



**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 236 OF 2020 (RJP)**

**B E T W E E N**

**(1) KUWAIT PORTS AUTHORITY**

**(on its own behalf and on behalf of The Port Fund L.P)**

**(2) THE PUBLIC INSTITUTION FOR SOCIAL SECURITY**

**(on its own behalf and on behalf of The Port Fund L.P)**

**(3) THE PORT FUND L.P.**

**Plaintiffs**

**and**

**(1) PORT LINK GP LTD.**

**(2) MARK ERIC WILLIAMS**

**(3) WELLSPRING CAPITAL GROUP, INC**

**(4) KGL INVESTMENT COMPANY ASIA**

**Defendants**

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**RE- AMENDED WRIT OF SUMMONS**

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**AMENDED AND THE DURATION OF THE WRIT EXTENDED  
PURSUANT TO THE ORDER OF JUSTICE PARKER ON 11 FEBRUARY 2021**

**RE-AMENDED PURSUANT TO PARAGRAPH 6 OF THE ORDER OF JUSTICE PARKER ON 13  
DECEMBER 2021**

**TO:**

- (1)** Port Link GP Ltd, Walkers Corporate Limited, Cayman Corporate Centre, 27. Hospital Road, George Town, Grand Cayman KY1-9008
- (2)** MARK ERIC WILLIAMS
- (3)** WELLSPRING CAPITAL GROUP, INC.
- (4)** KGL INVESTMENT COMPANY ASIA

**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiffs of 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands, KY1-9009 in respect of the claim set out on the next page.

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

**For the Second and Third Defendants, within 28 days** after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

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

Issued this 14<sup>th</sup> day of October, 2020

Amended this 12<sup>th</sup> day of February 2021

Re-amended this 13<sup>th</sup> day of December 2021



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**OGIER**

Attorneys for the Plaintiffs

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

**IMPORTANT**

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

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**RE -AMENDED STATEMENT OF CLAIM**

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Where direct claims are pleaded, the reference to "Plaintiffs" refers to the First and Second Plaintiffs. Where derivative claims are pleaded, the reference to "Plaintiffs" refers to the First and Second Plaintiffs on behalf of the Third Plaintiff.

1 This claim arises from the deliberate, serial and systematic unlawful conduct of the First Defendant ("Port Link") in relation to the assets and affairs of The Port Fund L.P. ("TPF"), the exempted limited partnership of which Port Link is and at all material times has been general partner. Pending discovery and the administration of interrogatories, the Plaintiffs estimate that Port Link's unlawful conduct has caused TPF loss well in excess of USD 100 million. As regards the Second to Fourth Defendants:

(i) The claims advanced at this stage against the Second Defendant ("Mr Williams") concern his central involvement in sham proceedings in the DIFC under claim number CFI-050-2018 (the "DIFC Proceedings"), which proceedings were used as a pretext for the unlawful payment of USD 59,990,461.30 of TPF's funds to the Third Defendant, Wellspring Capital Group, Inc. ("Wellspring"). In summary, the Plaintiffs allege that Mr Williams:

(a) Conspired with (among others) Port Link and the investment manager of TPF ("EMPEML"), and latterly Wellspring, to cause loss to the limited partners of TPF (including the Plaintiffs, collectively the "Limited Partners") and/or TPF by unlawful means in relation to the DIFC Proceedings and the payment to Wellspring of USD 59,990,461.30 (the "Wellspring Payment" or the "DIFC Judgment Monies"); further or alternatively

(b) Dishonestly assisted in Port Link's breaches of trust and/or breaches of fiduciary duty in relation to the DIFC Proceedings and the Wellspring Payment; further or in the further alternative

(c) Knowingly procured Port Link to breach its contractual duties to the Limited Partners; further or in the further alternative

(d) Breached fiduciary duties that he owed to TPF and/or Port Link as de facto director alternatively shadow director of Port Link further or alternatively as Port Link's officer and/or agent.

The Plaintiffs are currently investigating further potential claims against Mr Williams arising from his conduct in relation to TPF; their entitlement to amend this statement of claim to add further claims against Mr Williams is expressly reserved;

(ii) The claims against Wellspring, a company incorporated in the State of Georgia in the United States of America, are based upon its receipt of the Wellspring Payment. In the premises of the facts and matters pleaded below: (a) Wellspring is liable in knowing receipt, further or alternatively (b) Wellspring is liable in unlawful means conspiracy on the basis that it became party to the conspiracy originally formed between Mr Williams, Port Link and EMPEML at a point unknown to the Plaintiffs but before the Wellspring Payment was made; further or in the further alternative (c) the Plaintiffs are entitled to and claim (on behalf of TPF) relief under section 4 of the Fraudulent Dispositions Act (1996 Revision) (the "**Fraudulent Dispositions Act**") in respect of the Wellspring Payment; further or in the further alternative TPF's proprietary interest in the Wellspring Payment entitles it to follow and trace the Wellspring Payment, of which Wellspring was constituted constructive trustee. 100% of the shares in Wellspring are held within The Mark E. Williams Living Trust Under Agreement dated 29 June 2010 (the "**MW Trust**"). The trustees of the MW Trust are Mr Williams, his wife (Laura Williams) and one of his brothers (Dylan Williams). It is inferred and alleged that Mr Williams and/or members of his immediate family are beneficially interested in the MW Trust. At all material times Mr Williams has been the CEO, CFO, President, Vice President, Treasurer and Secretary of Wellspring;

(iii) The Fourth Defendant ("**KGLI Asia**") is a company incorporated in the Cayman Islands. The claims against KGLI Asia arise from its receipt (through its regional operating headquarters in the Philippines "**KGLI Asia ROHQ**") of payments out of TPF's funds of at least USD 3.3 million. Such payments were made by Port Link in breach of trust and/or breach of fiduciary duty. KGLI Asia is liable in knowing receipt in respect of such payments.

2 The Plaintiffs between them invested a total of USD 125 million in TPF, amounting to in excess of 60% of the total limited partner investment in TPF.

3 TPF made only four known investments, two of which Port Link has written off as complete losses. By far the most substantial investment was in a project to build an "aerotropolis" in the Philippines known as Global Gateway Logistics City ("**Clark City**"). As to that investment (the "**Clark Asset**"):

(i) Both the special purpose company that purchased the Clark Asset from TPF, Clark Global City Corporation ("CGCC"), as well as CGCC's parent company, Udenna Development (UDEVCO) Corporation ("Udenna"), reported in its their regulatory filings that it had paid TPF a price of approximately USD 1 billion. The same price was widely reported in the media. Of that sum:

(a) Udenna agreed to pay USD 655 million as the purchase price under the Sale and Purchase Agreement between TPF and Udenna dated 31 July 2017 (the "SPA"). Of this sum, USD 40 million was transferred prior to the SPA. This deposit was subsequently deducted from the amount payable, which does not appear to have been taken into account in Udenna's regulatory filing;

(b) Udenna paid a further USD 75 million in respect of equity infusions (USD 13.5 million), a debt service account (USD 2.7 million) and working capital (USD 58.8 million);

(c) Pursuant to a separate agreement with Elite First Investment Limited ("**Elite**") dated 17 February 2017, Udenna agreed to pay Elite USD 250 million as a purported advisory fee in respect of its purchase of the Clark Asset. For reasons that remain unexplained, TPF agreed to act as a conduit for this payment. CGCC transferred a total of USD 250 million to a bank account held by Clark Gateway Investment Group LP ("**CGIG**"). TPF has been the sole limited partner of CGIG since 18 July 2016. The funds were transferred by Udenna in five tranches into CGIG's account, from which they were transferred to accounts designated by Elite.

(ii) ~~Port Link denies that the purchaser paid USD 1 billion for the Clark Asset. At different times it has put forward a variety of figures in relation to the sale of the Clark Asset~~

ranging from around USD 380 million to USD 655 million before alighting (at least for the time being) on the position that the net sale proceeds were USD 496 million;

(iii) Remarkably, Port Link has refused to disclose any evidence as to the true sale price of the Clark Asset;

(iv) Taking Port Link's (latest) unsubstantiated assertion as to the sale price at face value, less than 62% of the supposed net sale proceeds were distributed to TPF's limited partners; the balance (Some At least USD 191 million) from the proceeds of the sale of the Clark Asset was distributed to third parties. As to such distributions:

(a) USD 36.2 million was paid ~~to a~~ in respect of fees charged by a Hong Kong company, Apache Asia Limited, and its related Macau entity, "apacheAsia Limitada", (together, "**Apache**"), ~~and an undisclosed nominee of Apache purportedly by way of fees~~ for "advisory services". USD 21.65 million was transferred to a nominee of Apache called Law Custodial Inc, and USD 14.55 million was transferred to KGL Investment Company KSCC ("KGLI"). Apache was incorporated on 7 February 2013; it had no track record when Port Link engaged it and does not appear to have been involved in any transactions apart from transactions relating to TPF. Despite this, Apache's purported fees approximated to between 450% and 700% of the market rate charged by leading established investment banks for advisory services. Port Link has sought to justify Apache's purported fees on the ground that Apache identified the purchaser of the Clark Asset, omitting to mention or acknowledge the fact that the parent of the purchaser (Udena) had itself already purchased the only other asset that Port Link managed to sell;

(b) Almost USD 60 million was paid to an ~~undisclosed~~ nominee of TPF's Investment Manager after Port Link admitted a claim brought by the Investment Manager in the DIFC that was in numerous obvious respects bad in law and grossly overstated. That nominee was Wellspring; its identity was not disclosed by Port Link until November 2020;

(c) USD 2.~~79~~2 million was paid by way of secret commission to a director of the parent company of the purchaser of the Clark Asset, purportedly to incentivise him to achieve the highest sale price for the seller;

- (d) Over USD 16 million was apparently paid to undisclosed recipients in Kuwait for purposes that Port Link has failed properly to explain, let alone evidence. The Plaintiffs now know the identity of those recipients; they are discussed below. The information that Port Link has now disclosed reinforces the Plaintiffs' conviction that these payments (or a substantial proportion thereof) were made by Port Link in breach of trust and/or breach of fiduciary duty:
- (v) Purportedly pursuant to a settlement agreement dated 5 February 2019 (the "Settlement Agreement") Port Link agreed to pay Udenna USD 55,343,116 in consideration of Udenna's relinquishment of its "outstanding rights under the SPA". This sum was transferred from TPF to Udenna on 10 February 2019. TPF's accounts for the year ended 31 December 2019 suggest that TPF owed Udenna a sum equal to the working capital referred to in subparagraph (a)(ii) above, as the sum of USD 55,343,116 is described as representing a saving of USD 3,499,763 on the original sum owing of USD 58,842,879. The Plaintiffs do not know on what basis TPF was liable to pay Udenna USD 58,882,879 at all, and/or why Udenna transferred that sum to TPF on 14 November 2017 if the intention was for TPF to transfer it back.
- 4 Until Port Link was served with these proceedings, Aall attempts by TPF's limited partners to obtain contemporaneous documents and/or independently verifiable information to enable them to understand Port Link's dealings with TPF's assets – including by means of proceedings before this Court and in New York – have been were met by Port Link with obfuscation, prevarication and/or the staunchest refusal. After being served with these proceedings, Port Link abandoned its appeal against an order that had been made in separate proceedings issued by the First Plaintiff (Originating Summons dated 29 January 2020 (Cause No. FSD 13 of 2020 the "Section 22 Proceedings")) and agreed to a consent order dated 3 November 2020 (the "Consent Order") that obliged it to disclose documents and information. Port Link disclosed material under the Consent Order in November and December 2020 (the "Section 22 Disclosure"). For the avoidance of doubt, the Plaintiffs do not accept that Port Link has discharged its obligations under the Consent Order.
- 5 That is the context for this claim Port Link's belated agreement to the Consent Order and its disclosures thereunder do not alter the fact that this claim was issued in circumstances where Port Link was continuinges to compound and exacerbate its (massive) wrongdoing by denying its fundamental obligations to TPF's limited partners.

## The parties

- 6 The Plaintiffs are the Kuwait Ports Authority ("**KPA**") and the Public Institution for Social Security ("**PIFSS**"). KPA and PIFSS are limited partners in TPF.
- 7 TPF is an exempted limited partnership, registered on 21 March 2007 in the Cayman Islands under the Exempted Limited Partnership Law (2003 Revision) (together with previous and subsequent revisions, the "**ELP Law**"). It was incorporated as a vehicle for investments in port-related assets around the world.
- 8 The Defendant, Port Link ~~GP Ltd.~~ ("**Port Link**"), is an exempted limited company, incorporated on 8 March 2007 in the Cayman Islands under the Companies Law with registration number 183434. The entire issued share capital of Port Link is currently held by Port Link Holdings USA Inc. ("**Port Link Holdings**"), a Delaware company that was incorporated on 29 May 2018 with registration number 6908085.
- 9 On 21 March 2007 Port Link entered into a limited partnership agreement with the original limited partners in TPF (the "**LPA**"). The LPA was amended and restated on 24 July 2008. By the LPA, Port Link was constituted as the general partner of TPF, as it has been at all material times and remains.
- 10 PIFSS was a first seed investor of TPF. It invested a total of USD 40 million in TPF by means of a single transfer on or around 5 June 2007. PIFSS signed the LPA on 21 March 2007.
- 11 KPA invested a total of USD 85 million in TPF (giving it at least a 41% interest in TPF) by means of two transfers of (a) USD 50 million in July 2010, and (b) USD 35 million in April 2013. KPA signed the LPA on 14 July 2010.
- 11A Mr Williams is a US citizen who is believed to be resident in the state of Georgia, USA. He has numerous links to Port Link and TPF, including being the Director of Investments for TPF, a member of TPF's Investment Committee and a member of the "Port Fund Team". He has also acted as Director of KGLI Asia, CEO of KGLI Asia ROHQ and the Investment Director of KGL Investment Asia's parent company, KGLI. Mr Williams previously personally held 14.9% of the shares in EMPEML, the full name of which is Emerging Markets PE Management Ltd, the Investment Manager of TPF. In early July 2018 all of the shares of EMPEML were acquired by a person or persons whose identity remains unknown to the Plaintiffs. Mr Williams was also

the sole incorporator of Port Link Holdings which has since 30 May 2018 owned the entire issued share capital of Port Link. Mr Williams is the 100% shareholder and sole director of Port Link Holdings.

