you to sell this interest referred to in your witness statement?
- A. I don't believe so.
- Q. Why would that be?
- A. It never resulted in anything really. The other shareholders were not willing to buy at that stage.
- Q. You refer to - if you go back to your witness statement, - attempts to market the property by the developer, but they came to nothing.
- A. So they were - there were two ways this could lead to a realisation: either there's a new external buyer who buys the whole property and the shareholders get the receipts or if only Mr Jafar wants to sell, the first port of call was the existing shareholders, and no one expressed interest.
- Q. I understand that. Again, I'm drawing a distinction between the two. If we go back to [101] of your witness statement ... you say: "... there were attempts to market the property." You refer in the footnote to AION's marketing strategy. AION is the company that owns the development or is responsible for the development of the site?
- A. Correct.
- Q. Is that Mr Dadabhoy that you referred to?
- A. Yes.
- Q. You refer there to marketing attempts and also to the fact that no concrete offers were ever received, correct?
- A. Correct.
- Q. So that was worthy of comment. But attempts to sell the stake to other participants in the development, which didn't reach fruition, is not something that is worth referring to; is that right?
- A. No, that's not right. I mean, the marketing effort referred to at [101] was a continuous effort over time by the developer; versus the potential interest of any other shareholder to buy, was put forth as a one-time question and the answer was no, so it didn't really require constant ... it was not a process. It was just simply no.

- Q. I understand. But again I'm trying to draw a distinction between the two. On the one hand you talk about the attempts to market the entirety of the property by the developer and no offers being received; correct?
- A. Correct.
- Q. And you explain rightly that that's one aspect or one ability to exit the development for everybody; correct?
- A. Yes.
- Q. You also noted that an alternative exit strategy would be Mr Jafar selling his stake directly to other shareholders; correct?
- A. Correct.
- Q. All I'm saying to you is that's not referred to in your witness statement, is it?
- A. It isn't.
- Q. You say it would have been a conversation and the answer was no. But if you are trying to realise Mr Jafar's particular stake, specific stake, and in October 2020 you are valuing it at £6.25 million, it is likely, isn't it, or there should have been, a record of you putting the prospect of selling Mr Jafar's stake to the other shareholders; correct?
- A. Yes. As I've said, that was not even in 2020, that was something I asked the shareholders shortly after we got into this, because - my Lord, I would like to state that there were several issues that came to light after we got into the project. What was represented by Mr Naqvi was, "This is a project, a high end development," he invested £15 million, "This could be sold at £20 million." When we got in, we saw that there were several cost overruns, there were contractors who had stopped work, there was a banking facility which we were not aware of, which was in default or about to be defaulted, and so there were all sorts of issues, and the fact that shareholders were expected to provide further funding in order to get the project back on track and to honour the covenants of the banking facility. So it was a situation that we did not - I mean, Mr Jafar acquired this to recover and receive, as opposed to put in more money. And at that point I had asked the shareholders whether anyone was willing to acquire this stake and the answer was no.
- Q. But you are an experienced businessman, you have been entrusted with a not insignificant task on behalf of effectively your employer; why is there no record of those offers being put to the other shareholders?
- A. Well, why it's not in this witness statement? Perhaps it could have been. But I'm telling you what was the situation and the fact that I did put that forward...."

312. I have set out at length Mr Singhvi's answers because they clearly explain his evidence. I find his responses to be clear, coherent, candid and convincing. Mr Atherton's cross-examination sought to challenge the credibility of some of Mr Singhvi's responses because they had not been covered and dealt with in Singhvi 1 but in my view Mr Singhvi's answers were honest and understandable. He had not covered every aspect in Singhvi 1, in particular, he had not given details of the efforts to attract interest from other shareholders and he candidly admitted that he perhaps should have done so. But in his evidence in cross-examination he did so and he gave a convincing explanation of the limited nature of those efforts and discussions. The other shareholders had given a clear negative response when initially approached and the problems with the development, clearly summarised by Mr Singhvi in these responses, made it highly unlikely that any other shareholder would at least at that stage be interested in taking over Mr Jafar's stake. I do not accept that because these matters were not set out in detail in Singhvi 1 that Mr Singhvi's evidence in cross-examination should not be believed.
313. The Fund Parties, as I have noted, referred to various other documents including the document prepared by Mr Singhvi in September 2020 and argued that they represented strong contemporary evidence of what the 40 Lowndes Square Stake was understood to be worth at the time (and which showed or supported the view that the market value of Mr Jafar's interest at the date of acquisition was, or was likely to be, greater than the price achieved on the sale of that interest). The September 2020 document included figures under the heading "*AMN Assets - Remaining Assets - Estimated value (as at 30 Sept 2020)*" and stated that the "*estimated value*" of the 40 Lowndes Square Stake was US\$ 6,250,000. But, in my view, tellingly, under the heading "*estimated date of sale*" there was a blank while a date was included for example for the Dubai Villa. This indicates in my view not only that the document was referring to indicative estimated values but also that they were tentative. Nor is there any indication that the figures were based on detailed and up to date expert valuations. I do not consider that the estimates in the documents identified by the Fund Parties can be given great weight as to the realistic and considered market value of the 40 Lowndes Square Stake at the relevant time.
314. It seems to me that Mr Cohen's valuation of US\$ 5,934,000, which was over twice the sum for which the 40 Lowndes Square Stake was sold, should not be accepted as more reliable than, or as displacing as the best evidence of the market value of the property at

the transfer date, the ultimate sale price. It provided an indicative market value as at the transfer date and I have carefully considered it but it seems to me that its reliability is open to question in a number of respects which make it less reliable than the real-world price actually obtained in the difficult circumstances affecting the Lowndes Square development after what I consider to have been a reasonably conducted process by Mr Singhvi to preserve and maximise the value of the property and put it into a state which would facilitate a realisation of Mr Jafar's interest.

315. Mr Cohen's approach was once again based on a desktop valuation based on input from historic data produced by third parties which he had not verified. This in itself does not undermine the reliability of the valuation but does require careful scrutiny of the reliability and use of that data and the extent to which the components of the valuation are based on elements that are speculative or difficult to estimate reliably, as well as having to assess the extent to which the valuation take account of all real-world conditions and considerations.
316. Mr Cohen calculated and estimated the likely sales proceeds from the development and the costs to complete the development. He also determined an appropriate discount rate to be applied to the projected net sales proceeds and then adjusted his valuation to take account of the size of Mr Jafar's stake in the development.
317. I consider that Mr Jafar was right to assert that Mr Cohen's credibility as a valuer and the reliability of his valuation of London retail developments was in doubt. Real estate and London real estate in particular is not within his sweet spot. He is not an experienced valuer of London residential property developments and while he asserted that Mr Torzewski had relevant and sufficient experience I agree with Mr Jafar that this was unproven. Mr Torzewski did not give evidence and could not be cross-examined. It was not clear to me that Mr Torzewski had any direct and recent experience of valuing similar properties in the London market and really had the necessary experience to produce a reliable valuation of this property beyond high level calculations.
318. Furthermore, as Mr Jafar claimed in his submissions, Mr Cohen seriously struggled to deal with detailed questions on his valuation when cross-examined and gave the impression of having only a limited personal knowledge and understanding of the property and valuation. This may have been because he had failed to re-read and get on

top of his report and the related materials before going into the witness box (he repeatedly had to say that he needed to remind himself of what was said in his reports) but it did rather weaken the persuasiveness of his evidence.