11B Wellspring was incorporated in Florida on 9 September 2013 (with an effective date of 3 September 2013). On 5 May 2020 its place of incorporation was moved to Georgia. As pleaded above, since 27 August 2018 Mr Williams has been the CEO, CFO, President, Vice-President, Treasurer and Secretary of Wellspring; 100% of the shares in Wellspring are held in the MW Trust. Mr Williams is one of the trustees of the MW Trust and it is inferred and alleged that Mr Williams and/or members of his immediate family are beneficially interested in the MW Trust.

11C As pleaded above, KGLI Asia is a wholly owned subsidiary of KGLI. On 20 December 2020 KGLI Asia was placed into voluntary liquidation by shareholder resolution, with KGLI appointed as voluntary liquidator. In light of the facts and matters pleaded below, the Plaintiffs contend that it is inappropriate for KGLI to act as liquidator.

#### **Other key persons and entities**

12 The Sponsor, Placement Agent and Administrator of TPF is KGLI KGL Investment Company K.S.C.C. ("KGLI"), a Kuwaiti company that was incorporated on 6 November 2006. KGLI was appointed as Placement Agent pursuant to a placement agreement dated April 2007. At all material times until 29 May 2018 KGLI was the 100% owner of Port Link. KGLI is also a limited partner in TPF.

13 At all material times prior to 7 July 2018 the Investment Manager of TPF was a Cayman Islands exempted limited company that since late June / early July 2018 has been called Emerging Markets PE Management Ltd ("**EMPEML**"). Until its name was changed in late June / early July 2018, EMPEML was called KGL Investment Cayman Ltd. It is referred to as EMPEML throughout this Statement of Claim.

14 EMPEML was appointed Investment Manager by an agreement between EMPEML and Port Link dated 28 June 2007 (the "**IMA**"). On 7 July 2018 EMPEML purported to terminate the IMA.

15 Saeed Dashti ("**Mr Dashti**"), a Kuwait national, was at all material times the Chairman of KGLI and the group of companies to which it belongs (the "**KGL Group**"). Between 16 April 2007 and 24 May 2018 Mr Dashti was a director of Port Link.

16 Mr Dashti is a convicted criminal and a proven fraudster:

(i) On 11 November 2019 Mr Dashti was convicted by the Kuwait Court of First Instance in the Kuwait Criminal Circuit (the "Kuwait Court of First Instance") in the proceedings numbered 1496/2012 of embezzling or facilitating the embezzlement of public funds and money laundering when acting as a director of Port Link and sentenced to a term of imprisonment of 15 years;

(ii) On 6 May 2018 Mr Dashti was convicted by the Kuwait Court of First Instance in the proceedings numbered 1942/2015 of facilitating the embezzlement of public funds belonging to KPA in the context of a purported advisory services contract between KPA and KGLI and sentenced to a term of imprisonment of 15 years;

(iii) Mr Dashti appealed against the convictions referred to in the two subparagraphs immediately above (the appeal proceedings were designated case number 3065/2019 and case number 1596/2018, respectively). The convictions were upheld by the Kuwait Court of Appeal (although Mr Dashti's prison sentence in the latter proceedings was reduced to 10 years); Mr Dashti then appealed to the Kuwait Court of Cassation (the proceedings were designated case number Cassation 361/2020 and case number Cassation 65/2020, respectively); that appeal is pending on 31 January 2021 the Court of Cassation (Cassation 361/2020) dismissed Mr Dashti's appeal and upheld his conviction in the proceedings numbered 1496/2012; no further appeal is open to him; in that case; on 28 December 2020 the Court of Cassation (Cassation 65/2020) held that Mr Dashti's appeal in the proceedings numbered 1942/2015 was well founded and gave directions for a further hearing. Mr Dashti is currently serving his prison sentence in Kuwait.

17 To the extent necessary, the Plaintiffs will rely on the convictions referred to in the paragraph immediately above as evidence that Mr Dashti is serially dishonest, including in particular in (a) his dealings with KPA, (b) purporting to carry out his roles within the KGL Group, and (c) in relation to TPF.

18 Maria Lazareva, also known as Marsha Lazareva, ("**Ms Lazareva**") is the Vice Chairman and CEO of KGLI. Between 8 March 2007 and 24 May 2018 Ms Lazareva was a director of Port Link; between 8 March 2007 and 4 February 2019 she was a director of EMPEML (and was EMPEML's sole director during that period other than between 28 August 2007 and 8 February

2009 when Kevin Krucik was also a director); until an unknown date in 2018 she was a shareholder of EMPEML.

19 Like Mr Dashti, Ms Lazareva is a convicted criminal and a proven fraudster:

(i) On 11 November 2019 Ms Lazareva was convicted by the Kuwait Court of First Instance in the proceedings numbered 1496/2012 of embezzling or facilitating the embezzlement of public funds and money laundering when acting as a director of Port Link and sentenced to a term of imprisonment of 15 years;

(ii) On 6 May 2018 Ms Lazareva was convicted by the Kuwait Court of First Instance in the proceedings numbered 1942/2015 of facilitating the embezzlement of public funds belonging to KPA in the context of a purported advisory services contract between KPA and KGLI and sentenced to a term of imprisonment of 10 years;

(iii) Ms Lazareva appealed against the convictions referred to in the two subparagraphs immediately above (case number 3065/2019 and case number 1596/2018, respectively). The convictions were upheld by the Kuwait Court of Appeal; Ms Lazareva then appealed to the Kuwait Court of Cassation (the proceedings were designated case number Cassation 361/2020 and case number Cassation 65/2020, respectively); on 31 January 2021 the Court of Cassation (Cassation 361/2020) dismissed Ms Lazareva's appeal against her conviction in the proceedings numbered 1496/2012 and upheld her conviction; no further appeal is open to her in that case; that appeal is pending on 28 December 2020, the Court of Cassation also held that Ms Lazareva has forfeited her right to appeal against her conviction in the proceedings numbered 1942/2015.

(iv) Further, on 12 October 2020, Ms Lazareva was convicted by the Kuwait Court of First Instance of money laundering in respect of funds obtained from the embezzlement of Kuwaiti public funds and sentenced to a term of imprisonment of 7 years (case number 62/2019). The conviction was upheld by the Kuwait Court of Appeal on 27 January 2021.

20 Ms Lazareva is a fugitive from justice. In or around November 2019, Ms Lazareva violated her bail conditions and absconded to the Embassy of the Russian Federation in Kuwait. To the extent necessary, the Plaintiffs will rely on the convictions referred to in the paragraph immediately above as evidence that Ms Lazareva is serially dishonest, including in particular

~~in (a) her dealings with KPA, (b) purporting to carry out her roles within the KGL Group, and (c) in relation to TPF.~~

21 ~~Ms Lazareva maintains that she is innocent of the criminal offences of which she has been convicted.~~ Since 2018, Ms Lazareva has been the subject of an international lobbying campaign in furtherance of which a number of law, public relations and lobbying firms have been engaged, and several high profile private individuals mobilised (the "**Lazareva Lobbying Campaign**"). On 10 July 2018 Ms Lazareva commenced arbitration proceedings in International Centre for Settlement of Investment Disputes against the State of Kuwait, ICSID Case No. UNCT/19/1 (the "ICSID Arbitration"). As set out below, Port Link has unlawfully caused TPF to pay unknown amounts in support of the Lazareva Lobbying Campaign and/or the ICSID Arbitration.

22 ~~The criminal proceedings in Kuwait against~~ Mr Dashti and Ms Lazareva have been subject to criminal proceedings in Kuwait that –and referred to in paragraphs 16 to 20–21 above are referred to as the "**Kuwaiti Criminal Proceedings**" herein.

23 ~~At all material times Mark Williams ("Mr Williams") was the Director of Investments for TPF, the Investment Director of KGLI and CEO of KGL Investment Company Asia ("KGLI Asia", a subsidiary of KGLI) and until an unknown date in 2018 he was a shareholder of EMPFML. Further, Mr Williams was the Sole Incorporator of Port Link Holdings (on 29 May 2018), Port Link's parent company, and has since its incorporation been its sole director and shareholder.~~

### **Basis of claims**

24 The Plaintiffs' primary case is that they are entitled to bring the claims set out in this Statement of Claim against Port Link on their own behalf by reason of the statutory, equitable, common law and contractual duties that Port Link owes the Plaintiffs as Limited Partners and by reason of Port Link having conspired to cause loss to the Limited Partners by unlawful means.

25 In the alternative, if and to the extent that the claims set out in this Statement of Claim (or any of them) are properly regarded as and/or must be brought as derivative claims on behalf of TPF, the Plaintiffs will contend that Port Link has without cause failed to initiate proceedings on behalf of TPF against itself (and there is no real prospect of it doing so) such that the requirements of section 33(3) of the Exempted Limited Partnership Act Law (2020 Revision)

(the “**ELP Act**”) are satisfied, such that the Plaintiffs should be permitted to prosecute the relevant claims on behalf of and in the name of TPF.

25A The Plaintiffs advance claims against Mr Williams and Wellspring on their own behalf on the grounds that (a) Mr Williams, Port Link, EMPEML and (latterly) Wellspring conspired to cause loss to the Limited Partners by unlawful means, (b) Mr Williams dishonestly assisted Port Link in breaching fiduciary duties that it owed to the Limited Partners, and (c) Mr Williams knowingly procured Port Link to breach contractual obligations that it owed to the Limited Partners.

25B The balance of the claims against Mr Williams and Wellspring and the claim against KGLI Asia are brought by the Plaintiffs as derivative claims on behalf of TPF in circumstances where Port Link has without cause failed to initiate proceedings on behalf of TPF against those parties and there is no real prospect of it doing so. Not only did Port Link fail to commence such claims; as described in paragraph 4 above it deliberately withheld from the Limited Partners the information upon which the claims are based. In the premises, the requirements of section 33(3) of the ELP Act are satisfied such that the Plaintiffs should be permitted to prosecute these claims on behalf of and in the name of TPF.

26 Pending full discovery and/or the administration of interrogatories in these proceedings ~~and/or further disclosure in the proceedings under Cause No. FSD-13 of 2020 (which proceedings are addressed below)~~, the Plaintiffs only advance such claims against the Defendants Port Link as they consider to be properly maintainable based upon the very limited information available to them. The Plaintiffs reserve the entitlement to amend this Statement of Claim by (without limitation) adding additional claims against the Defendants Port Link as further documentation and information comes to light.

### **Summary of claims against Port Link**

27 The Plaintiffs' claims principally relate to breaches of trust, further or alternatively breaches of statutory, common law, contractual and equitable duties owed by Port Link as General Partner.

28 The relevant breaches caused very substantial loss to TPF. Because Port Link has wrongfully failed to disclose to the Plaintiffs (and other Limited Partners) information to which they are entitled, the Plaintiffs are not presently able to provide an accurate estimate of that loss; that being said, they expect, subject to further inquiry and discovery, TPF's losses to exceed USD 100 million.

29 Port Link's breaches of trust and/or breaches of duty involved:

- (i) Causing USD 45,850,000 of TPF monies to be paid to Apache and "a payee designated by Apache Asia" purportedly in respect of fees for "advisory services" in relation to the Clark Asset and a further unknown sum of TPF monies (possibly as much as USD 6,480,024) to be paid to Apache purportedly in respect of fees in relation to the sale of the only other asset that TPF sold. Causing at least USD 58,528,399 of TPF monies to be paid to Apache, of which Apache directed USD 14,550,000 to be paid to KGLI. USD 45,850,000 of this sum was purportedly due to Apache under an advisory agreement between Apache and TPF. The purported basis for the remaining payments is unknown;
- (ii) Apache was incorporated on 7 February 2013; it had no track record when it was engaged by Port Link, and it does not appear to have been involved in any completed transactions other than transactions that relate to TPF. As explained below, the Plaintiffs have uncovered significant links between Apache and the KGL Group/EMPEML, including the fact that USD 14,550,000 of Apache's purported fee under the advisory agreement was paid to KGLI (which fact was only disclosed in the Section 22 Disclosure). It is inferred and alleged that the KGL Group and/or EMPEML obtained undisclosed benefits from the payments purportedly made in respect of Apache's fees including in particular the payment of USD 14,550,000 referred to in the immediately preceding sentence; but further and in any event (a) Apache's purported fees were extraordinary and excessive (approximating to somewhere between 450% and 700% of the market rate charged by leading established investment banks), and (b) no reasonably competent and rational person in the position of Port Link could have concluded that Apache was a suitable and appropriate advisor alternatively the optimal advisor for TPF in relation to the matters in respect of which it is said to have provided services;
- (iii) Paying USD 2.792 million of TPF monies purportedly by way of "advisor fees" to Wilfredo Placino ("**Mr Placino**"), a director of the parent company of the SPV purchaser of the most substantial asset that TPF sold during its term (the Clark Asset) in connection with the sale. Remarkably, Port Link has sought to justify such payment on the ground that Mr Placino was incentivised by way of a success fee to obtain "*the*

*highest possible sale price*"; that is to say, Port Link incentivised Mr Placino to breach the duties that he owed as a director of the purchaser's parent company (Udenna);

- (iv) Using TPF monies in ~~undisclosed but substantial~~ amounts that were substantial but as yet not fully disclosed to fund directly or indirectly (a) the Lazareva Lobbying Campaign and (b) the defence of the Kuwaiti Criminal Proceedings in circumstances where neither the Lazareva Lobbying Campaign nor the defence of the Kuwaiti Criminal Proceedings was in the Limited Partners' or TPF's interests and for the avoidance of doubt the defence of the Kuwaiti Criminal Proceedings did not engage the indemnity under clause 5.4 of the LPA;
- (v) Paying a total of USD ~~16,088,917.27-095,767.12~~ of TPF monies between 10 February 2019 and 14 March 2019 to five service providers that Port Link refused to identify before the Section 22 Disclosure, referring to them only as "Kuwaiti based service providers" (the "Kuwaiti Service Providers"). Following the Section 22 Disclosure, Port Link's previous explanations of what these payments related to have now been shown to be inaccurate in various respects. unidentified "Kuwaiti based service providers" (the "Undisclosed Kuwaiti Recipients") but refusing to disclose the identities of the Undisclosed Kuwaiti Recipients or to provide a proper explanation of what the payments related to. In the premises set out below, it is inferred and alleged that the payments to the Kuwaiti Service Providers ~~Undisclosed Kuwaiti Recipients~~ or a substantial proportion thereof (1) were made for illegitimate purposes and/or (2) involved a direct or indirect benefit to one or more of the KGL Group, EMPEML, Mr Dashti and Ms Lazareva, and/or (3) were unreasonable and/or excessive in amount and/or not commensurate with any services provided and could not have been considered by Port Link in good faith to represent transactions that were no less favourable to TPF than equivalent transactions with unaffiliated third parties and/or (4) were otherwise not in the interests of the Limited Partners or TPF;
- (vi) In the DIFC Proceedings ~~proceedings~~ brought by EMPEML against Port Link and TPF: ~~in the DIFC under claim number CFI-050-2018 (the "DIFC Proceedings")~~—(a) submitting to the jurisdiction of the DIFC Court, (b) admitting liability in respect of EMPEML's claim in the sum of USD 56,808,005 within two days of the claim being issued, and (c) paying USD 59,990,461.30 to a payee designated by EMPEML (Wellspring) in satisfaction of the judgment entered in the DIFC Proceedings. Port Link

did so in circumstances where (a) the agreement to which the DIFC Proceedings related contained a jurisdiction clause conferring jurisdiction on the courts of the Cayman Islands and there is no known connection between EMPEML's claim and the DIFC, and (b) EMPEML's claim was (at least) grossly overstated and in a number of respects bad in law. In the light of the Section 22 Disclosure the Plaintiffs allege that Port Link conspired with Mr Williams, EMPEML and (latterly) Wellspring to cause loss to the Limited Partners and/or TPF by unlawful means in relation to the DIFC Proceedings and the Wellspring Payment.

30 The Plaintiffs claim equitable compensation, alternatively damages payable by Port Link to them directly, alternatively by Port Link to TPF, reflecting the loss that the breaches referred to in the paragraph immediately above caused TPF.

31 Based upon the facts and matters pleaded herein the Plaintiffs also claim an account on the footing of wilful default alternatively a common account as to:

(i) The payments that Port Link made directly or indirectly, procured to be made or diverted to EMPEML and members of the KGL Group; further or alternatively

(ii) Port Link's dealings in relation to the Clark Asset.

### **Duties of Port Link**

32 At all material times, Port Link held all rights and property of TPF of every description upon trust as an asset of all the partners of TPF. Port Link did so as a matter of statute from 2 July 2014 when section 16(1) of the ELP Law came into force pursuant to the revisions made to the ELP Act Law in 2014 (the "**ELP Act Law (2014 Revision)**"); prior to that date it did so in equity and/or at common law.

33 Port Link therefore has an equitable obligation to account to each and every one of the Limited Partners limited partner of TPF (the "Limited Partners") in respect of its dealings in relation to TPF's property (the "**Duty to Account**"). This Duty to Account is independent of the duties referred to in the two paragraphs immediately below.

34 Further or alternatively, at all material times Port Link owed (and continues to owe) the following duties to each and every one of the Limited Partners, further or alternatively to TPF:

- (i) An equitable further or alternatively common law further or alternatively implied contractual duty to preserve the assets of TPF;
- (ii) A duty pursuant to section 4(3) of the ELP Law as originally enacted in 1991 and subsequently section 19(1) of the ELP Law (2014 Revision) and all subsequent revisions of the ELP Law to act at all times in good faith and in the interests of TPF (there being no agreement to the contrary);
- (iii) An equitable, further or alternatively common law, further or alternatively implied contractual, duty to display complete good faith towards the Limited Partners in all dealings and transactions of TPF;
- (iv) An equitable, further or alternatively common law, duty not to make a profit (whether directly or indirectly) at the expense of the Limited Partners without their full knowledge and consent, alternatively an equitable, further or alternatively common law, further or in the further alternative a contractual, duty not to make such a profit from transactions absent a rational and good faith belief that the terms and conditions of such transactions were no less favourable than those that could have been obtained for comparable products or services from an unaffiliated third party with similar (or better) expertise and experience;
- (v) An equitable, further or alternatively common law, duty to manage TPF rationally;
- (vi) An equitable, further or alternatively common law, duty to disclose to the Limited Partners any breach of duty or other misconduct by it or any person or entity engaged or employed by TPF (the “**Duty to Speak**”);
- (vii) An implied contractual duty under the LPA, further or alternatively a common law duty, to exercise reasonable care and skill in performing its role.

35 Further or in the yet further alternative, at all material times Port Link owed (and continues to owe) the following duties to maintain and provide to the Limited Partners information relating to the business and affairs of TPF. Such duties are referred to collectively as Port Link’s “**Information Obligations**” herein.

- (i) A duty pursuant to section 21 of the ELP Law to keep proper books of account including, where applicable, material underlying documentation, necessary to give a true and fair view of TPF's business and financial condition and to explain its transactions.
- (ii) A duty pursuant to section 22 of the ELP Law to provide to the Limited Partners on demand true and full information regarding the state of the business and financial condition of TPF. For the avoidance of doubt, this statutory duty is not limited or otherwise modified by any express or implied term of the LPA.
- (iii) A contractual duty pursuant to clause 7.1 of the LPA to keep appropriate records and books of account for TPF and provide to the Limited Partners (a) access to such records and books of account, and (b) copies of such records and books of account "*under such reasonable conditions and restrictions*" as it prescribed.
- (iv) An equitable, further or alternatively common law, duty to render true accounts and full information of all things affecting TPF to any Limited Partner or his legal representatives.

36 For the avoidance of doubt, as a matter of law, Port Link's duties as trustee of the assets of TPF and the other fiduciary duties that Port Link owed to the Limited Partners, further or alternatively to TPF, were non delegable.

### **Imputation of knowledge**

37 By reason of (inter alia) (a) Mr Dashti's and Ms Lazareva's directorships of Port Link and Ms Lazareva's directorship of EMPEML, (b) Mr Williams' and/or KGLI's ownership of Port Link, and (c) Mr Williams' and/or Mr Dashti's and/or Ms Lazareva's and/or KGLI's interests in EMPEML, and (d) Mr Williams' role as a shadow alternatively de facto director and/or agent and/or officer of Port Link, at all material times the knowledge of EMPEML in relation to TPF is to be imputed to Port Link.

### **Overview of TPF's dealings**

38 TPF made a total of four known investments (subject to further enquiries and disclosure) during its seven-year term:

- (i) In August 2007, an investment of USD 20 million by way of a convertible loan agreement with Damietta International Ports Company SAE ("**DIPCO**"), an Egyptian company. Port Link caused TPF to recognise a provisional loss of the entire investment in its financial statement for the year ended 31 December 2014. Port Link and EMPEML blamed the loss on the Arab Spring and difficulties between DIPCO and the Egyptian government;
- (ii) In November 2007, an investment of USD 20 million in Münchmeyer Petersen Capital Global Maritime Opportunities SA ("**MPC GMO**"). Port Link and EMPEML have stated that the entire investment in MPC GMO was lost, purportedly due to the global financial crisis;
- (iii) In January 2008, an investment of approximately USD 28.6 million in Negros Navigation Company Incorporated ("**NNC**"), a Filipino shipping and logistics company. In 2010, NNC purchased one of its competitors, a company called ATS Corporation. The business of ATS Corporation combined with elements of the pre-existing business of NNC was rebranded as 2GO Group Inc ("**2GO**"). In November 2016, TPF sold its interest in NNC to ~~another Filipino company, Udenna Development Corporation ("Udenna")~~ Udenna, apparently for USD 120 million;
- (iv) From April 2008 onwards, an investment in a total amount unknown to the Plaintiffs (said by Port Link to be USD 100,040,000) in Clark City. TPF's interest in Clark City was held through a Filipino special purpose vehicle, Global Gateway Development Corporation ("**GGDC**"). GGDC was granted a long lease over a 177 hectare parcel of land in Clark City for an initial period of 50 years on 16 July 2008. GGDC was ultimately owned by GGDC Holdings, a Cayman Islands company which was itself wholly owned by TPF. In or around November 2017, TPF sold its interest in GGDC Holdings to Clark Global City Corporation ("**CGCC**"), a Filipino company which was a wholly owned subsidiary of Udenna. The Plaintiffs do not know what price CGCC paid; Port Link currently maintains that the sale price was USD 655 million, of which in excess of USD 300 million was distributed to the Limited Partners. Port Link refers to TPF's interest in Clark City as the "Clark Asset". For convenience, the Plaintiffs have adopted this term in this Statement of Claim.

- 39 In November 2017, Udenna apparently transferred USD 496,429,767 in connection with the sale of the Clark Asset to Noor Bank PJSC ("**Noor**") for deposit into an account held with Noor by Port Link (the "**Noor Account**").
- 40 The UAE Central Bank and the Attorney General of Dubai instructed Noor to freeze the transfer referred to in the paragraph immediately above. The monies remained frozen until February 2019.

### **The Section 22 Proceedings**

- 41 By ~~an Originating Summons dated 29 January 2020 (Cause No. FSD 13 of 2020,~~ the "**Section 22 Proceedings**"), KPA claimed against TPF and Port Link relief pursuant to section 22 of the ELP Law (2018 Revision) and/or pursuant to clause 7.1 of the LPA.
- 42 In the course of the Section 22 Proceedings:
- (i) Walkers sent the Plaintiffs a letter dated 6 March 2020 on behalf of Port Link (and purportedly on behalf of TPF) providing certain information regarding Port Link's dealings (the "**Disclosure Letter**");
  - (ii) Andrew Childe ("**Mr Childe**") of the current directors of Port Link has sworn two affidavits providing further information regarding Port Link's dealings (respectively "**Childe 1**" and "**Childe 2**").
- 43 Port Link ~~has~~ resisted the Section 22 Proceedings and related proceedings (under Cause No. FSD 235 of 2019) brought by two other Limited Partners, Gulf Investment Corporation and General Retirement and Social Insurance Authority.
- 44 By an order dated 28 August 2020 made in the Section 22 Proceedings and Cause No. FSD 235 of 2019 (the "**August 2020 Disclosure Order**"), the Honourable Mr Justice Parker required Port Link and TPF to provide extensive disclosure. Port Link (acting on its own behalf and purportedly on behalf of TPF) applied for a stay of execution of the August 2020 Disclosure Order and appealed against it.

44A After being served with these proceedings, Port Link abandoned its appeal against the August 2020 Disclosure Order and agreed to the Consent Order.

45 The Plaintiffs will say that Port Link's conduct in relation to the Section 22 Proceedings and Cause No. FSD 235 of 2019 involved serious ~~and continuing~~ breaches of its duties as General Partner of TPF including in particular the Duty to Account and the Information Obligations. For the avoidance of doubt, the Plaintiffs do not accept that Port Link has discharged its obligations under the Consent Order.

### **Purported Apache fees**

46 In total, Port Link apparently caused at least USD 58,528,399 well in excess of USD 45,850,000, and potentially as much as USD 52,330,024, of TPF monies to be paid to Apache and KGLI and Law Custodial Inc (whose identities Port Link did not disclose, referring to them as "a payee designated by Apache Asia" (the "**Undisclosed Designated Payee**") purportedly by way of fees for advisory services provided in relation to the sales of TPF's interests in NNC and the Clark Asset.

#### *Ownership and control of Apache*

47 Apache was incorporated in Hong Kong on 7 February 2013. Upon incorporation, a single share in Apache was issued to Highnoon Limited ("**Highnoon**"), another Hong Kong company. Highnoon was appointed as a corporate director of Apache on the same date (7 February 2013). No other shares in Apache were issued.

48 From at least July 2013 until 6 December 2018, the only (two) issued shares in Highnoon were owned by Granville Limited ("**Granville**"), a Hong Kong company. Throughout this same period (1) Granville was a corporate director of Highnoon, and (2) Shane Weir ("**Mr Weir**"), the founder of Weir & Associates, was a director of Granville.

49 On 6 December 2018, Granville transferred its shares in Highnoon to Cheonghar Wong ("**Ms Wong**"), who was appointed a director of Highnoon on the same date. Until 1 January 2019, Ms Wong was a partner at Weir & Associates.

50 On 15 February 2019, Highnoon transferred the sole share in Apache to Capital Corporation Limited ("**CCL**"), a further Hong Kong company. CCL replaced Highnoon as corporate director

of Apache two days earlier, on 13 February 2019. The directors and registered shareholders of CCL are Ms Wong and Mr Weir.

51 The Plaintiffs do not know the identity of the past or present ultimate beneficial owner(s) of Apache.

52 The other directors of Apache are Bee Lin Ang ("**Ms Lin Ang**", who has been a director since 5 March 2014) and Ronald Henry Ayliffe ("**Mr Ayliffe**"), Apache's founder. Mr Ayliffe was a director of Apache from 1 April 2013 until 5 March 2014 (the date on which Ms Lin Ang was appointed). He was then reappointed on 15 April 2020. Apache has never had any directors other than Highnoon, CCL, Ms Lin Ang and Mr Ayliffe.