319. It also seems to me that Mr Cohen's valuation was dependent on a number of difficult to estimate inputs, which make a valuation of developments like Lowndes Square difficult. This difficulty was made more acute in this case because of the serious problems to which the development and the developer were subject (as explained by Mr Singhvi). It does not appear that Mr Cohen factored into his methodology or valuation the actual problems that had been and were at the transfer date being experienced and their impact on the key inputs into his model and valuation.
320. To calculate the projected sale proceeds to be generated by the development, Mr Cohen first had to determine the period of time over which a sale of the completed units at the Lowndes Square property would be sold and he projected a three-year sell-off period based on a review of the market demand. He then had to identify and evaluate comparable sales of other properties which he did by reference to data compiled from research of sales of comparable properties within the local market. He said that these comparables were chosen based upon date of transfer, size, and location and that ten comparables were used to determine the appropriate price per square foot of the Lowndes Square units. Mr Cohen calculated his estimate of the price per square foot for each unit of the Lowndes Square property and the aggregate gross development value (GDV) for the entire property. The aggregate GDV was £106,108,300 which he divided by the five units (£21,221,660 per unit) and he then developed the value of Lowndes Square using a DCF method based on his assessment of the present value factor of 17% (which he selected "*based on [his experience in valuations of this type as well as [his] my analysis of properties similar to Lowndes Square*"). These elements require access to reliable data and the exercise of judgment. While coherent and carefully constructed, it seems to me that the figures generated are in some respects speculative and cannot be taken to be hard and fixed.
321. I think that Mr Jafar was also right to challenge the reliability of Mr Cohen's calculation of development costs, his use of a 17% discount rate and his reliance on the old reports and data. This is not to say that in the circumstances of Mr Cohen's limited review it was

unreasonable for him to use these reports and this data, but rather these factors impact on the reliability of his valuation.

322. I also accept Mr Jafar’s submission that his interest in LSH for the purpose of determining the value of the 40 Lowndes Square Stake was only 42%.
323. The register of members for LSH recorded a transfer on 29 May 2019 of 80,000 shares by SHL to Mr Sahenk. In addition, in an email dated 14 September 2018 from Mr Jafar’s solicitor at Gibson Dunn to Mr Naqvi’s solicitor at Dechert, Gibson Dunn complains that “.. *the issue of Mr Sahenk's investment in [SHL] must surely have [been] known to you from the outset but was not adequately disclosed. We were only provided with documentation regarding this on 5 September [2018]. Moreover, the information which was provided was incomplete requiring us to raise various additional enquiries.*” Mr Singhvi was asked about this during his cross-examination and he said as follows (Day 16, page 113):

“Q. What [the share register] shows is it was at that date or from that date [29 May 2019] that Mr Sahenk acquired his shareholding and therefore Mr Naqvi's shareholding was reduced from 50% to 42%; would you agree?”

A. Well, my understanding, this may have been the time that the shares were actually transferred. But what Mr Naqvi had explained is the ownership in Steadfast was 8% owned by Ferit Sahenk and 42% by himself and did not – and that's how the investment also happened at the time they invested. So Ferit Sahenk had invested through him and it was not fully reflected in the share register. And from what I understood [it] is because Ferit Sahenk was a friend of Mr Naqvi and they had some sort of an understanding. But when Mr Naqvi was transferring it to Mr Jafar, Ferit Sahenk wanted his shareholding to be directly reflected in the share register. And it took some time for that to happen.

Q. When do you say you became aware of that being the position, can you recall?”

A. This was shortly after the settlement agreement.”

324. Mr Singhvi’s account seems to me to be credible. It is inherently unlikely that there would be a transfer or agreement to transfer shares only taking effect after the transfer of the 40 Lowndes Square Stake to Mr Jafar. It seems likely that all that Mr Naqvi had was the interest subject to and after taking account of Mr Sahenk’s rights. The transfer to him was clearly recorded and this seems to me to be the most likely explanation of why there was such a transfer and what was happening. The fact that there was an arrangement or agreement

between Mr Naqvi and Mr Sahenk before the transfer to Mr Jafar on 14 August 2018 is corroborated by the email from Gibson Dunn in the first half of September 2018.

325. It also seems to me that in the circumstances Mr Jafar is entitled to deduct from the market value of his interest the sums advanced by SHL. The evidence indicates that these sums were needed to allow the development to proceed and that without the sums being advanced and spent, the 40 Lowndes Square Stake could not have been sold at all or only for a much lower amount. The expenditure was necessary in order to enable the 40 Lowndes Square Stake to be put into a condition where it could be sold and appears to have been reasonable in amount. Mr Jafar appears to have had a sufficient interest in SHL to justify the conclusion that the expenditure was on his account.

The Yacht

326. Mr Jafar valued the Yacht by reference to the net sale proceeds of EUR 8,959,114 (US\$ 10,505,528) and in the alternative he relied on Mr Coats' valuation estimate which adjusted the net realised value of the Yacht as at the date of transfer to US\$ 9,660,669. Mr Cohen concluded that the value of the Yacht was US\$ 17,375,000 as at 13 July 2018 and 20 December 2018, the first date being the date on which Mr Jafar acquired (indirectly) beneficial ownership of the Yacht and the second date being the date on which legal title was transferred.
327. The Yacht was eventually sold in June 2021 for EUR 11,500,000. Mr Jafar argued that the following costs should be deduced: operating costs of EUR 1,417,460, the cost of dealing with the VAT issues of EUR 80,203 and the sale costs of EUR 1,043,223.
328. Once again, there was a material delay between Mr Jafar's acquisition of the interest in the Yacht and its sale and this is a concern. But, looking at the evidence in the round, I accept Mr Jafar's submission that the evidence showed that Mr Singhvi (advised by experienced brokers) had done everything that could reasonably have been done to realise the Yacht for a reasonable price and within a reasonable time, against a backdrop of name tainting, substandard physical condition and the COVID-19 pandemic. I also accept that it was reasonable to wait until legal title had been transferred before seeking a buyer. The

evidence indicates that there were serious problems relating to the condition of the Yacht and that despite an active marketing process it was difficult to obtain acceptable offers. The evidence does not indicate that potential buyers were ignored or not approached or that higher offers were unreasonably ignored or rejected. In these circumstances, I accept that the net sale price provides good and reliable evidence of the market value of the Yacht at the date on which Mr Jafar acquired the full interest in it (that is, in December 2018) and a proper basis for assessing the value of the Yacht at that date.

329. I have carefully considered Mr Cohen's valuation but once again prefer to rely on and use the value produced by the sales process which I have concluded was reasonably and properly conducted. The fact is that no acceptable offer at the level of Mr Cohen's valuation was received during the lengthy marketing process. Had his valuation been reasonable and realistic one would have expected bids at or near it from reputable bidders to have been received. During his cross-examination, as I have noted, Mr Cohen was asked whether the absence of such bids had caused him to revisit and reassess his valuation but he rather unhelpfully simply said that it had not. In my view, it should have caused him to reassess and take the absence of bids into account, and at least to have provided convincing explanations for the failure to obtain offers at the price he had calculated. As Mr Jafar suggested, and I find persuasive, it is likely that Mr Cohen's high valuation failed properly to take into account the poor condition of the Yacht and the other factors that chilled interest in the Yacht and made finding a buyer at the time a particular challenge. I also consider that Mr Cohen's valuation was impermissibly on the high side for the reasons given by Mr Coats in Coats 2. Mr Jafar, based on Mr Coats' evidence, challenged Cohen's use of blended methodologies, his focus on the length rather than gross tonnage of comparables, and the appropriateness of the comparables selected (see Coats 2 at [50]-[62]). I found Mr Coats' criticisms to be cogent and persuasive. For example, Mr Coats (at [51] of Coats 2) said that Mr Cohen had provided no explanation or justification for his choice of weighting the methodologies 90%/10% and that in his opinion the Sales Comparison Approach would be the appropriate methodology to value the Yacht in an unsold state. Whilst the outcome of the Sales Comparison Approach could be compared to the value determined by the Cost Approach to test for reasonableness, he considered the combination of the two methodologies "*to be inappropriate and inconsistent with proper valuation practice.*" He noted that by mixing the methodologies, Mr Cohen had increased his valuation by US\$0.69 million.