53 While Mr Ayliffe has experience in banking, having worked for Bank of America Merrill Lynch in Australia in small-cap advisory between mid 2010 and October 2012 and prior to that for Deutsche Bank in Hong Kong, Ms Lin Ang appears not to have any significant experience in banking or finance.

*Apache's purported expertise and experience*

54 Apache describes itself on its website (<http://apacheasia.com>, the "**Apache Website**") as "a merchant bank targeting the Asia Pacific region ... addressing the mid-cap market".

55 On the "Relevance" page of the Apache Website, it is stated that Apache "can help in situations where traditional investment banks believe a transaction is too small or too difficult" and that Apache "specialises in transactions that are considered too difficult for investment banks or outside their core area of expertise".

56 The "Transactions" page of the Apache Website gives details of only three transactions with which Apache claims to have been involved. It states that Apache:

(i) "*acted for 2GO Group, the Philippines' largest logistics company, in the refinancing of its senior debt*" in a transaction said to be worth approximately USD 100 million in April 2013 (the "**2GO Transaction**");

(ii) "*structured and arranged an economic swap for its client [described on the Apache Website as an "Undisclosed Counterparty"] to monetise an equity position that had shareholder restrictions*" in October 2013 (the "**Undisclosed Client Transaction**"); and

(iii) "arranged a US\$45 million loan for the Port Fund, a fund sponsored by Kuwait-based KGLI" in August 2013 (the "TPF Loan").

57 All three transactions referred to in the paragraph immediately above apparently relate to TPF:

(i) As at the date of the 2GO Transaction, TPF had a substantial indirect interest in 2GO. 2GO was owned as to 88.31% by NNC which in turn was owned as to 59.59% by KGLI-NM Holdings, which was itself owned as to 80% by KGL Investment BV. Further, Mr Mark Williams was a director of 2GO;

(ii) Mr Ayliffe has stated that the "Undisclosed Client Transaction" related to 2GO;

(iii) The TPF Loan directly concerned TPF. The TPF Loan is referred to in the minutes of TPF's Investment Committee Meeting held on 9 October 2013, in which it is stated that TPF "*negotiated and obtained a loan from Goldman Sachs's entity Best Investments (Delaware, USA) for a purpose of capital infusion in Negros Navigation and GGDC*". The minutes make no reference to Apache having assisted in the arrangement of the TPF Loan; nor do the minutes or any other document that the Plaintiffs have seen refer to Apache having been paid fees in relation to the TPF Loan.

58 There is nothing on the Apache Website or any other material that the Plaintiffs have seen to suggest that Apache – as distinct from the unidentified individuals who apparently became Apache's "team" and are said to have been involved in historical deals in the Philippines and Mongolia – was involved in any completed transactions beyond the three transactions referred to in paragraph 56 above and the sales of TPF's interests in the Clark Asset and NNC.

59 The homepage of the Apache Website contains a statement that "apache has had a successful and profitable initial 18 months and is now in growth mode from a position of strength, with several blue-chip mandates under execution". It is suitable and appropriate to infer, and is inferred and alleged, that this statement was first made in or around September 2014 given the reference to Apache's "initial 18 months". The Apache Website was last updated on 2 March 2016.

60 In the premises of paragraphs 56 to 59 above, it is appropriate to infer, and is inferred and alleged, that:

- (i) As of April 2013, Apache had no track record, having only been established in February 2013;
- (ii) During the period between April 2013 and November 2017, Apache was not involved in any completed transactions apart from those referred to in paragraph 56 above and the sales of TPF's interest in NNC and the Clark Asset. (For the avoidance of doubt, the Plaintiffs do not accept that Apache had any substantial and legitimate involvement in any of those transactions.)

*Links between Apache and the KGL Group/EMPEML*

- 61 The Apache Website domain name was registered in November 2012 (i.e., before Apache was incorporated) by KGLI. KGLI is, and at all material times has been, the Registrant Organisation for the Apache Website domain name.
- 62 At all material times, the Apache Website has been hosted on name servers managed by and/or registered to Matt Williams Consulting ("**MWC**"). The founder and president of MWC is Mr Williams' brother, Matthew Williams. MWC has also provided web services to KGLI and KGLI Asia (as well as to TPF) and to Wellspring.
- 63 From November 2012 until August 2018, Anas Matar ("**Mr Matar**") was named in the domain name records for the Apache Website. From September 2011 until March 2014, Mr Matar was employed by KGLI as an IT infrastructure manager.
- 64 As pleaded above, Apache is currently indirectly legally owned by Mr Weir and Ms Wong and was formerly indirectly legally owned by Ms Wong alone. EMPEML has used the services of Weir & Associates since at least July 2018, when it nominated a client account of Weir & Associates to receive its claimed fee entitlement from Port Link.
- 64A In February 2019, Building Smart Limited, a company indirectly owned by Mr Weir, was appointed as director of EMPEML, replacing Ms Lazareva.
- 64B Mr Weir is also a director and shareholder of Capital Corporation Limited (one of Apache's corporate directors and shareholders).

64C Apache appears to have been engaged by KGLI Asia prior to being engaged by Port Link on behalf of TPF. In a letter dated 19 September 2014 sent by Mr Williams on behalf of KGLI Asia to Solaire Resort in the Philippines, Mr Williams referred to Apache as “our financial advisors”.

64D In an invoice dated 8 February 2019 Apache designated KGLI as the payee of USD 14,550,000 that was purportedly due from Port Link to Apache. The significance of this payment is addressed below.

65 When EMPEML was put into liquidation on 18 February 2020, Mr Ayliffe was appointed voluntary liquidator of EMPEML.

*The Apache Agreement*

65A On 17 April 2015 Port Link and Apache entered into an Advisory and Investor Relationship Services Agreement (the “Apache Agreement”). The Apache Agreement was signed by Mr Ayliffe for Apache and Ms Lazareva for TPF.

65B Apache’s only entitlement to remuneration under the Apache Agreement was by way of a “Success Fee” calculated as a “percentage of sales price of GGDG (equity and debt) as stated in SPA or similar documents.” If the sale price exceeded USD 600 million, the stipulated Success Fee was 7%.

65C The Apache Agreement also entitled Apache to be reimbursed for “reasonable out-of-pocket marketing expenses (primarily travel and accommodation (including for the purposes of due diligence and site visits), reasonable third party expenses, etc.” All costs over USD 5,000 were to be agreed with TPF in advance.

*Payments for Apache’s purported benefit*

65D The Plaintiffs have identified payments that were purportedly made for Apache’s benefit out of TPF funds totalling USD 58,528,399. The payments and underlying invoices (where available) are detailed in Annex 2 to this Statement of Claim.

65E On Port Link’s most recent version of events (without limitation), (1) USD 750,000 was paid by Port Link to Apache on 23 November 2011 (around 14 months before Apache was incorporated), and (2) USD 1.8 million was paid to Apache on 24 June 2017 purportedly in part payment of a success fee for a transaction (the sale of the Clark Asset) that had yet to occur.

65F The payment of USD 14,550,000 of TPF funds to KGLI was made by Crowell & Moring purportedly on behalf of TPF (it is appropriate to infer at the direction of Port Link). It corresponds to an invoice rendered by Apache dated 8 February 2019. In a letter accompanying that invoice, Apache described the sum of USD 14,550,000 as being in "settlement of the obligations of Alternative Asset Management Limited towards KGL Investment KSCC".

65G In the premises of paragraphs 46 to 65F above, it is appropriate to infer, and is inferred and alleged, that (1) there was no legitimate basis for Apache or Port Link to procure the payment of USD 14,550,000 of TPF monies to KGLI, and (2) such payment was paid as an unlawful "kickback" and/or secret commission to KGLI and/or persons associated with it.

*The Plaintiffs' claims in relation to Apache*

66 It is appropriate to infer, and is inferred and alleged, that Apache provided no, alternatively no substantial, legitimate services to TPF, or in the further alternative that the fees purportedly paid by TPF/Port Link to Apache far exceeded the market value of any legitimate services that Apache provided to TPF. The grounds for this inference are as follows:

- (i) The facts and matters pleaded in paragraphs 47 to 65 above;
- (ii) As stated in paragraph 12.1 of the Disclosure Letter, Port Link's position is that Apache "was first engaged by the Fund in April 2015". On this basis – contrary to what is suggested on the Apache Website – Apache cannot have provided services to TPF in relation to the transactions referred to in paragraph 56 above, which transactions are said to have occurred between April and October 2013;
- (iii) As stated above, in November 2017, TPF sold the Clark Asset to CGCC, a wholly owned subsidiary of Udenna. CGCC was a special purpose vehicle, incorporated by Udenna only three months earlier for the purposes of acquiring the Clark Asset. Well before a sale to CGCC/Udenna was in contemplation, TPF/Port Link had a pre-existing relationship with Udenna by reason of Udenna's purchase in November 2016 of TPF's interest in NNC. Accordingly, at least as regards the Clark Asset, CGCC/Udenna was not a purchaser found, identified or introduced by Apache. The statement in paragraph 12.1 of the Disclosure Letter that "*Apache played a key role in identifying potential*

*buyers of GGLC, including Udenna*" is therefore false: there was no possible need for Apache to "identify" Udenna as a potential purchaser of the Clark Asset;

- (iv) In discussing TPF's exit from the Clark Asset in her witness statement dated 30 September 2019 in ICSID Case No. UNCT/19/1 Ms Lazareva does not mention Apache, let alone suggest that it played a substantial role in facilitating that exit;
- (v) The paucity of references in TPF's documents of record to Apache;
- (vi) In a detailed description of the steps taken by TPF to sell the Clark Asset provided in the Section 22 Disclosure there is only one reference to Apache, namely that in November 2015 TPF "accelerated efforts regarding the GGDC sale process with the assistance of its financial advisor Apache Asia". No detail is provided as to the nature of this purported assistance;
- (vii) The paucity of other contemporaneous documents disclosed by Port Link evidencing the provision of services by Apache.

67 Further or alternatively, it is appropriate to infer, and is inferred and alleged, that:

- (i) Port Link's engagement of Apache in relation to TPF's interests in NNC and the Clark Asset were not arm's length engagements;
- (ii) The terms of such engagements were commercially disadvantageous to TPF;
- (iii) Port Link failed to consider properly or at all whether Apache was the best possible advisor for TPF in relation to NNC and the Clark Asset;
- (iv) The KGL Group, further or alternatively EMPEML, further or in the further alternative Ms Lazareva and/or Mr Dashti and/or other persons unknown, improperly obtained direct or indirect benefits from the payments that Port Link made purportedly in respect of Apache's fees including by means of the payment of USD 14,550,000 made to KGLI at Apache's direction and/or otherwise from Port Link's engagement of Apache, contrary to the best interests of TPF;
- (v) Port Link's engagement of Apache and the payments that it made to Apache or payee(s) designated by Apache constituted transactions that Port Link entered into

absent a rational and good faith belief that the terms and conditions of such transactions were no less favourable than those that could have been obtained for comparable products or services from an unaffiliated third party with similar (or better) expertise and experience.

68 The grounds for the inferences pleaded in the paragraph immediately above are as follows:

- (i) The facts and matters pleaded in paragraphs 47 to 66 above;
- (ii) The sales of TPF's interests in the Clark Asset and NNC were not transactions that "*traditional investment banks*" would have considered "*too small or too difficult*" or "*outside their core area of expertise*". To the contrary, they were transactions in relation to which investment banks (and other suitable established financial entities) would have been eager to act to the extent that it was necessary and appropriate for Port Link and EMPEML to obtain external advice and assistance;
- (iii) In the premises of the subparagraph immediately above and given Apache's lack of track record, experience and expertise, no reasonably competent and rational person in the position of Port Link could have concluded that Apache was an appropriate advisor, alternatively the optimal advisor, for TPF in relation to NNC and the Clark Asset;
- (iv) The extraordinary and excessive level of fees that Port Link apparently caused to be paid to Apache and to KGLI and Law Custodial "a payee designated by Apache" (the "~~Undisclosed Designated Payee~~"), approximating to somewhere between 450% and 700% of the market rate charged by leading established investment banks;
- (v) The statement in paragraph 3.12 of the Disclosure Letter that a payment of USD 36.2 million was purportedly made around 9 February 2019 to "*Apache Asia and a payee designated by Apache Asia based on documented contractual obligations*", coupled with Port Link's failure to disclose the fact that KGLI was the recipient of USD 14,500,000 the identity of the Undisclosed Designated Payee or the relevant "contractual obligations" purportedly entitling KGLI the Undisclosed Designated Payee to payment; and that USD 21,650,000 was paid to Law Custodial Inc, in the circumstances where it is understood that Law Custodial is a Samoan registered

company of which Mr Weir is a shareholder (according to information disclosed in the Panama Papers).

69 It was not in the interests of the Limited Partners or TPF for Port Link to engage Apache, further or alternatively for Port Link to use TPF's monies to pay purported fees to Apache and to KGLI and Law Custodial the Undisclosed Designated Payee; further or alternatively Port Link did not act in good faith in engaging Apache, further or alternatively in so using TPF's monies; further or in the further alternative no reasonably competent general partner in the position of Port Link, further or alternatively no general partner acting rationally, would have acted as Port Link did in relation to Apache.

70 In the premises, Port Link acted in wilful and/or intentional further or alternatively negligent breach of trust, further or alternatively in breach of the duties referred to in paragraph 34 above in engaging Apache, further or alternatively in using TPF's monies to pay purported fees to Apache and, Law Custodial, and KGLI the Undisclosed Designated Payee.

71 The Plaintiffs are therefore entitled to and claim equitable compensation, alternatively damages payable by Port Link to them direct, alternatively by Port Link to TPF reflecting the total payments purportedly made in respect of Apache's fees less the market value of any legitimate services provided by Apache to TPF.

72 Further or alternatively, Port Link is liable to account for and disgorge to TPF any indirect or direct benefit that it obtained from the payments that it made purportedly in respect of Apache's fees or otherwise from its engagement of Apache.