330. It seems to me that the operating costs of EUR 1,417,460 and the sale costs of EUR 1,043,223 should be deducted. The operating costs were necessarily and properly incurred in putting the Yacht into, and maintaining, a condition that facilitated a sale at a proper price and within a reasonable time and have to have been reasonable in amount. The sale costs also appear to have been properly incurred for the purpose of the sale and reasonable in amount.
331. However, I am not satisfied that the cost of dealing with the VAT issues (of EUR 80,203) should be deducted. Mr Jafar said that those costs had been incurred to preserve the tax status of the Yacht and that if they had not been spent and the sums imposed by the Penalty Notice had not been paid, the price obtainable for the Yacht “*might*” have been adversely affected. It seems to me that the VAT problems and the sums that Mr Jafar was required to pay were connected with his use and operation of the Yacht and it cannot be said to have been necessarily incurred to put or preserve the Yacht in a marketable state or to avoid a reduction in the sale price. The VAT Penalty Notice related to VAT on the importation of the Yacht into France, VAT on fuel and penalties and interest. As I have noted, Mr Jafar submitted that if the relevant sums had not been paid the sale price “*might*” have been adversely affected. But Mr Jafar did not explain clearly and convincingly why this was likely to be so. He did not show that the liabilities attached to the Yacht and could be enforced *in rem* against it even after a sale and on his own case was only able to say there might rather than would be an adverse impact on the sale price.

The El Gouna Property

332. It seems to me that the value to be attributed to the El Gouna Property should be the net sale proceeds of EGP 7,042,753. There has been no serious challenge to this approach.

The realised artwork

333. I accept Mr Jafar’s submission that the value to be attributed to the realised Artwork should be the net amount obtained on its realisation in the aggregate sum of US\$ 17,439,073.

334. I accept Mr Jafar's submission it was reasonable for him and Mr Singhvi to rely on the valuations of and sales process managed by Christie's and that they both had taken reasonable steps to progress the sales process promptly and to ensure that the sale prices were maximised and represented market value. The evidence indicates that there was a sale process managed and conducted with the benefit of world-class advice which dealt properly and reasonably with the difficulties faced resulting from market retractions, the COVID-19 pandemic and general tainting as a result of the connection to Mr Naqvi.
335. As I have noted above, it appears that Mr Cohen's evidence (clearly confirmed during his cross-examination) was that the prices obtained pursuant to the Christie's process and in reliance on Christie's valuations were reasonable and represented the most reliable evidence of the market value of the items of artwork at the date on which they were acquired by Mr Jafar.

The Realised VC Portfolio Assets - Wamda Capital, MENA Venture Investments, First Minute Capital and Velocity Black

Wamda Capital

336. On 6 September 2018, Mr Naqvi transferred the shares in MIH1 to CH2 and, on 13 December 2018, CCL agreed to buy the shares in MIH1 from CH2. MIH1 owned the shares in WMV which owned the shares in Wamda. CCL purchased the shares in MIH1 for US\$ 5,081,048. Mr Singhvi said that this was equivalent to the total capital contribution that had been made by MIH1 (the investment cost).
337. Mr Cohen considered that the sale to a Crescent entity required particular scrutiny to establish that the price paid was a proper market price. He said that he had only limited information from which to offer a view as to the market value of the shares in MIH1 when transferred to Mr Jafar. He noted the letter dated 17 September 2018 from the general partner of the WAMDA fund which referred to an offer previously made based on a recently reported net asset value of Wamda Capital and suggested that an estimate of the market value of the shares in MIH1 (in substance in Wamda) could reliably be made by using the recent net asset value figures. US\$ 5,800,000 was said to be based on the fund's most recent NAV reporting.

- 338 I accept that an insider sale requires careful scrutiny. This is particularly the case if and where there has been no testing of the market by an active marketing process targeting all potential buyers and lasting for a sufficient period of time to allow interested parties to come forward.
339. While I consider that Mr Jafar could have done more to support the case that the sale was at market value (for example by having commissioned a report at the time) I have concluded, on balance, that the net sale price paid by CCL is the most reliable basis for assessing the market value of the MIH1 shares at the relevant date.
340. Forming a view on the market value of Wamda Capital at the date on which Mr Jafar acquired his interest is made difficult because there is only limited information and data available to assess and test whether the actual sale price or the offer price referred to in the September 2018 letter should be used. The nature of the asset also makes this difficult. The Wamda investments were all early-stage companies and were yet to mature and there was little information available to enable it to be ascertained whether the companies had or would increase in value over time or fail altogether or have a very limited value. Using the capital contribution measure to determine price is not in these circumstances unreasonable or unheard of. So the actual price paid was not based on an uncommercial methodology and could be justified in light of the nature and uncertainties surrounding the asset concerned. Furthermore, the evidence showed that this was not a case of no-marketing. As Mr Singhvi had noted, Mr Jafar did not receive any offers for his stake in Wamda, despite it having been offered to the other limited partners (Day 17, page 34) and there had been previous unsuccessful attempts to sell Mr Naqvi's stake in Wamda for a price below its own investment cost. In addition, as Mr Jafar submitted, it is at least likely that if the transfer from Mr Jafar to CCL was insufficient in terms of value, the general partner would have sought competing bids from Wamda's other limited partners and then, if necessary, rejected CCL's offer (which it did not). I can see the force of using a net asset based valuation and the evidence of the September 2018 letter indicates that the net asset figure was higher than the price paid by CCL and that there had been some interest at that level. But I do not consider it appropriate to use the "offer" referred to in that letter as the prime benchmark for assessing the value of the interest in Wamda when there are no details regarding the offer (when was it made, by whom, subject to what conditions and other terms affecting value).

MENA Venture Investments

341. MVI was a joint venture in which Mr Naqvi's stake was 50%. That 50% stake was held through MIL which was owned by MESA. On 6 September 2018, Mr Naqvi transferred the shares in MIL to CH2. On 13 December 2018, CH2 sold the shares in MIL to CCL for US\$ 5,365,347. Mr Jafar submitted that this sale price should be used to determine the market value of that interest as at 6 September 2018.
342. The Fund Parties submitted that the Court should prefer and rely on the fair market value of the MVI portfolio either as calculated by MVI's fund manager in a report dated 5 September 2018 (the MVI Assessment document) which resulted in a market value of Mr Jafar's interest as at the date of transfer in the sum of US\$ 6,993,467. Alternatively, the Court should use Mr Cohen's estimate which was based on the MVI Assessment document, but which made some adjustments to the fund manager's calculations, in particular as to discount rates, which resulted in an estimated value of Mr Jafar's interest of US\$ 9,889,181.
343. Mr Singhvi said that the price paid had been based on the following base case formula: unrealised value of portfolio companies and funds + expected profits from the Entertainer investment (totalling US\$ 10,730,695) x 50% (representing CH2's 50% share in MVI). Mr Singhvi accepted that this was a "*prudent*" basis but said that this represented the sum that MVI's fund manager could have sold the asset for at that time. He also accepted that the fund manager had in the MVI Assessment been prepared to use a less prudent basis (the fair market value basis) which had produced a higher value, but in his view there was no guarantee that the asset was marketable at such a higher price and it was relevant and notable that when Mr Jafar had offered his MVI stake to the other limited partners in the fund no offer had been received.
344. The Fund Parties questioned whether there really had been any genuine or a sufficient attempt by Mr Jafar to market his interest in MVI and whether there was a sufficient justification for not using the higher fair market value assessment made by the fund manager to set the price payable by CCL. They said that the MVI Assessment was made

sufficiently close to the transfer date to be taken into account and was clearly highly relevant.

345. It seems to me to be right that the fair market value as assessed by MVI's fund manager in the almost contemporaneous report is the most reliable figure to be used for the purpose of determining the market value on 6 September 2018 of Mr Jafar's interest in MVI. The fund manager was both knowledgeable and independent and possessed all the requisite expertise. The drafting of and annotations in the MVI Assessment show that it was carefully considered and prepared. The fair market value figure as so assessed is in my view preferable for current purposes to the lower and more conservative base case figure. It is designed to capture the ultimate selling price and while I take into account Mr Singhvi's comment that there was a greater risk that the fair market value figure would not be achieved, it seems to me that in the absence of more evidence to assess and confirm the extent of such risks, I should use the market value basis.
346. However, I do not consider that I should use the fair market value estimate produced by Mr Cohen based on his adjustments to various elements of the fund manager's MVI Assessment. For the reasons given by Mr Jafar, the adjustments appear not to have been fully or sufficiently justified and to be somewhat speculative. No sufficient reason for departing from the careful and fully documented analysis of the real expert concerning the MVI fund, namely the fund manager, has in my view been produced.