### **The Placino Payment**

73 Port Link apparently caused a total of USD 2.792 million to be paid from the Noor Account to Mr Placino, purportedly by way of "advisor fees" in connection with the sale of the Clark Asset (the "**Placino Payment**"). The Placino Payment was first disclosed to the Plaintiffs in line 23 of the table under paragraph 3.11 of the Disclosure Letter as being a payment of USD in the lesser amount of 2.72 million.

73A The terms of Mr Placino's purported engagement are contained in a letter dated 8 March 2017 pursuant to which Mr Placino was appointed as a "Non-Exclusive Arranger" on behalf of TPF in respect of the sale of the Clark Asset. The services that Mr Placino undertook to provide

included identifying potential investors, introducing and leading in discussions with potential investors and facilitating closing the deal.

74 The payments that Port Link made to Mr Placino comprised a payment of USD 200,000 on 1 August 2017 and a further payment of USD 2,720,000 on 10 February 2019. At the time of the payments, Mr Placino was a director of Udenna, the 100% owner of CGCC, the purchaser of the Clark Asset. As stated above, CGCC was an SPV, incorporated in August 2017 for the purposes of acquiring the Clark Asset. It is therefore inherently unlikely that CGCC and Udenna were under separate and independent control, and inherently likely that CGCC's and Udenna's interests in relation to the Clark Asset were closely aligned (if not substantively identical).

75 Accordingly, Mr Placino was by definition unfit to advise TPF in relation to the sale of the Clark Asset: Mr Placino could not lawfully or properly do so.

76 By reason of his directorship of Udenna, Mr Placino would have been under an insoluble conflict of interest as regards the sale to the extent that he purported to advise TPF. In his capacity as a director of Udenna, Mr Placino was obliged to seek to negotiate and agree the best possible terms for Udenna (including the lowest possible price), whereas TPF was interested in obtaining the best possible terms for it (including the highest possible price).

77 In paragraph 36 of Childe 2 Mr Childe stated:

*"I understand from speaking to representatives of the Fund that Mr Placino played a crucial role in facilitating the transaction with Udenna and facilitating the closing of the sale. Mr Placino was engaged by the Fund on a success fee structure and his fees were calculated as a percentage of the sale price of the Clark Asset in order to incentivise Mr Placino to achieve the highest possible sale price."*

78 This constitutes an admission that Port Link incentivised Mr Placino to breach the duties that he owed as a director of Udenna, further or alternatively paid Mr Placino a secret commission.

79 It was not in the interests of the Limited Partners or TPF for Port Link to undertake to make the Placino Payment, further or alternatively to use TPF's monies to make the Placino Payment; further or alternatively Port Link did not act in good faith in so undertaking and using TPF's monies; further or in the further alternative no reasonably competent general partner in the

position of Port Link, further or alternatively no general partner acting rationally, would have made the Placino Payment.

80 In the premises, Port Link acted in wilful and/or intentional further or alternatively negligent breach of trust, further or alternatively in breach of the duties referred to in paragraph 34 above in making the Placino Payment, further or alternatively in using TPF's monies to make the Placino Payment.

81 The Plaintiffs are therefore entitled to and claim equitable compensation alternatively damages payable by Port Link to them direct alternatively by Port Link to TPF reflecting the Placino Payment.

### **Lobbying and legal fees**

82 Under paragraph 3.11 of the Disclosure Letter, Walkers set out fees that were paid by Port Link using monies that were released from the Noor Account in February 2019. A substantial proportion of those payments (in number and value) were made to firms or entities that provide legal, public relations and/or lobbying services. In addition, a payment of USD 1,085,833.33 was made to Neil Bush, one of the brothers of President George W Bush and sons of President George Bush Senior, who has had extensive involvement with the Lazareva Lobbying Campaign.

83 The relevant payments are detailed in Annex 1 to this Statement of Claim, together with Walkers' purported explanation of what the fees related to. The payments total USD 7,312,436.32.

84 A large proportion of the Annex 1 payments are said to have been paid in respect of services to "assist with [TPF's] efforts to unfreeze the \$496 million held by Noor". The descriptions provided by Walkers are neither accurate nor comprehensive, for the reasons set out below. In particular, the fees said to have been incurred in relation to the Noor Account were not or alternatively not all exclusively so incurred.

85 In paragraph 85 of Childe 1, Mr Childe stated:

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

86 Mr Childe's reference to "*ongoing criminal proceedings in Kuwait*" is a reference to the Kuwaiti Criminal Proceedings. The statement in paragraph 85 of Childe 1 constitutes an admission that (1) Port Link applied TPF's monies to fund Mr Dashti's and Ms Lazareva's defence of the Kuwaiti Criminal Proceedings, and (2) the descriptions of the payments listed under paragraph 3.11 of the Disclosure Letter are neither accurate nor comprehensive. A statement to almost identical effect – constituting the same admissions – was made in paragraph 11.3 of the Disclosure Letter.

87 Further (without limitation):

(i) The following sums are said to have been paid to Crowell & Moring LLP ("**Crowell & Moring**") purportedly "*for their legal fees and for disbursement on behalf of the Fund [TPF]*":

(a) USD 7.5 million on 7 February 2019;

(b) USD 41.7 million on 12 February 2019; and

(c) USD 1.5 million on 30 March 2019.

(ii) Crowell & Moring represents Ms Lazareva personally (inter alia in [the ICSID Arbitration ICSID Case No. UNCT/19/1](#)) and KGLI in relation to public and media relations, and has been (and continues to be) heavily involved with the Lazareva Lobbying Campaign. In the table under paragraph 3.12 of the Disclosure Letter, it is stated that from the payments referred to in the subparagraph immediately above, Crowell & Moring retained USD 2,576,349.69 in respect of fees purportedly for "*legal and other services to the Fund and Port Link GP*";

(iii) In the same table under paragraph 3.12 of the Disclosure Letter, it is stated that Crowell and Moring made (inter alia) the following payments "*acting on the instructions of the board of directors of the Fund*":

(a) A payment of USD 229,593.56 to Navigant Consulting Inc ("**Navigant Consulting**") purportedly in respect of "*services in support of legal advice to the Fund and the GP*". This description is not understood, but given the absence of any reference to the unfreezing of the Noor Account (which is referred to repeatedly elsewhere in the same table in relation to other entries) it is

appropriate to infer, and is inferred and alleged, that the services provided by Navigant Consulting Inc did not relate to the Noor Account but rather to the Lazareva Lobbying Campaign and/or the Kuwaiti Criminal Proceedings;

(b) A payment of USD 260,795.18 to Marathon Strategies LLC ("**Marathon**") purportedly in respect of "*services to assist in the Fund's efforts to unfreeze \$496 Million held by Noor and protect the reputation of the Fund*" (emphasis added). It is appropriate to infer, and is inferred and alleged, that the services provided by Marathon (alternatively a substantial proportion of such services) related not to the unfreezing of the Noor Account but instead to the Lazareva Lobbying Campaign and/or the Kuwaiti Criminal Proceedings:

(A) Marathon was engaged by Crowell & Moring under an engagement letter dated 1 May 2019, nearly three months after the Noor Account was unfrozen;

(B) Marathon's filing in the United States under the Foreign Registration Act 1938 ("**FARA**") does not mention any work or assistance in relation to the unfreezing of the Noor Account;

(C) To the contrary, Marathon's FARA filing states that it "*will assist the foreign principal [defined as KGLI rather than TPF] in connection with public relations implications of the legal advice the firm, Crowell & Moring LLP provides to [KGLI]*";

(c) Squire Patton Boggs, which received fees totalling USD 1,405,930.69 stated in its FARA filing that it was still being paid in Q2 2019 (1 April – 30 June 2019) for "*monitoring issues in relation to bank hold on funds*" despite the Noor Account having been unfrozen months earlier, in February 2019;

(d) In paragraph 40 of Childe 2, Mr Childe stated: "*I understand from representatives of the Fund that once the release of the \$496 million occurred, Marathon and Squire subsequently entered into new agreements with another third party. I also understand that this means that the Fund did not pay Marathon and Squire the amounts claimed in [the second affidavit of Yousef Al Sabah dated 24 April 2020 ("**AI Sabah 2**")]*". This statement is not understood: the

payments to Marathon and Squire Patton Boggs referred to in Al Sabah 2 exactly reflect the payments to those firms identified in the Disclosure Letter. Further and in any event, the FARA filings of Squire Patton Boggs identify TPF as the client; the Plaintiffs are not aware of any FARA filings identifying any possibly relevant "third party" client of Squire Patton Boggs.

87A The Section 22 Disclosure included a number of invoices that were issued by Crowell & Moring to TPF in respect of "Advice re Kuwaiti Legal Proceedings and Related Matters" (the "C&M Kuwaiti Invoices"). The C&M Kuwaiti Invoices confirm that TPF was charged and has paid legal fees for work done by Crowell & Moring on behalf of (1) Ms Lazareva in relation to the ICSID Arbitration, (2) Ms Lazareva and Mr Dashti in relation to the Kuwaiti Criminal Proceedings, (3) KGLI, (4) EMPEML, (5) the shareholders of Port Link and/or Mr Williams, and (6) Apache.

88 The Plaintiffs do not know the extent to which the payments set out in Annex 1 were paid in relation to the Lazareva Lobbying Campaign, the ICSID Arbitration and/or the Kuwaiti Criminal Proceedings. However, given (1) the facts and matters pleaded in paragraphs 84 to 87A above, (2) the timings and amounts of the relevant payments, (3) the identity of the payees, **and** (4) the descriptions of the payments provided by Walkers in the Disclosure Letter, **and (5) the narratives in the C&M Kuwaiti Invoices** it is appropriate to infer, and is inferred and alleged, that such fees or alternatively a substantial proportion of such fees (including but not limited to at least a substantial proportion of the fees paid to Crowell & Moring, Navigant Consulting, DiGenova & Toensing LLP and Marathon) were paid in relation to the Lazareva Lobbying Campaign, the ICSID Arbitration and/or the Kuwaiti Criminal Proceedings.

89 The table under paragraph 3.11 of the Disclosure Letter also refers to two payments to KGLI Asia in February 2019 totalling USD 1,948,976.32. Walkers stated that these payments were made in respect of fees "*for administrative and personnel services it provided to the Fund in 2018 – 2019 in respect of the sale of GGLC and the subsequent release of the monies frozen at Noor*" (emphasis added). These payments to KGLI Asia are addressed further below.

90 In paragraph 40 of Childe 2 Mr Childe stated: "*representatives of KGLI Asia were involved on a daily basis in securing the release of the Fund monies at Noor bank.*" The Plaintiffs are entitled to and claim an account detailing the extent to which KGLI Asia or unidentified

"representatives" thereof provided services in relation to the Lazareva Lobbying Campaign, the ICSID Arbitration and/or the Kuwaiti Criminal Proceedings.

- 91 It was not in the interests of the Limited Partners or TPF for TPF's monies to be applied in support of the Lazareva Lobbying Campaign, the ICSID Arbitration and/or the defence of the Kuwaiti Criminal Proceedings; further or alternatively Port Link did not act in good faith in so applying TPF's monies; further or in the further alternative no reasonably competent general partner in the position of Port Link, further or alternatively no general partner acting rationally, would have so applied TPF's monies.
- 92 Port Link therefore acted in wilful and/or intentional, further or alternatively negligent, breach of trust, further or alternatively in breach of the duties referred to in paragraph 34 above in applying TPF's monies in support of the Lazareva Lobbying Campaign, the ICSID Arbitration and/or the defence of the Kuwaiti Criminal Proceedings.
- 93 In the premises of paragraphs 82 to 92 above, the Plaintiffs are entitled to and claim equitable compensation alternatively damages payable by Port Link to them direct alternatively by Port Link to TPF reflecting the total payments that Port Link made either directly or indirectly in relation to the Lazareva Lobbying Campaign, the ICSID Arbitration and the Kuwait Criminal Proceedings using TPF's monies.

#### **Payments to ~~undisclosed Kuwaiti recipients~~ Kuwaiti Service Providers**

- 94 In paragraph 3.13 of the Disclosure Letter, Walkers stated that the tables under paragraphs 3.11 and 3.12 of that letter did not include payments out of the Noor Account to "*service providers to the Fund*" based in Kuwait, purportedly on the ground that the disclosure of their identities "*would, in all likelihood, lead to adverse and wholly unjust consequences for such parties*".
- 95 Port Link's position in this regard was criticised in paragraph 46 of Al Sabah 2. In response to such criticism, Mr Childe included under paragraph 49 of Childe 2 a table setting out five payments made out of the Noor Account between 10 February 2019 and 14 March 2019 to unidentified "*Kuwaiti based service providers*" (~~the "**Undisclosed Kuwaiti Recipients**"~~) and a

further payment (of USD 6,849.85) that was apparently made to EMPEML's lawyers in the Uncontested DIFC Proceedings (addressed below).

96 The payments to the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers total USD 16,~~088,917.27.~~ ~~095,767.12.~~ Under the heading "*Transaction Details*", Mr Childe purports to describe the services in respect of which such payments were made:

(i) The first two payments (totalling USD 1,507,941.83) are said to have been made to a service provider or service providers "*engaged by the Fund on a joint mandate to provide assistance with (i) the Fund's effort to secure the release of the frozen funds in the Noor Account and (ii) the Kuwaiti Criminal Proceedings*";

(ii) The third and fourth payments (totalling USD 14,420,000) are said to have been made to a service provider or service providers "*engaged by the Fund to provide assistance with the Fund's effort to secure the release of the frozen funds in the Noor Account*", and that the third payment (in the sum of USD 14,070,000) "*accounted for the success fee*";

(iii) The sixth payment (on 14 March 2019 in the sum of USD 160,975.44) is said to have been made to a service provider "*engaged by the Fund to provide legal advice to the Fund in connection with the frozen funds in the Noor Account*".

96A Port Link belatedly provided further information regarding the Kuwaiti Service Providers in the Section 22 Disclosure. That disclosure demonstrates the following (which is not entirely consistent with Childe 2):

(a) A payment of USD 837,745.46 was paid to Al Haq Group For Law Firms ("Al Haq") on 11 February 2019. As to this payment:

(i) A legal services agreement between Al Haq and TPF dated 24 September 2018 was included in the Section 22 Disclosure (the "Al Haq Agreement"). Its stated purpose is to engage Al Haq to assist with the unfreezing of the Noor Account;

(ii) The Al Haq Agreement provided that Al Haq was entitled to be paid a fee of KWD 250,000 if the Noor Account was unfrozen within the term of the agreement. The term of the agreement was stated to be 30 days from the date

on which it was signed, but “renewable for an additional period, subject to written agreement between both parties”;

(iii) As at 9 February 2019 KWD 250,000 was approximately equal to USD 837,745.46. Accordingly, it appears that the entire payment to Al Haq was made on 11 February 2019 in respect of its purported entitlement under the Al Haq Agreement;

(iv) Mr Childe’s evidence was that the payment that is now known to have been made to Al Haq was made under a joint mandate “to provide assistance with (i) the Fund’s effort to secure the release of the frozen funds in the Noor Account, and (ii) the Kuwaiti Criminal Proceedings”. Yet the Al Haq Agreement makes no reference to the Kuwaiti Criminal Proceedings or the provision of services in relation thereto;

(b) A payment of USD 670,196.37 was paid to Dr Yousef Thaher Al Harbash (“**Dr Al Harbash**”) on 11 February 2019. As to this payment:

(i) According to Mr Childe, Dr Al Harbash (like Al Haq) was engaged to assist with both the unfreezing of the Noor Account and the Kuwaiti Criminal Proceedings;

(ii) No contract with Dr Al Harbash nor any other document evidencing the services that he purportedly provided has been disclosed by Port Link;

(iii) In addition, on 11 June 2017 Dr Al Harbash was paid USD 100,078.73 by TPF with the reference “Office Attorney and Legal Consultant.” No documents or information have been disclosed by Port Link in relation to this payment;

(iv) In addition, on 9 November 2017 Dr Al Harbash was paid USD 83,953.75 by TPF. No documents or information have been disclosed by Port Link in relation to this payment.

(c) A payment of USD 14,070,000 was paid to Golden Shahin General Trading & Contracting Company (“**Golden Shahin**”) on 12 February 2019. As to this payment:

- (i) According to Mr Childe, this payment represented a success fee for assisting with unfreezing the Noor Account. The payment request from Port Link to Noor Bank is dated 10 February 2019 and has the reference “Retainer fees – Professional & Legal”;
- (ii) The success fee is documented in a Support Service Agreement dated 1 December 2017 (the “Golden Shahin Agreement”) between Golden Shahin and TPF and was to be calculated as a fixed fee of USD 14,070,000.
- (iii) The Golden Shahin Agreement was supplemented by an Addendum dated 15 August 2018 which also permitted Al Morabitoon International General Trading and Contracting (“Al Morabitoon”) to undertake the work in the Golden Shahin Agreement. This amended the calculation of the success fee so that it was to be calculated as 3% of any unfrozen amount released to TPF. Notwithstanding this, the amount paid reflected the success fee in the original Golden Shahin Agreement.
- (iv) The Golden Shahin Agreement states that Golden Shahin was engaged in order to “exert its best efforts to provide the Services required by the Client for unfreezing and releasing the exit proceeds held in UAE and to restore the reputation of the Client discredited by the smear campaign led by a strong business competitor and other governmental authorities in Kuwait as well as different entities and individuals including government officers.”
- (v) The Golden Shahin Agreement describes Golden Shahin as “a Kuwaiti company with a reputable network and resources in Kuwait and abroad especially in the GCC countries including local and international consultants and advisors as well as [sic] experts, with vast knowledge and experience in commercial and financial transactions, amongst others.” This description is inconsistent with Golden Shahin’s registered activities at the Kuwait Chamber of Commerce and Industry, which are cleaning of buildings and structures, roads & streets, and general trading and contracting.
- (vi) Al Morabitoon’s website states that its activities include “acting mainly as a local agent for international companies to do different government projects especially with the State’s different oil companies.” It does not suggest that Al Morabitoon

has the necessary experience or expertise to assist with unfreezing the Noor Account.

(vii) Golden Shahin is part of a group of companies that are associated with KGLI:

(1) Golden Shahin's 75% shareholder, Al Ahlia United General Services Company K.S.C.C. ("Al Ahlia") was designated by KGLI by a letter dated 5 February 2019 to receive KWD 1,500,000 out of its share of the second distribution to Limited Partners by TPF.

(viii) The other payee designated by KGLI in the same letter was Al Awaed National Group Trading & Contracting Company ("Al Awaed"). Al Awaed is a 19.42% direct shareholder of Al Ahlia's 99% shareholder, National Cleaning Company K.P.S.C. ("NCC"). It also indirectly holds 14.07% of the shares in NCC's other largest shareholder, Kuwait and Gulf Link Transport Co. KGLI requested that Al Awaed be transferred KWD 6,432,834.621. Al Morabitoon is also associated with KGLI and Mr Dashti personally:

(1) Al Morabitoon's full name in the Kuwaiti Ministry of Commerce and Industry records is Al-Marabtoon International Group for General Trading and Contracting Co but it is understood that on the Ministry of Commerce and Industry's records the company name is "Saeed Ismail Dashti and Partner Company WLL – Al Morabitoon International Group General Trading And Contracting Company and its partners are Saeed Dashti and Fouad Ismail Ali Dashti. Morabitoon (believed to be Saeed Dashti's brother) has been a shareholder of KGLI since its incorporation in November 2006, holding a 29.23% share. Its website, www.morabitoon.com, is associated with kgl.com, which is the same name server associated with the KGL websites:

(2) ~~The Kuwaiti Criminal Proceedings against Ms Lazareva authorised included an indictment in relation to a transfer of KWD 200,000, which she authorised to be made from TPF to KGLI, and then from KGLI to Al Morabitoon on 30 September 2013. Al Morabitoon was described in the indictment as "owned by Dashti and others;"~~

(d) A payment of USD 350,000 was paid to Jihad Ayoub, a law firm based in Lebanon, on 13 February 2019. As to this payment:

- (i) Mr Childe's evidence is that it was made in respect of legal advice in connection with unfreezing the funds in the Noor Account;
- (ii) The basis for this payment is an invoice dated 1 December 2017 for "Retainer Fees for Organizing TPF Legal Documentation – Agreement Review and Drafting – Provide Legal Support and Assistance – Compliance with Laws and Regulations" for the period up to the end of November 2017. Jihad Ayoub's given address is in Lebanon;
- (iii) The payment request from Port Link to Noor Bank is dated 11 February 2019 and includes the reference "Legal support service up to end of Nov 2017";
- (iv) The Plaintiffs have seen no documentary evidence of any work that Jihad Ayoub carried out. It is not understood why TPF needed the assistance of a firm based in Lebanon in relation to the unfreezing of the Noor Account or at all;
- (v) Further and in any event, since the funds from the sale of the Clark Asset were only paid into the Noor Account on 14 November 2017 and no substantial steps were taken to unfreeze the account prior to 30 November, it is not understood how a Lebanese law firm could have provided advice in relation to the Noor Account prior to 30 November 2017 that justified such a payment (or any substantial payment);

(e) A payment of USD 160,975.44 was made to Horizon FCB For Advertising ("Horizon"). Although Mr Childe stated that this payment was made in respect of legal advice in connection with the unfreezing of funds in the Noor Account, (i) as its name suggests, Horizon is not a law firm but a marketing and advertising firm, (ii) Horizon is based in Dubai, not in Kuwait, and (iii) Horizon's payment requests dated 28 February 2019 and 11 March 2019 refer to payments in respect of insertions in newspapers in Kuwait on 17 February 2019 and 10 March 2019 and make no reference to legal services. The Plaintiffs therefore have no knowledge of what services Horizon provided, and for whose benefit.

97 Until the Section 22 Disclosure, Port Link was is in continuing breach of the Duty to Account, further or alternatively the Information Obligations, by withholding from the Limited Partners the

identities of the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers (and inaccurately asserting that they were all based in Kuwait), further or alternatively by failing to disclose to the Limited Partners full details of such services as the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers provided to TPF and others. There wasis no legitimate basis for Port Link to do so. The Plaintiffs' position as to the adequacy of Port Link's disclosure in relation to such matters under the Section 22 Disclosure is expressly reserved.

- 98 In the premises of paragraphs 94 to 0 above, it is appropriate to infer, and is inferred and alleged, that the payments to the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers or a substantial proportion thereof (1) were made for illegitimate purposes and/or (2) involved a direct or indirect benefit to one or more of the KGL Group, EMPEML, Mr Dashti and Ms Lazareva, and/or (3) were otherwise not in the interests of the Limited Partners or TPF such that they were made by Port Link in wilful and/or intentional, further or alternatively negligent, breach of trust, further or alternatively in breach of the duties referred to in paragraph 34 above.
- 99 To the extent that the payments to ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers were made in respect of services provided in support of the Lazareva Lobbying Campaign and/or the ICSID Arbitration and/or the defence of the Kuwaiti Criminal Proceedings, paragraphs 91 and 92 above are repeated.
- 100 The Plaintiffs are therefore entitled to and claim equitable compensation alternatively damages payable by Port Link to them direct alternatively by Port Link to TPF reflecting the payments made to the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers but giving credit for the value of any legitimate services provided by the ~~Undisclosed Kuwaiti Recipients~~ Kuwaiti Service Providers to TPF in TPF's interests.

### **The DIFC Proceedings**

- 101 By a claim form dated 9 July 2018 (the "**DIFC Claim Form**"), EMPEML commenced the DIFC Proceedings against Port Link and TPF in the DIFC under claim number CFI-050-2018. EMPEML claimed:

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

- (ii) Compound interest on the allegedly unpaid Carry of 8% per annum commencing on 1 January 2015.
- (iii) Allegedly unpaid Management Fees (as defined in clause 5.1 of the IMA) of USD 8,106,386.
- (iv) Compound interest on the allegedly unpaid Management Fees of 8% per annum.

102 The DIFC Claim Form stated that on 7 July 2018, EMPEML's legal representatives wrote to Port Link and TPF:

*"requesting their agreement that this dispute and any claims under the IMA and/or the LPA be heard in the DIFC Courts. On 8 July 2018, [Port Link and TPF] confirmed their express agreement in writing to the jurisdiction of the DIFC Courts. Accordingly, the parties have agreed to submit to the jurisdiction of the DIFC Courts in respect of disputes arising out of both the IMA and the LPA in specific, clear and express terms."*

102A On 11 July 2018, Abdulughfoor M A Alwadhi, then the sole de jure director of Port Link, resolved by written resolution to submit to the jurisdiction of the DIFC and admit the claim in the DIFC Claim Form. The written resolution stated that: "in the opinion of the Director, the merits of the Claim and the amount of the Outstanding Debt is valid".

103 On 11 July 2018, Port Link filed an acknowledgement of service in the DIFC in response to the DIFC Claim Form (the "**DIFC Acknowledgment of Service**").

104 On or around 11 July 2018, Port Link filed an admission of the amount claimed in the DIFC Proceedings, admitting that they and TPF were jointly and severally liable for USD 56,808,005 (the "**Admitted Amount**"), and without requesting any time to pay the Admitted Amount.

105 The Admitted Amount represented the entire amount claimed in the DIFC Claim Form plus interest on that amount calculated to the date of filing the DIFC Claim Form.

106 On 12 July 2018, EMPEML filed a request for default judgment in the DIFC Proceedings for the Admitted Amount. Port Link did not take any steps to resist this request.

107 On 25 July 2018, the DIFC entered judgment against Port Link and TPF. This was reissued on 31 July 2018 (the "**DIFC Judgment**"). The DIFC Judgment included:

- (i) At paragraph 12, a statement that Port Link and TPF had "*agreed to submit to the jurisdiction of the DIFC Courts in specific, clear and express terms.*"
- (ii) At paragraph 16, an order requiring TPF and Port Link to pay EMPEML USD 56,999,978, being the Admitted Amount plus interest on the Admitted Amount at the rate of 8% per annum on a compound basis from the date of the DIFC Claim Form until the date of judgment.
- (iii) At paragraph 17, an order requiring TPF and Port Link to pay EMPEML's costs, to be assessed if not agreed.
- (iv) At paragraph 18, an order requiring TPF and Port Link to pay EMPEML simple interest of 9% per annum on USD 56,999,978 from the date of judgment until the date of payment.

- 108 Port Link did not take any steps to appeal against or otherwise challenge the DIFC Judgment.
- 109 On 27 February 2019, Port Link requested that apparently paid USD 59,990,461.30 be transferred from the Noor Account to Wellspring in satisfaction of the DIFC Judgment to an undisclosed payee designated by EMPEML (the "DIFC Payee"). It is appropriate to infer, and it is inferred and alleged, that EMPEML communicated with Port Link about this transfer on or before 2 February 2019, at a time when Ms Lazareva was the sole de jure director of EMPEML.
- 109A On 4 February 2019 EMPEML wrote to Port Link requesting that USD 59,990,461.30 be transferred to Wellspring in satisfaction of the DIFC Judgment and providing Wellspring's bank account details. On the same date Ms Lazareva resigned and Building Smart Limited was appointed as the sole de jure director of EMPEML instead.
- 110 Further, on 14 February 2019, Port Link apparently paid USD 6,849.85 to Omar Al Omar Advocates ("Al Omar"), previously described by Port Link as an undisclosed "service provider of the Fund based in the United Arab Emirates", purportedly in respect of services that it had provided to EMPEML in connection with the DIFC Proceedings.
- 111 Port Link failed to disclose the DIFC Proceedings to the Limited Partners at any time prior to satisfying the DIFC Judgment. Nor has Port Link ever explained how the DIFC Proceedings arose.