First Minute Capital

347. On 6 September 2018, Mr Naqvi transferred the shares in MIHL (which held the stake in FMC) to CH2. On 6 September 2018, Mr Naqvi transferred the shares in MIHL to CH2.
348. Before Mr Naqvi transferred the shares he had committed US\$ 516,000 to FMC and, at the time of the transfer to Mr Jafar, a total of US\$ 112,000 had been paid, leaving a liability of US\$ 403,000 (£313,157) over the remaining lifetime of the fund. Mr Singhvi said that he and Mr Jafar had taken the view that the value of the shares in MIHL should be realised before the outstanding capital commitment liability crystallised.
349. As I have noted, Mr Singhvi said that Mr Naqvi notified the general partner of FMC of Mr Jafar's decision to sell his stake and the general partner took responsibility for finding

a purchaser. In spring 2019, Mr Jafar received an offer for FMC from DDSG and Sapia for a sale price of £70,000, which was accepted. The sale was concluded in May 2019.

350. Mr Jafar submitted that the price paid by an independent buyer found by the general partner following its own usual practice for finding a buyer for an interest in the fund should be accepted as the best evidence of the market value of his interest in MIHL/FMC. The sale had taken place promptly and properly pursuant to the process best suited to obtaining bids and obtaining the market price. I agree.
351. Mr Cohen's desk-top estimate of value cannot in my view be said to be more reliable or displace the actual purchase price obtained through a proper process. As Mr Jafar pointed out, the data relied on (produced by Cambridge Studies) was not obviously appropriate and directly relevant and nothing contained in his analysis suggests that the sales process adopted here was fundamentally flawed and that his market value assessment should be preferred to the market value established in and by that process.

Velocity Black

352. For similar reasons, I consider that the net sales price (US\$ 119,183) obtained on the sale of Mr Jafar's interest in Velocity Black is the figure that should be used.
353. The sale was once again made pursuant to what Mr Singhvi said, that in December 2022 a notification had been received from Latham & Watkins (Velocity Black's lawyers) of the CONA Acquisition. In March 2023, Velocity Black notified Mr Jafar that the CONA Acquisition was expected to close on or before 2 June 2023 and that it would result in MIHL receiving US\$ 123,131 (US\$ 119,183 being paid at closing, with the remaining US\$ 3,947 to be paid nine months thereafter).

The valuation of the Unrealised Assets

The Art Dubai Shares

354. Mr Jafar relied on Mr Coats' valuation either as at 31 March 2023 of US\$ 2,474,991 or, alternatively, as at the date of transfer of US\$ 2,198,229. This 31 March 2023 figure

represented a reduction from Mr Coats' valuation in Coats 1 as a result of revisions made in Coats 2 to his analysis as a result of the inclusion of some new information (relating to the position as at 31 March 2023) and adding guideline companies in response to Mr Cohen's analysis. I note that Mr Coats' adjusted value estimate as at 6 September 2018 was US\$ 1,822,858. Mr Cohen's adjusted valuation as at the transfer date was US\$ 3,389,210.

355. As I have explained, Mr Jafar acquired the shares in GIL on 6 September 2018 (when the shares in GIL were transferred to CH2). GIL owned 40% of MEF. MEF owned 49% of ADF (which owned Art Dubai).
356. Mr Coats (and Mr Cohen) used the Guideline Public Company Method of the Market Approach to estimate the Enterprise Value of Art Dubai. This involves identifying comparable guideline companies. Once the guideline companies have been selected valuation multiples are developed by dividing the enterprise value of the guideline companies by appropriate measures of operating results, such as revenue, EBITDA or earnings. After analysing the risk and return characteristics of the guideline companies relative to the subject company, appropriate valuation multiples are applied to the operating results of the subject company in order to develop indications of value.
357. Mr Coats used and relied on the Art Dubai Fair's EBITDA for the year ending 31 March 2023. He then selected his guideline companies. As he noted in Coats 2, these were different from those selected by Mr Cohen. Mr Cohen had not considered four companies (Hyve Group Plc, Italian Exhibition Group S.p.A., Zhejiang Meorient Commerce Exhibition Inc., and TuanChe Limited). Mr Coats considered that, since these companies organised and held exhibitions/promotion events or provide related services, they had similar operations to those of Art Dubai and, therefore, were good comparables they should be used, although he accepted that, since data on Hyve Group Plc as at the date of transfer was not available, it was reasonable for Mr Cohen's valuation as at that date to ignore it, and, therefore, could not be considered by Mr Cohen. He noted that Mr Cohen had considered four additional comparable companies (Informa plc, TOW Co. Ltd., NOVA Group Holdings Limited, and M Vision Public Company Limited). Mr Coats considered that NOVA Group was not a relevant comparable because it had closed down

a relevant part of its business but accepted that the other three were relevant and added them to his list of guideline companies for the purpose of updating his analysis.

358. Mr Coats said that given that the peer group he selected includes international companies with diverse operations, whereas Art Dubai was a regional operator, he had originally derived the applicable multiple based on the first quartile, giving a multiple of 6.7 (in Coats 1) but this was reduced to 5.7 in Coats 2 (see Table 22). This resulted in a reduction of enterprise value from US\$ 18,285,624 in Coats 1 to US\$ 15,816,280 in Coats 2.
359. Mr Coats deducted estimated notional transaction costs of at least US\$ 625,000 which included M&A fees, sell-side financial, and tax due diligence and legal costs.
360. In Coats 2, Mr Coats adjusted his valuation as at 31 March 2023 by applying the same valuation methodology but now as at date of transfer (6 September 2018), and using 30 June 2018 as the nearest date before the transfer date at which comparable company data was available (that is by applying prorated EBITDA for the period from July 2017 to June 2018 and considering the same peer group multiples, but using a multiple of 6.4) which produced an equity value of US\$ 14,404,230 for a 100% stake in ADF (and US\$ 2,198,229 for Mr Jafar's interest). Mr Coats also did the same analysis for 30 September 2018 (which was shortly after the date of transfer) using the lower 5.7 multiple because, he said, there was a steady decline in the peer group multiple from March 2018 to September 2018 which resulted in a steady decrease in the value of Art Dubai. This produced an enterprise value of US\$ 12,489,073 and a value of Mr Jafar's interest of US\$ 1,822,858.
361. Mr Cohen noted in Cohen 2 that in Cohen 1 he had valued Mr Jafar's interest in Art Dubai at the date of transfer as the average of the FMV calculated using a multiple based on comparables at the lower quartile of US\$ 3,336,876 and a multiple using the harmonic mean of the comparables of US\$ 3,908,869. He had determined the fair market value of ADF as US\$ 17,024,876 using the GPC Method with a lower quartile comparable multiple and US\$ 19,943,208 using the GPC Method with a harmonic mean comparable multiple. But after Cohen 1, he decided that he needed to adjust the enterprise value of one of his comparable companies (Fiera Milano SPA – because it had been based on bank holiday data which understated the lower quartile and harmonic mean multiples) with the

result that the fair market value of Mr Jafar's interest increased to US\$ 3,389,210 (lower quartile) and US\$ 4,011,109 (harmonic mean). In addition, in Cohen 2, Mr Cohen said that after further consideration he had concluded that while a multiple based on the harmonic mean of the comparables provided a reasonable fair market value an appropriate and conservative multiple to use was a multiple based on the comparables lower quartile because these comparables were most similar in size to ADF. Thus, although both methods were reasonable and appropriate, for the purposes of his updated valuation he had revised his fair market value of Mr Jafar's interest to US\$ 3,389,210, which was conservatively based on the lower quartile and not the average of the lower quartile and harmonic mean. I note that Mr Coats had said (in Coats 2 (at [79])) that he had never seen the application of the harmonic mean when valuing such assets and considered that this was not industry valuation practice.