112 Port Link acted in wilful and/or negligent breach of trust, further or alternatively in wilful and/or negligent breach of the duties referred to in paragraph 34 above in relation to the DIFC Proceedings, by (inter alia):

- (i) Submitting to the jurisdiction of the DIFC Court;
- (ii) Failing to challenge EMPEML's claim in respect of Management Fees on the grounds that:

  - (a) EMPEML had assigned its rights to Management Fees under the IMA to KGLI and therefore had no entitlement to Management Fees;
  - (b) No Management Fees accrued under the IMA from 1 January 2015 onwards;
  - (c) There was no contractual or other entitlement to interest, let alone to compound interest at 8% per annum, on unpaid Management Fees;
- (iii) Failing to challenge EMPEML's claim in respect of allegedly unpaid Carry on the grounds that:

  - (a) The Carry was calculated on an incorrect basis and consequently overstated, as particularised below;
  - (b) There was no requirement under the IMA that EMPEML receive the allegedly unpaid Carry by 1 January 2018;
  - (c) The combined effect of clauses 4.3 and 4.4 of the LPA was that a Performance Fee (including any Carry element) only became due to EMPEML when a TPF investment was exited and was not payable until cash or the cash equivalent was received by TPF in respect of the exited investment;
  - (d) There was no contractual or other entitlement to interest, let alone to compound interest at 8% per annum, on unpaid Carry;
- (iv) Admitting liability for the Admitted Amount; and
- (v) Failing to disclose the alleged legal advice that was apparently given to TPF, in whole or in part.

113 To the extent that further particulars of such breaches are required and can be provided by the Plaintiffs, they are set out below.

*Submission to the jurisdiction*

114 Pursuant to clause 18.2 of the IMA, Port Link and EMPEML irrevocably submitted to the jurisdiction of the courts of the Cayman Islands in relation to any action or proceeding arising out of or in connection with the IMA.

115 The purported dispute regarding EMPEML's fees had no known connection to the DIFC.

116 In the premises, it was not in TPF's interests for Port Link to submit to the jurisdiction of the DIFC Court, further or alternatively Port Link did not act in good faith in so submitting, further or in the further alternative no reasonably competent general partner in the position of Port Link, further or alternatively no general partner acting rationally, would have so acted.

*Alleged assignment of EMPEML's rights to Management Fees*

117 By a letter dated 2 September 2007, EMPEML notified Port Link that it wished to assign its rights to Management Fees under clause 5.1 of the IMA to KGLI.

118 Port Link consented to EMPEML's wish to assign its rights to Management Fees to KGLI in accordance with clause 16.1 of the IMA (which clause stipulated that prior written consent was required for an assignment of any interest under the IMA), further or alternatively Port Link waived its entitlement to rely on clause 16.1 in relation to the assignment, such that the assignment was effective on or around 2 September 2007 (the "**Assignment**").

119 In accordance with the Assignment, KGLI was paid a total of USD 22,125,341 in respect of the Management Fees under the IMA that apparently accrued until 31 December 2014. Of this amount, USD 16,832,078 was paid by Port Link to KGLI by bank transfers between 25 July 2010 and 1 October 2014, as follows:

- (i) On 25 July 2010 (effective 26 July 2010), a payment of USD 2,424,658;
- (ii) On 25 July 2010 (effective 26 July 2010), a payment of USD 2,142,780;
- (iii) On 21 November 2010, a payment of USD 2,857,040;

- (iv) On 17 April 2013, a payment of USD 3,563,040;
- (v) On 22 April 2013, a payment of USD 1,336,140;
- (vi) On 15 August 2013, a payment of USD 980,570;
- (vii) On 1 October 2013, a payment of USD 705,570;
- (viii) On 5 January 2014, a payment of USD 705,570;
- (ix) On 3 April 2014, a payment of USD 705,570;
- (x) On 1 July 2014, a payment of USD 705,570; and
- (xi) On 1 October 2014, a payment of USD 705,570.

120 The remaining USD 5,293,263 was added to KGLI's Capital Commitment in TPF by Port Link between 15 July 2007 and 31 December 2014 purportedly on account of KGLI's entitlement to Management Fees.

121 No further transfers were made to KGLI in respect of Management Fees after 1 October 2014, and no further sums were added to KGLI's Capital Commitment in TPF in respect of Management Fees after 1 October 2014.

*No entitlement to Management Fees after 1 January 2015 in any event*

122 The Initial Closing Date of TPF was 15 July 2007. On 28 July 2012, Port Link extended TPF's term by two consecutive additional one-year periods in accordance with clause 2.4 of the LPA, such that TPF's term expired on 31 December 2014.

123 EMPEML's entitlement to Management Fees is prescribed by clause 5.1 of the IMA, which mirrors clause 3.7 of the LPA (to which EMPEML was not a party). Clause 5.1 of the IMA provides:

*"In consideration of the provision of discretionary Investment management services in accordance with this Agreement, the Investment Manager shall be entitled to receive, and the Fund shall pay the following management fees in USD to the Investment Manager (the "**Management Fee**"):*

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

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

*The Management Fee shall be payable quarterly in advance, commencing on the Initial Closing Date and thereafter on the first day of each calendar quarter. The Management Fee shall at all times be borne by the Limited Partners pro rata to their Capital Commitments, and appropriate adjustments shall be made to their Capital Accounts."*

124 On the true construction of clause 5.1 of the IMA (alternatively a well arguable construction of that provision), TPF was not obliged to pay any Management Fees after "*the termination of the Fund*" on 31 December 2014.

125 It is apparent that Port Link construed clause 5.1 of the IMA in the way explained in the paragraph immediately above:

(i) Note 7 to TPF's audited financial statements for the year ended 31 December 2015 states: "*in accordance with the Limited Partnership Agreement, [EMPEML] is not eligible for management fees after the Fund's life time period. No management fees were charged during 2015*";

(ii) Note 7 to TPF's audited financial statements for the year ended 31 December 2016 states: "*In accordance with the Limited Partnership Agreement, [EMPEML] is not entitled to management fees after the Fund's life time period. No management fees were charged during 2016 and 2015*".

125A Port Link sought and obtained Cayman law advice from the Dubai Office of Walkers (Cayman) LLP ("Walkers Dubai") about inter alia EMPEML's right to Management Fees after 31 December 2014. Such advice supported the construction of clause 5.1 pleaded in paragraph 124 above:

(a) in an email dated 3 July 2018 Walkers Dubai stated “we do not consider that [EMPEML] could reasonably continue to claim the Management Fee under the terms of the IMA and the LPA”:

(b) in an email dated 4 July 2018, Walkers Dubai advised that “any management fees paid after 31 December 2014 could be construed to be a breach of the IMA and the LPA (where that clause is replicated)”.

125B Port Link did not seek or obtain any or any adequate legal advice as to the quantum of any allegedly unpaid Management Fees, the quantum of any allegedly unpaid Carry or as to whether interest or compound interest was due on any such outstanding sums under the IMA.

*Allegedly Unpaid Carry*

126 Pursuant to clause 4.3 of the LPA:

*“(a) Distributions may be made to Limited Partners in the General Partner’s sole discretion.*

*(b) Distributions from exited Fund Investments shall be distributed to the Partners in accordance with the following provisions:*

*(a) 100% to all Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment, until such time that each Limited Partner receives an amount equal to its Capital Contribution employed in that particular Fund Investment; then*

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

*(c) 100% to the Investment Manager until such time that the Investment Manager receives 20% of the amount allocated to the Limited Partners pursuant to (ii) above; then*

(d) 80% to the Limited Partners in proportion to their respective Capital Contributions employed in that Fund Investment and 20% to the Investment Manager (the "Carry").

(c) Other Distributions shall be made 80% to all Limited Partners in proportion to their respective Capital Contributions and 20% to the Investment Manager.

*(d) Distributions paid to the Investment Manager in accordance with this section are referred to as the "Performance Fee."*

127 On the true construction of clause 4.3 of the LPA, a Performance Fee (including any "Carry" element) was only due to the Investment Manager when an investment of TPF was exited and a compound return of 8% on Capital Contributions had been distributed to the Limited Partners. Pursuant to clause 4.4 of the LPA the Performance Fee would then be payable within 90 days of the receipt by TPF of cash or cash equivalent from the exited investment.

128 Accordingly, EMPEML had no entitlement to Carry unless and until a TPF investment was exited, and until the Limited Partners had received a compound return of 8% on their Capital Contribution. TPF's audited financial statements for the period from 21 March 2007 to 31 December 2016 were therefore wrong to include a "Performance Fee" due to the Investment Manager on the basis that they did. Based upon the limited information available to the Plaintiffs, it appears that this threshold requirement had not been satisfied when the DIFC Claim Form was issued and indeed may not have been met at the date of this Statement of Claim.

129 In the Section 22 Disclosure Port Link provided some information about how the allegedly unpaid Carry of USD 45,462,000 was calculated, which is contained in an excel spreadsheet (the "Carry Calculation"). The Plaintiffs do not know whether Port Link or EMPEML prepared this spreadsheet. As to the Carry Calculation:

(i) Contrary to clause 4.3 of the LPA, the Carry Calculation takes 14 November 2017 as the date on which the Carry was due. In fact no payments at all were due to EMPEML until at least after the Limited Partners had received their distributions in accordance with clauses (i) and (ii) of the Distributions Clause.

(ii) Contrary to clause 4.3 of the LPA, the Carry Calculation was based on each Limited Partner's total capital contribution rather than being calculated in respect of the "Capital Contributions employed in that Fund Investment", i.e. the Clark Asset.

- (iii) Contrary to clause 4.3(b)(iii) of the LPA, the Carry Calculation allocates 25% of the amount allocated to the Limited Partners in clause 4.3(b)(ii) to EMPEML.
- (iv) The amount available for Distribution to the Limited Partners and EMPEML was taken to be USD 415,462,000. It is not clear how this sum was arrived at. In any event, this was a substantial overestimate, as in fact Port Link only distributed a total of USD 305 million to the Limited Partners.
- (v) Contrary to clause 4.3(f) of the LPA, Port Link did not take any steps to clawback the excess paid to EMPEML prior to its dissolution.

~~Further or alternatively, the DIFC Claim Form grossly overstated the Carry due to EMPEML:~~

~~(a) — In a demand notice sent by EMPEML (then, KGL Investment Cayman Ltd.) dated 16 June 2018 demanding payment of the sums that were subsequently claimed in the DIFC Proceedings, it was stated that: "*under the LPA, the Carry is 20 percent of Distributions from exited Fund Investments*". A statement to like effect was made in the letter dated 7 July 2018 sent by Clyde & Co on behalf of EMPEML;~~

~~(b) — This is incorrect. The Performance Fees due to EMPEML from time to time should not have been calculated as a simple 20% allocation of TPF's profit (contrary to what is suggested in the "*Related Party Balances and Transactions*" note to TPF's audited financial statements), but in accordance with clause 4.3 of the LPA.~~

130 When the DIFC Proceedings were brought and the DIFC Judgment entered, the proceeds from the sale of the Clark Asset were frozen in the Noor Account and none of the Limited Partners had received any distributions in respect of TPF's exit from the Clark Asset. It was therefore not possible for EMPEML to calculate (or Port Link to verify) what Carry would be payable in respect of the Clark Asset.

131 Based upon the material presently available to them, the Plaintiffs believe that are not able to calculate EMPEML's ~~true~~ Carry entitlement arose no earlier than 7 February 2019. Pending discovery in these proceedings and/or the accounts that the Plaintiffs seek against Port Link, they cannot calculate EMPEML's true Carry entitlement or the date(s) on which such entitlements arose.

### *The Plaintiffs' Claims*

132 Absent the breaches of trust and breaches of duty in relation to the DIFC Proceedings set out above Port Link would have:

- (i) Successfully challenged the jurisdiction of the DIFC Court and thereby avoided any, or any significant, expenditure on legal costs in the DIFC (including EMPEML's legal costs in that jurisdiction);
- (ii) Successfully resisted EMPEML's claim to Management Fees, further or alternatively its claim to Management Fees from 1 January 2015 onwards (alternatively would have compromised EMPEML's claim to Management Fees on the basis that the defences to it were at least well arguable);
- (iii) Successfully resisted EMPEML's claims to compound (or any) interest on allegedly unpaid Management Fees and Carry;
- (iv) Successfully resisted EMPEML's claim to Carry save to the extent that it reflected EMPEML's true Carry entitlement.

133 In the premises, the Plaintiffs are entitled to and claim equitable compensation alternatively damages payable by Port Link to them direct alternatively by Port Link to TPF reflecting the total payments made by Port Link in relation to the DIFC Proceedings and the DIFC Judgment less EMPEML's true entitlement to unpaid Management Fees and/or unpaid Carry as at 7 February 2019 net of such counterclaims as Port Link and/or TPF is found to have had as against EMPEML.

#### **Other payments to the KGL Group**

134 In the light of Port Link's overpayment of Management Fees and Performance Fees under the pretext of the DIFC Judgment, the Plaintiffs are entitled to and claim an account on the footing of wilful default, alternatively a common account as to the payments that Port Link made directly or indirectly, procured to be made or diverted to EMPEML and members of the KGL Group.