362. The parties' cross-examination of Mr Coats and Mr Cohen did not, in my view, reveal any significant flaws in the two experts' analysis. It is not easy to choose between their different adjusted valuations. I accept that Mr Cohen's analysis had from the outset been done by reference to the transfer date while Mr Coats had been required to make various *ex post facto* adjustments but I do not accept the Fund Parties' submissions that these adjustments were self-evidently and clearly insufficient to result in a reliable transfer date value estimate and it seems to me that Mr Coats' adjustments were appropriate and reasonable. Both Mr Coats and Mr Cohen have used the same basic methodology and each of their valuations appear to be to be within the range of what is reasonable. Furthermore, by removing in Cohen 2 his reliance on the average of the lower quartile and harmonic mean, he had dealt with one of Mr Coats' major challenges. It seems to me that while Mr Cohen's choice of comparables remained subject to some fair challenges by Mr Coats they could not be regarded as unreasonable or wholly unreliable. In these circumstances it seems to me that the fair and proper result is to use the midpoint between Mr Cohen's adjusted valuation of US\$ 3,389,210 and Mr Coats' 30 June 2018 estimate of US\$ 2,198,229 (which Mr Jafar had advocated for) which produces, when rounded up US\$ 2,793,720. A deduction is to be applied for an estimate for transaction costs which would be incurred and necessary when Mr Jafar's interest came to be realised. I shall use Mr Coats' estimate of US\$ 625,000 which as Mr Jafar pointed out was not challenged by Mr Cohen. Since this sum was already deducted from Mr Coats' valuation of US\$

2,198,229 there is no need for the sum to be deducted from, or any further adjustment in respect of costs to be made to, the US\$ 2,793,720 mid-point valuation.

Romulus

363. Mr Coats valued Romulus Capital as at 31 March 2023 at US\$ 1,624,297 or, alternatively, as at the date of transfer for US\$ 1,288,204. Mr Cohen's estimate of value at the transfer date was US\$ 2,460,000.
364. Mr Coats valued, in accordance he said with IPEV 2022, Mr Jafar's interest in Romulus Capital by reference to the reported NAV of the fund. In Coats 2, Mr Coats revised his initial valuation to ensure that it was based on data relating to and available at the transfer date. He said that the transfer date valuation would be based on the capital accounts statement as of 30 June 2018, which would be the latest available statements at the transfer date. As of 30 June 2018, the partner's capital was valued at US\$ 1,288,204, i.e., below the invested amount. By contrast, Mr Cohen's estimate was based on the expected growth of the Romulus Capital investment using venture capital fund industry averages. He applied a 1.64 TVPI on the initial US\$ 1,500,000 invested capital from the time of the initial investment (on 13 September 2012) to the date of transfer (on 6 September 2018).
365. I prefer Mr Coats' approach which is based on an estimate of the value of the investment in contemporary accounts rather than a projection which is forward looking from the date of the original investment and which appears to me to be more speculative.

Segovia Technologies - Crown Agents Bank and Taptap Send

366. Mr Coats valued Crown Agents Bank as at 31 March 2023 at US\$ 4,659,546 and US\$ 1,952,323 at the date of transfer (6 September 2018) and Taptap Send at US\$ 9,728,840 as at 31 March 2023 and US\$ 4,076,328 as at the same date of transfer. Mr Cohen's estimate of the value of Segovia, without disaggregating its assets, at the date of transfer was US\$ 8,299,911.

367. As regards Crown Agents Bank, MIH1 had received a 0.63% stake in CAB Tech Holdco which was the parent company of Crown Agents Bank Ltd. (*CAB*) and CAB Tech Holdco USA LLC (which was the holding company for Segovia's enterprise payments business).
368. In Coats 1, Mr Coats had applied the Guideline Public Company Method and used the median Price to Book ratio (from which he derived an equity value of US\$ 851,081,454 for 100% of CAB Tech Holdco) and the median Price to Earnings ratio (from which he derived an equity value on a 100% basis of US\$ 673,888,575) which resulted in a Price to Book ratio valuation of US\$ 5,361,813 and a Price to Earnings ratio valuation of US\$ 4,245,498 for the 0.63% stake. Mr Coats had then given equal weight to each method and concluded that the FMV for the stake was US\$ 4,803,656 as at 31 March 2023. Transaction costs were estimated as 3% of total equity value and were deducted. In Coats 2, Mr Coats then discounted his value figure back to the transfer date of 6 September 2018.
369. Mr Cohen adopted a different approach. His estimate was based on the expected growth of the Segovia investment using venture capital industry averages. He applied a 30% ROR on the initial US\$ 2,800,000 investment amount from the time of the initial investment on 15 July 2014 to the date of transfer on 6 September 2018 to produce his estimated value of US\$ 8,299,911.
370. The Fund Parties argued that Mr Coats' approach was flawed because the separate valuation of Crown Agents Bank and Taptap Send was not the same as a valuation of Segovia, particularly where the transfer of these companies had taken place sometime after the transfer date; Segovia had been acquired by CAB Tech Holdco in 2019 and Taptap Send Inc. had then been spun-off as a separate business.
371. I can see that the separate valuation of Segovia's separate businesses could result in an undervalue if and to the extent that their being held by one owner resulted in added value. There was no evidence as to whether this was the case and if it was how material an impact this might have on the valuation. But it seems to me to be a factor that weighs against the use of Mr Coat's transaction date estimate.

372. Of greater significance, as it seems to me, is the reliability in the context of this asset, of Mr Coats' simplified discounting methodology (I have explained above what he said about this in Coats 2). It seems to me that a reliable value estimate, for a valuation using the Guideline Public Company Method, required a more extensive review and reconsideration, for example as regards the comparable guideline companies selected (to consider whether the list needed to be amended when considered by reference to the transfer date).
373. For these reasons, it does seem to me that it would not be appropriate to treat Mr Coats' adjusted transfer date value estimate as reliable.
374. I have considered the challenges made to Mr Cohen's methodology but while it does seem to be rather theoretical and on the high side, I do not consider that the evidence allows me or that I am in a position to produce my own adjusted valuation and so, for this asset, I shall adopt Mr Cohen's valuation, subject to a deduction for a reasonable estimate of the transaction costs (for both Crown Agent Bank and Taptap Send). In the absence of any challenge to Mr Coats' cost estimate, I am prepared to adopt and use these.
375. The valuation methodology used by Mr Coats for his 31 March 2023 valuation of Taptap Send was different from the methodology he used for Crown Agents Bank. For Taptap Send (as he explained at [102] of Coats 2) he had "*valued Taptap Send ... considering the price of the recent investment.*" As [60]-[62] of Coats 1 makes clear, the recent investment data related to three financing rounds with the latest having closed on 30 September 2021. Mr Coats also took into account adverse market movements since the last financing round. It seems to me that, as with his approach to producing his transfer date value estimate for Crown Agent Bank, Mr Coats' transfer date value estimate for Taptap Send is equally unreliable. It was not sufficient in order to produce a reliable estimate as at 6 September 2018 just to apply a discount to the figures produced by reference to data (from 2019-2023) relating to financings undertaken after the 2019 Segovia disposal, and even longer after the transaction date. A more extensive reconsideration of what underlying data to assess the position as at the transfer date and an assessment of that data was, in my view, required in order to produce a reliable estimate.

King Children

376. Mr Coats valued the convertible promissory note at cost plus interest (that is by reference to principal of US\$ 150,000 plus accrued interest as at 6 September 2018) giving a figure of US\$ 160,187. Because of the limited information available as to the financial position of King Children and the uncertain status of the option (he discussed how the option had not been exercised and apparently deferred) he considered that this conservative methodology was appropriate.
377. Mr Cohen estimated the value of the convertible note to be US\$ 200,986. His estimate was based on the expected growth of the King Children investment using venture capital industry averages. He applied a 35% rate of return on the initial US\$ 150,000 investment amount from the time of the initial investment on 15 September 2017 to 6 September 2018 to estimate a value of US\$ 200,986. Mr Cohen had relied in particular on the Multi Investments HoldCo Ltd. September 2018 Presentation which indicated that the then current value of the investment in King Children was US\$ 262,500.
378. I prefer Mr Coats' approach and estimate. It seems to me that a cautious approach is justified in view of the limited information available regarding the issuer of the note and in particular the uncertain status of the conversion option. I accept that the Multi Investments HoldCo Ltd. September 2018 Presentation does suggest a higher value, and an approach that gives some value to the conversion option, and, of course, this is one of the data points that Mr Cohen relied on. That presentation on its face appears to be well informed and carefully constructed and to have been prepared close to the transfer date. But it seems to me that some caution is needed as there is no material evidence as to who prepared this presentation and precisely how it was prepared. Most importantly as regards this asset, the presentation does not deal with the issue regarding the status of the conversion option. On balance, it seems to me that Mr Cohen's estimate of value is significantly at the optimistic end of the spectrum.

Zignal Labs

379. Mr Coats had valued Zignal Labs at US\$ 100,000 both in relation to the date of his report and as at the date of transfer. He considered that given the absence of relevant information, the proper approach was to value MIH1's stake in Zignal Labs by reference and as corresponding to the amount of the initial investment.
380. Mr Cohen's estimate of value was US\$ 232,285. Once again, in view of his assessment that Zignal Labs was probably what he categorised as a First Stage Company or possibly a Second Stage Company and his experience in performing similar estimates, he considered that applying a ROR of 35% was reasonable. This was consistent with the ROR of First Stage Companies' and Second Stage Companies' RORs presented in the Venture Capital Study. He said that his estimate of US\$ 232,285 was consistent with the Multi Investments HoldCo Ltd. September 2018 Presentation which had estimated the then current value of the investment to be US\$ 250,000.
381. It seems to me that, in this case, Mr Coats has overstated the absence of information and appears to have ignored the Multi Investments HoldCo Ltd. September 2018 Presentation. While Mr Cohen's estimate seems to me once again to be bullish in that it is based on a generalised ROR which is not linked to the actual features of the company, it does have some support in the presentation to be based on a reasonable methodology. I consider that an estimate in between Mr Coats' and Mr Cohen's valuation is appropriate and that US\$ 200,000 is a reasonable figure.

The Marque

382. It seems to me that Mr Coats is right that a nil value is appropriate in view of The Marque having been placed into insolvent administration and then voluntary winding up. The conclusion that there was no prospect of any recovery being made seems to me to be correct.

The unrealised artwork

383. It seems to me that Christie's estimates from September 2018 are the only reliable evidence before the Court as to the values of the unrealised artwork at the date of transfer and should be adopted. This was, as I understand it, accepted by Mr Cohen and the Fund Parties. Christie's provided a range of values of US\$ 1,686,326 and US\$ 2,510,679 and in my view the fair and appropriate approach is to use the mid-point in the range, being US\$ 2,098,503 (rounded-up).

384. A reasonable estimate of the realisation costs should be deducted.

Mitigation*The Settlement Assets*

385. I have reviewed the Fund Parties' allegations that Mr Jafar failed properly to mitigate his loss by failing to act reasonably in relation to enforcing his claims against Mr Naqvi, in managing and dealing with the Settlement Assets transferred to him before sale and in relation to the sale process. I consider that the Fund Parties have failed to establish their case on this issue. I accept Mr Jafar's submissions in response to these allegations and that there is insufficient evidence to justify a finding of unreasonable conduct on his part.

386. I have already discussed my view of the evidence regarding the sales process for the Dubai Villa, the 40 Lowndes Square Stake and the Yacht. I consider that Mr Singhvi's evidence established that Mr Jafar's decisions not to rent out the Dubai Villa on a short term basis or defer a sale in the hope that the falling market would at some undefined time in the future materially improve were not unreasonable, and that it could not be shown that Mr Jafar had failed to consider reasonable and suitable cost saving in relation to the Yacht. In my view, the same conclusion applies to the allegation that there had been an unreasonable delay in progressing a sales process or a failure to adopt a proper sales process for and to pursue and find all interested parties in relation to the 40 Lowndes Square Stake or MIL (and MIH Limited). I also do not consider that the Fund Parties established that there had been an unreasonable failure to manage the sales process for the Artwork in particular to delay the sale of some of the Artwork to await an

improvement in the market. I can see that the allegation that Mr Singhvi had failed to be proactive in liaising with the JOLs to coordinate the sale of art by Mr Jafar and the JOLs has some merit but there is no evidence that any such failure had any, let alone a material adverse impact on the sale price of particular items of Artwork. Nor do I consider that the Fund Parties have shown it can be inferred that Mr Jafar had deliberately chosen not to take any steps to recover a significant sum of money available to him under the Settlement Deed. Mr Jafar provided an explanation of why he had not taken further action and, in my view, it cannot be said that he acted unreasonably.

Non-transferred Assets

387. As I have noted the GHF Parties argued that during the negotiation of the Settlement Deed (and its precursors) there had been a number of assets that Mr Naqvi and Mr Jafar contemplated would be transferred, which were ultimately not included in the Settlement Deed. They submitted that Mr Jafar's failure to obtain a transfer of these assets constituted unreasonable conduct. Having reviewed the evidence and submissions, I am satisfied that the Fund Parties have failed to show that Mr Jafar behaved unreasonably in not obtaining and requiring Mr Naqvi to transfer these assets. As I have noted the onus is on the defendant to show that the plaintiff failed to mitigate and I consider that the Fund Parties have failed to do so. It is far from clear that the further assets were available or in a condition that allowed them to be transferred or unencumbered and realisable for a material amount.

388. 4 Palace Gate is a good example of how the Fund Parties' case is built on weak evidence and speculation (and was the asset on which the Fund Parties most closely focussed). GP8 submitted that had Mr Jafar accepted 4 Palace Gate as part of the settlement arrangements, his loss under the Loans would have been reduced by a further £6.3 million (or approximately US\$ 8.1 million) and that despite Mr Jafar's evidence that the property was occupied by Mr Naqvi's elderly mother (and so would have been of little realisable value at least for the time before her death or would have required possession proceedings to remove her, which Mr Jafar did not consider to be appropriate), Mr Jafar acted unreasonably in failing to obtain title to 4 Palace Gate. GP8 said selling the property despite Mr Naqvi's mother being in occupation was not a problem as was evidenced by the fact that Mr Naqvi had already decided to put the property on the market. But the

evidence for this did not clearly establish that a decision had been made to sell the property. It is not clear from the Knight Frank letter referred to (that recommended a guide price £6,950,000 to achieve a figure in the region of £6,500,000) that *a decision* had been made to market the property. Knight Frank said that (my underlining):

“Thank you for inviting Knight Frank to provide our initial recommendations. The apartment, as we all agree is situated in arguably the most prestigious road in Kensington. Apartments of this nature very rarely come to the market and are extremely popular with middle-eastern buyers. As discussed, we have identified a fully qualified buyer who wants to live on Palace Gate. We would very much like to have the opportunity to work alongside you both and make sure that we maximise the price at the outcome of the process.

Depending on your own objectives we would very much welcome the opportunity to act for you in a discreet manner and feel that we are very much the right team to help you achieve an excellent price.

This initial report outlines how we would propose to sell Flat 4, 29 Palace Gate...”

389. This letter indicates that discussions about a sale were preliminary and tentative and subject to a further decision as to how to proceed. Knight Frank were providing initial and preliminary advice and seeking appointment if a decision to sell was made. It may be that Knight Frank had been approached to ascertain what the property would be worth on a sale with vacant possession. There is no mention of a sale, subject to Mr Naqvi's mother being in occupation. It would have been one thing for Mr Naqvi to sell with his mother's consent on the basis that he would find her somewhere else to live but another thing for the property to be transferred to Mr Jafar when Mr Naqvi was unable to find his mother another place to occupy leaving Mr Jafar to have to hold the property and maintain it without being able to sell it until after the death of Mr Naqvi's mother or other arrangements to which she consented were put in place.

The financial position of AH and AIML and the other Abraaj entities in December 2018

390. Mr Jafar relied on the evidence of Mr Conway in Conway 1 to show that AH and AIML were insolvent as at December 2017. Mr Jafar said that the facts established by Mr Conway's evidence (and not his opinions relating to them or commentary thereon) established that the Abraaj entities were not in a financially sound state when each of the Loans was made. Mr Jafar said that there was no evidence to the contrary and noted that

the Fund Parties had failed to call their own expert to review and assess the factual basis for Mr Conway's evidence.

391. Mr Conway's conclusions were set out in Conway 1 at [318] as follows (my underlining):

“As noted on page 40 above under the sub-heading "The cash crisis within the Abraaj Group", the JOLs' investigations have revealed that the Abraaj Group was in serious financial difficulty from at least the beginning of 2017 (and probably earlier). These difficulties progressively worsened, reaching crisis-levels by December 2017. Our investigations into the cash crisis in the lead up to the Payments demonstrate that there was a chronic shortage of cash within the Abraaj Group, which was only able to (artificially) sustain its operations by short term borrowing (often secured against AH's assets), drawing monies from the Abraaj Funds (as part of the commingling I describe above), and deferring or extending liabilities. The reality was that the Abraaj Group simply could not cover its expenditure and service the very significant debt through cash generated from its trading income. This reached a climax in December 2017, when the Abraaj Group had to return the uninvested funds to the AGHF investors (and also to replace "missing" funds in [Fund IV]). The monies that Mr Naqvi raised in December 2017 on behalf of AH and AIML did not, however, solve the underlying chronic cash shortage and lack of profitability within the Abraaj Group, and only superficially propped up the Group for a short period of time. However, there was no prospect whatsoever that sufficient cash could be generated to repay the unsustainable levels of borrowing by AH and AIML that fell due for repayment in 2018 including the further debt which they assumed in December 2017 in an effort to delay the inevitable. In fact, the companies' losses were accelerating.”

392. Conway 1 set out a detailed account of the history, management and funding of AH, AIML and the other Abraaj entities, including the AGHF and Fund IV. He also discussed the practice of commingling (*“a key feature of the management of the Abraaj Group was that cash was centrally managed and cash belonging to particular entities within the Group was routinely transferred from those entities' bank accounts to meet the cash requirements of other entities within the Abraaj Group”* [80]), the use of AH to borrow funds for onward transmission to other Abraaj entities (*“in addition to the commingling of money belonging to the Abraaj Funds, the Abraaj Group also met cash shortfalls using money borrowed by AH. Between 23 July 2012 and the date of the appointment of the JPLs, AH arranged 11 facilities with 8 different lenders, pursuant to which a total principal of US\$895 million and AED 720 million was borrowed (total US\$-equivalent of US\$1.09 billion”* [87]-[88]) and what he labelled the cash crisis within the Abraaj Group. Mr Conway said that since their appointment, the JOLs had conducted extensive investigations into the financial position of the Abraaj Group which *“have*

revealed that the Abraaj Group suffered from a chronic shortage of cash and was in an almost constant state of financial crisis from at least June 2015” ([91]). He noted that while the shortage of cash within the Abraaj Group appeared to have pre-dated 2017, the shortage appeared to have become more acute in 2017. He set out in detail the development and nature of these cash shortages in the period from early 2017 to December 2017.

393. Mr Conway then considered the nature and extent of the acute cash crisis that had developed by and during December 2017. He said as follows (my underlining):

“245. As I explain above, it is clear from our investigations that December 2017 was a time of acute crisis within the Abraaj Group. The AGHF investors were demanding the return of their uninvested capital, which the AGHF did not have – the monies having been transferred to other entities within the Abraaj Group as part of the commingling which I describe above. The cash shortfall across the Abraaj Group was also spiralling uncontrollably to in excess of US\$500 million, as the Group continued to incur unsustainable levels of borrowing to meet its cash needs. Accordingly, during the same period in which the exchanges with the AGHF investors to which I refer above were occurring, internally, Mr Naqvi and others within the Abraaj Group were scrambling to raise cash, or defer liabilities, to try and avert financial disaster.

246. On 6 December 2017, Mr Lakhani emailed Mr Naqvi further to his email of 27 November 2017 to which I refer above (“Alhamdulillah, immediate crisis averted by 50 MM coming in from Air Arabia today or tomorrow” at paragraph 207(a)), informing him of various payments that had been made using the US\$50 million advanced by Air Arabia upon Mr Naqvi’s instruction

247. On 7 December 2017, Mr Dave emailed Mr Naqvi formally resigning from the Abraaj Group:

“Arif, the last few weeks have reconfirmed my view that I am not cut out for the way in which things have been and are being managed. When we met on the 28th of October 2017 I told you so and resigned and agreed to work till the 31st of January 2018. The developments of the last few weeks have clearly shown me that I cannot continue in this fashion. I am therefore formally resigning from the firm effective today.”

248. This email was forwarded to Mr Siddique on 8 December 2017, and Mr Dave started to plan his exit from Abraaj, in consultation with Mr Siddique

249. On 10 December 2017, Air Arabia agreed to rollover a US\$50 million loan which had been provided to SPV 46 (which had previously been rolled over

on several occasions, most recently in April 2017 – as referred to in paragraph 105 above).

250. Yet, despite this rollover and other the measures being taken to borrow further funds, on 11 December 2017 Mr Lakhani emailed Mr Naqvi a cash update for the month (copied to Mr Siddique, Mr Dave and Mr Abdel-Wadood) which set out the that:
- (a) *the Group's current consolidated cash balance stood at US\$31.5 million;*
 - (b) *the Group was required to make "critical payments" in December 2017 totalling US\$78.5 million;*
 - (c) *the Group would have a substantial cash shortfall of US\$47 million after making "critical payments";*
 - (d) *the Group was also required to make payments of US\$112.1 million in respect of deployments of drawn down funds into the AGHF's underlying investments and projects. Following those deployments, the AGHF would have a balance payable of US\$117.9 million, which was required to be returned to its investors by 15 January 2018 (including US\$60 million required to be disbursed to investors to equalise contributions and/or to be returned to OPIC);*
 - (e) *the Group had liabilities in the sum of US\$374.3 million, comprising the following:*
 - (i) *US\$200 million in respect of "various borrowings" from Air Arabia, maturing in the last week of December 2017; and*
 - (ii) *US\$174.1 million (less any investments expenses paid on behalf of APEF IV [Fund IV] during December) had to be returned to APEF IV prior to its financial year end (31 December 2017).*
251. *The combined effect of the foregoing was that the total cash shortfall for the Abraaj Group and Abraaj Funds in December 2017 was forecast to be in excess of half a billion (US\$533.8 million). Mr Naqvi replied to Mr Lakhani's email: "Under control, we will deal with it, let's discuss Wednesday".*
252. *In mid to late December 2017, Mr Naqvi therefore looked desperately to raise cash in order to fulfil his promise to return unutilised funds to investors and to mask the Group's financial problems: (i) by issuing instructions that AH and the Abraaj Group should seek to defer and/or extend any payment obligations wherever possible, which have been summarised above; and (ii) by raising cash from external sources.*
253. *The cash update circulated by Mr Lakhani on 11 December 2017 appears to have assumed that the "short term deposit" of US\$140 million provided by Air Arabia to AHG (GHF), and which was due to be repaid on 12 December 2017, had been repaid, or would not have to be repaid, as it was omitted from*

the liabilities which he identified in that email. However, at around the same time, Air Arabia pressed for repayment:

- (a) Air Arabia followed up about the repayment on 10 December 2017.
- (b) On 11 December 2017, Mr Lakhani then emailed Mr Naqvi, copied to Mr Siddique and Mr Dave: "AA payment of \$140m is due tomorrow-- 12 December 2017 with a fee of \$5.6m. Can I go ahead and make the payment tomorrow?". Mr Naqvi said: "No, I will speak to Adel".
- (c) Mr Naqvi separately emailed Mr Siddique, off-copy, instructing: "Please get Rafique [Lakhani] to calm down. This also spreads panic, especially the cash email copied to Mustafa and ash given their state of minds. Please keep Rafique motivated but silent amongst us".
- (d) On 12 December 2017, Ms Castro from Air Arabia emailed Mr Dave asking him to confirm when the US\$140 million, which was due that day, had been repaid. Mr Dave forwarded the email to Mr Naqvi seeking instructions: "Arif, the cut off for making the payment today is 3pm. Would appreciate your direction on this matter." Mr Naqvi then replied: "I told Adil we won't do anything before tomorrow he is ok". Mr Naqvi then emailed again: "Relax please. I am fully aware of cutoffs etc. if you folks get a call, just say it's logistics issues, Arif on a plane and needs his authorization key for transfer size. I am speaking to Adel soon. Relax."
- (e) On 13 December 2017, Mr Naqvi emailed Mr Dave, copied to Mr Siddique and Mr Lakhani, directing that Mr Dave "Go ahead and send today; don't pay interest etc, just return the sum they sent." The deposit of US\$140 million was returned to Air Arabia from AHG (GHF) that day.

254. Accordingly, by the time the CBD December Confirmation confirming AHG (GHF)'s bank balance of US\$169.9 million had been provided to investors on 15 December 2017 (referred to in paragraph 239 above), its cash balance had in fact already been reduced to approximately US\$9.9 million (and, as noted above, this cash was not "available" to be returned to investors).

255. Furthermore, Air Arabia also continued to chase payment of the interest due on the loan. Mr Dave informed Mr Naqvi that Air Arabia was requesting payment of interest amounting to US\$5.6million on 14 December 2017. Mr Naqvi replied "Just tell him that it was stopped by Arif when it was ready to go; and that he will release it soon. If Manish has a problem, can he ask Adil to call Arif?" Mr Dave responded, "Just spoke to Manish, he said, his brief from Adil was that we would be paying the interest but separately. He asked me to speak to you and get an indication of when, he mentioned that if it's one or two days it's not a problem"

256. Mr Agarwal from Air Arabia chased up on the outstanding payment of the interest payment again on 18 December 2017. Mr Naqvi replied "Manish my

friend, the transaction is closed and we returned the capital! As for he [sic] interest, I am sure you have booked it, and I told Adel we would be delayed on the interest. We are well aware of the need to pay and trust me, you don't need to remind us! I will get back very soon to Adel and you with a payment date."

257. *Around the same time as the exchanges with Air Arabia described above, Mr Naqvi spearheaded the Abraaj Group's cash raising, not only identifying potential sources of funding, but also directing and conducting negotiations with third parties to raise cash..."*

394. Mr Conway was extensively cross-examined on this evidence. However, it appears that neither the GHF Parties nor GP8 in their closing submissions sought to rely on the cross-examination to challenge the facts set out in Mr Conway's evidence (see for example [270] of the GHF Parties' written closing submissions). They did, however, note that since Mr Conway had given evidence in his capacity as one of the JOLs of AH and as an office-holder, he had no first-hand knowledge of relevant events, insofar as he offered a commentary or opinion on documents, his evidence was inadmissible and irrelevant opinion evidence.

395. The GHF Parties maintained their position that on the basis of the documentary evidence, at the time Mr Naqvi made the Statements to Mr Jafar he had reasonably believed (or held the opinion) and had a reasonable basis for believing (or for holding the opinion) that AH and AIML were solvent, or at least would be in a position to repay the Loans by the time the fixed term of the Loans had expired. The GHF Parties claimed that the evidence showed that there was reason for Mr Naqvi to believe, or hold the genuine opinion, that the Loans would be capable of repayment in the early part of 2018. He was aware that the launch of APEF VI, the sale of K-Electric and the sale of LP interests could generate significant cash flows for AIML and AH. APEF VI had reached commitments of approximately US\$ 3 billion in October 2017. On 21 December 2017, APEF VI GP LP and AIML (as manager of APEF VI) had entered into a revolving credit facility agreement with Societe Generale, London Branch. This agreement allowed for a facility of US\$ 150,000,000 that could be increased up to a maximum facility of US\$ 900,000,000 in accordance with clause 2.2 (the Accordion Increase). It was available to pay APEF VI management fees to AIML. US\$ 73 million was drawn down under this facility in late December 2017. In addition, the sale of K-Electric was expected to generate substantial income. In the June 2017 Financial Statements, it was noted "*The sale of the stake in K-*

Electric is yet to be executed subject to regulatory approvals and completion of conditions precedent in the sale and purchase agreement. The Group's management is confident that this sale will be completed shortly." They noted that as of 4 April 2018, the following unencumbered revenue for AIML was anticipated: the transaction in the sum of US\$ 25 million, the deferred transaction fee of US\$2 million and the safe completion fee in the sum of US\$ 75 million. On 1 April 2018, Mr Naqvi noted that *"I am hopeful that we will complete by 30 April."* Further, AH also held unsecured limited partnership interests in investments valued at US\$ 98,193,989 as of 31 December 2017, which could have been sold on the secondary markets in Q1 2018.

396. I accept that opinions expressed by Mr Conway are inadmissible but his evidence as to the facts relating to the financial position of the Abraaj entities was admissible and important. This extends to his understanding of the facts relating to the Abraaj entities' ability to pay their liabilities falling due in the near future (including his evidence, quoted above, that *"there was no prospect whatsoever that sufficient cash could be generated to repay the unsustainable levels of borrowing by AH and AIML that fell due for repayment in 2018 including the further debt which they assumed in December 2017 in an effort to delay the inevitable"*). In my view the facts as to the financial position of AH and the other Abraaj entities set out in Mr Conway's evidence, which in my view have not been shown to be wrong, show that in December 2017 at the time that the Statements and Representations which Mr Jafar alleged that Mr Naqvi had made to him, show that during December 2017 there had been various payment defaults although many of them had been remedied. But, for example, the interest of US\$ 5.6 million owed to Air Arabia was due but unpaid and Air Arabia were chasing for payment. In addition, and critically, the total cash shortfall for the Abraaj entities (companies, partnerships and funds) in December 2017 was forecast to be in excess of half a billion dollars (US\$ 533.8 million) and the available cash in bank accounts and immediately available was low. It is true, as the Fund Parties said, that Mr Naqvi was in negotiations to secure further funds but in view of the vast cash crisis being experienced by the Abraaj entities and the precarious state of these entities, resulting in an existential risk of imminent collapse, these transactions could only have proceeded if Mr Naqvi had been able to defraud the counterparties and the extent of the problems he faced kept quiet. It seems to me that the evidence shows that by the time of the First Loan, AH and AIML were probably cash flow insolvent at least because they were unable to pay the debts falling due within the

short term (up to the first quarter of 2018) without further funding being obtained which, because it was dependent on third parties not being given a true account of the financial predicament of the Abraaj entities, was neither legitimate nor reasonably likely. In any event, and this is the key point as regards the Third Express Representation and the First Implied Representation, in view of the extent of these cash flow problems and the high risk of financial collapse producing a balance sheet insolvency for the key Abraaj entities, it cannot be said that Mr Naqvi had a reasonable basis for a belief that the Loans would be repaid when they fell due or that the Abraaj entities were in an essentially sound financial state. I did not hear from Mr Naqvi and so it is difficult to reach a firm view as to his state of mind at the relevant time. It is possible that Mr Naqvi had deluded himself into thinking that his high-wire act and defrauding of third parties would continue and allow the Abraaj entities to survive at least for a period and then restructure, but the documentary evidence strongly suggests that this was not the case. He was desperate, manipulative and fully aware of the high risk of collapse. But whatever his precise state of mind, in my view, he was at a minimum reckless and clearly did not have and could not have had a reasonable basis for believing that AIML (or AH) “*would be able to repay the money to Mr. Jafar before the end of January 2018 or shortly thereafter*” or that “*the finances of the entities for the benefit of which he was seeking to raise monies were essentially sound and proper, and any liquidity issues which they were experiencing were short term.*”



The Hon. Justice Segal
Judge of the Grand Court, Cayman Islands
25 July 2025