135 The Plaintiffs rely on the following additional facts and matters in support of their claims for such accounts:

- (i) The Management Fee of USD 4,281,697 in TPF's audited financial statements for the year ended 31 December 2009 appears to have been excessive and calculated on an

incorrect basis: it reflects 3% of the total capital commitments of TPF in that year rather than the 2% prescribed by clause 5.1 of the IMA;

(ii) The report prepared by Baker Tilly dated 11 December 2008 (the "**Baker Tilly Report**") states (on page 36):

*"It was approved to include KPA to benefit from the Fund's profits for the period from Fund's profits for the period from 30 July 2007 until 31 December 2008, therefore, the Investment manager has retroactively approved the Management Fees for the past period (535 days) in the amount of USD 1,424,658, for that period (i.e., until the end of 2008) in addition to its 2% fees on the capital commitment for 2009".*

However:

(a) TPF's audited financial statements for the year ended 31 December 2009 appear to indicate that KPA did not benefit from the profit of USD 28,305,461 attributable to TPF's Limited Partners for the period 30 July 2007 to 31 December 2008;

(b) Such audited financial statements also appear to indicate that KPA did not receive its full allocation of the profits attributable to Limited Partners for the year ended 31 December 2009;

(c) If – as appears from TPF's audited financial statements for the year ended 31 December 2009 – KPA did not benefit from TPF's profits on the basis that it was deemed to have made its capital contribution on 30 July 2007, the additional Management Fee of USD 1,424,658 was not properly payable and should not have been paid;

(iii) The Baker Tilly Report states on pages 32 to 33 that TPF made payments totalling USD 1,037,780 to KGLI in August 2007 relating to a "*Placement Fee*" equalling 3% of each Limited Partner's capital commitment at the time of subscription. However, TPF's audited financial statements for the period ended 31 December 2008 make no reference to such Placement Fees (or any Placement Fees);

(iv) Note 11 to TPF's audited financial statements for the year ended 31 December 2009 states that "*Marketing expenses*" of USD 2.5 million were incurred by TPF in 2009. For

the avoidance of doubt, the Plaintiffs do not accept that such alleged expenses were properly incurred or payable. In any event, the Baker Tilly Report states that two payments of USD 2.5 million were made by Port Link to KGLI in August 2010 purportedly in relation to "Marketing expenses":

- (a) A payment made from TPF's HSBC bank account on 11 August 2010 (referred to on page 34 of the Baker Tilly Report); and
- (b) A payment made from TPF's Al Ahli bank account on 12 August 2010 (referred to on page 28 of the Baker Tilly Report).

The discrepancy between TPF's audited financial statements for the year ended 31 December 2009 and the statements in the Baker Tilly Report referred to immediately above demands explanation.

#### Dealings in relation to the Clark Asset

136 In the premises of paragraphs 46 to 133 above, the Plaintiffs are entitled to and claim an account on the footing of wilful default alternatively a common account as to Port Link's dealings in relation to the Clark Asset.

137 The Plaintiffs rely on the following additional facts and matters in support of their claims for such accounts:

(i) There are (at least) grounds to suspect that ~~(1) Port Link has failed to disclose the true consideration paid by CGCC for the Clark Asset, and (2)~~ the market value of the Clark Asset substantially exceeded the consideration paid by CGCC:

- (a) Note 6 to CGCC's audited financial statements for the year ended 31 December 2017 states: "In 2017, [CGCC] acquired all of the outstanding shares of stock of GGDH [i.e., the Clark Asset] for [Philippine Pesos, ("PP")] 50,179,400,000";
- (b) ~~To like effect, note 35.3 to Udenna's audited financial statements for the year ended 31 December 2017 states the consideration paid by CGCC to purchase GGDH "amounts to US\$980.0 million (P50.2 billion)";~~

(c) ~~In contrast, Port Link currently maintains that the sale price for the Clark Asset was USD 655 million: see paragraph 25 of Childe 2;~~

(d) Note 9 to the financial statements for GGDC (Philippine Branch) for the years ended 31 December 2018 and 31 December 2017 states that the "*Fair value gain*" in respect of leasehold rights and completed building in the year ended 2018 was PP 61,679,997,039 (approximately equivalent to USD 1.175 billion in 2018). It then states:

*"The fair value of the investment properties and the land under operating lease (see Note 19.1) based on the latest valuation conducted by an independent appraiser is higher than its carrying value as at December 31, 2018"* (emphasis added);

(ii) Port Link apparently paid a total of USD 109,939.77 from the Noor Account to Global Advocacy in Dubai purportedly for "*legal services provided to the Fund in respect of the DIFC Proceedings*" (according to paragraph 3.11 of the Disclosure Letter). Given that (as set out above) Port Link wrongly submitted to the jurisdiction of the DIFC Courts and then wrongly admitted the Admitted Amount, it is appropriate to infer, and it is inferred and alleged, that USD 109,939.77 far exceeded the fair value of any legal services provided by Global Advocacy to TPF in respect of the DIFC Proceedings;

(iii) Port Link ~~apparently previously admitted to having~~ paid a total of USD 3,651,570 from the Noor Account to Jimeno Cope and David Law Offices ("**Jimeno Cope**"), a Filipino law firm. In paragraph 32 of Childe 2, it is stated that these payments were "*for legal services it provided to the Fund between January 2017 and 31 October 2017 in connection with matters regarding the sale of the Negros Navigation Asset and the sale of the Clark Asset and, in particular, the complex regulatory aspects of the Clark Asset transaction*". As to this purported explanation:

(a) Since TPF sold its interest in NNC in November 2016, it is difficult to understand what possible legal services Jimeno Cope could have provided to TPF in relation to NNC during 2017;

(b) While Port Link has sought to justify the level of fees paid to Jimeno Cope by reference to the purported gross sale price for GGDC (see paragraph 34 of

Childe 2), such justification is inadequate. The essential inquiry is as to the value of the legal services that Jimeno Cope provided in relation to the Clark Asset;

(c1) In fact, Port Link made payments to Jimeno Cope totalling at least USD 4,976,473.40, as follows:

(i) USD 344,811.40 on 7 September 2014 from TPF's account with the Al Ahli Bank of Kuwait (the "Al Ahli Account").

(ii) USD 6,250 on 21 October 2014 from the Al Ahli Account.

(iii) USD 267,234 on 21 October 2014 from the Al Ahli Account.

(iv) USD 53,000 on 13 October 2015 from the Al Ahli Account.

(v) USD 2,933 on 27 July 2016 from the Al Ahli Account.

(vi) USD 500,000 on 27 February 2018 from the Al Ahli Account. This was described as for "partial legal fees from Jan-Oct 2017".

(vii) USD 150,675 on 27 February 2018 from the Al Ahli Account.

(viii) USD 3,651,570 from the Noor Account on 6 February 2019. This was described as being for "Legal consultancy & professional fee";

(c2) The invoices from Jimeno Cope that Port Link has disclosed total USD 4,151,559.36. The narratives on such invoices are extremely vague and provide no details of the services that Jimeno Cope provided. Further and in any event, the sums known to be paid to Jimeno Cope out of TPF funds exceed the aggregate of the invoices that Port Link has disclosed by USD 771,914.04. Port Link has provided no explanation for this;

(c3) The managing partner of Jimeno Cope is Rita Jimeno. Her daughter, Karen Jimeno-McBride ("Ms Jimeno-McBride"), is a junior partner at Jimeno Cope. Ms Jimeno-McBride is married to Evan McBride, who was:

(i) a shareholder of EMPEML until all the shares therein were transferred to an undisclosed person or persons in July 2018;

(ii) director, CFO and EVP of KGLI Asia ROHQ from April 2008 until an unknown date;

(iii) a member of “the Port Fund Team”; and

(iv) an authorised signatory of Port Link as at 13 November 2017 and February 2019;

(c4) In the premises of subparagraphs (c) to (c3) above, it is appropriate to infer, and is inferred and alleged, that the payments by Port Link to Jimeno Cope were not arms’ length transactions and/or that they exceeded the market value of any legal services provided by Jimeno Cope to Port Link from 2014 to October 2017;

(d) Port Link ~~apparently previously admitted to having~~ paid USD 300,000 from the Noor Account to Michael V Russell (“**Mr Russell**”) on 7 February 2019. This payment is described in paragraph 3.11 of the Disclosure Letter as a “*Payment by [TPF] to an employee retained to assist with the sale of GGDC*”. The Section 22 Disclosure revealed that Port Link had earlier paid USD 700,000 to Mr Russel on 11 January 2018. At the time of these payments, Mr Russell was a Vice President of KGLI and the CFO of GGDC. ~~The Plaintiffs do not know on what basis Mr Russell was personally entitled such payment. As to these payments:~~

(a) A fee of USD 1,000,000 was purportedly payable to Mr Russell pursuant to an Executive Retention Agreement between TPF and Mr Russell dated 14 November 2017 (the “Executive Retention Agreement”) for continuing as President of GGDC and overseeing certain key aspects of the transfer. This fee is purportedly justified by recitals (B) and (C) of the Executive Retention Agreement. Recital B relevantly provides that “the Port Fund has agreed to endeavour to cause certain key employees of GGDC to remain as employees of GGDC after the Share Sale” and recital C relevantly provides that Mr Russell “has agreed with the Port Fund to continue as President of GGDC, a subsidiary of GGDC Holdings, on the terms set out in this Agreement”.

(b) The SPA did not require Port Link to make payments to such employees in order to incentivise them to stay nor did it require Port Link to guarantee that any such employees would remain as employees. Rather, the SPA was clear

that Udenna would be responsible for the remuneration of any retained employees, and that those employees were to be retained “under compensation arrangements existing and in effect”, not under new compensation arrangements. This is set out in clause 5.3 of the SPA which provides as follows: “The Seller shall assist in the orderly transition of the operations of the Company and the Subsidiary and endeavour to cause certain officers of the Company and/or the Subsidiary designated by the Purchaser to continue to consult for and assist the Company and/or the Subsidiary under compensation arrangements existing and in effect during the Transition, without prejudice and subject to employee rights under applicable law. The Transition and the consultancy of the designated officers may be terminated by the Purchaser at any time and for any reason, subject only to the payment of accrued compensation and employee rights under applicable law.”

(c) Mr Russell has previously acted as:

(i) a member of the “Port Fund Team” together with Mr Williams and Mr McBride;

(ii) President and CFO of GGDC; and

(iii) a Vice President of KGLI;

(d) In the premises, it is appropriate to infer, and is alleged, that Port Link’s decision to enter into the Executive Retention Agreement and make the payments to Mr Russell involved breaches of trust and/or of the duties that it owed to TPF and/or the Limited Partners.

### **Claims against Mr Williams**

138 The Section 22 Disclosure revealed that (1) Mr Williams was responsible for, inter alia, orchestrating the DIFC Proceedings on behalf of both EMPEML and Port Link in June and July 2018, and (2) the DIFC Judgment Monies were paid to Wellspring in February 2019. As set out above, it is inferred and alleged that Mr Williams and/or members of his immediate family are beneficially interested in Wellspring (as beneficiaries of the MW Trust, of which the shares in Wellspring are an asset).

139 The Plaintiffs' primary case against Mr Williams is that he is liable for dishonestly assisting Port Link in the breaches of trust and/or breaches of fiduciary duty referred to in paragraph 112 above, further or alternatively that he, Port Link, EMPEML and (latterly) Wellspring conspired to cause loss to the Limited Partners and/or TPF by unlawful means. Mr Williams' conduct in relation to the DIFC Proceedings (detailed below) does not admit of an honest explanation: if Mr Williams (as the controller and ultimate owner of Port Link) honestly believed EMPEML (in which he was interested) to be entitled to the sum that it claimed in the DIFC Proceedings the obvious and natural thing for him to have done would have been to cause Port Link to pay the sum claimed before it became necessary for EMPEML to threaten let alone commence litigation. The DIFC Proceedings were a sham, designed to give a veneer of legitimacy to the extraction of almost USD 60 million from TPF into a trust of which it is inferred and alleged Mr Williams and/or members of his immediate family are beneficiaries.

140 Further or in the further alternative, Mr Williams is liable for knowingly procuring Port Link to commit breaches of the contractual obligations that it owed to the Limited Partners (which breaches are referred to in paragraph 112 above). Further or in the yet further alternative, Mr Williams is liable for breaching duties that he personally owed to Port Link and/or TPF as de facto director alternatively shadow director further or alternatively agent and/or officer of Port Link.

141 The grounds for the claims referred to in the two paragraphs immediately above are set out below. Mr Williams had the requisite knowledge of Port Link's obligations to the Limited Partners and TPF (which obligations are referred to in paragraph 33 above) by reason of his roles and interests in and involvement with TPF, Port Link, EMPEML, KGLI and KGLI Asia (which matters are pleaded above); his knowledge is confirmed by the facts and matters referred to below.

*The role of Mr Williams at Port Link*

142 At all material times Mr Williams acted as a de facto director alternatively shadow director further or alternatively officer further or in the further alternative agent of Port Link. The Plaintiffs will rely on the following facts and matters in support of these allegations:

(i) At all material times Mr Williams held positions as:

(i) a member of TPF's Investment Committee;

(ii) TPF's Director of Investments; and

(iii) a member of the "Port Fund Team".

- (ii) Since 30 May 2018 Mr Williams has been the sole director and owner of Port Link's sole shareholder, Port Link Holdings.
- (iii) Between at least 23 May 2018 and 12 June 2019 Mr Williams signed numerous contracts for Port Link and TPF in his capacity as the "Authorized Signatory" or "Authorised Signer" on behalf of Port Link and/or TPF.
- (iv) Letters written on behalf of Port Link and TPF by Squire Patton Boggs and Brownstein Hyatt Farber Schreck LLP in July and August 2018 both refer to Mr Williams as their client, rather than Port Link or TPF.
- (v) At all material times Mr Williams was responsible for providing instructions to and receiving advice from, inter alia, Crowell & Moring and Walkers Dubai on behalf of Port Link.
- (vi) In the light of the subparagraph immediately above and in particular given Mr Williams' role in instructing Walkers Dubai to draft the written resolution dated 11 July 2018 whereby Port Link's sole de jure director, Mr Alwadhi, admitted EMPFML's claim in the DIFC Proceedings, it is appropriate to infer, and it is inferred and alleged, that Mr Alwadhi signed the written resolution to admit the claim in the DIFC Proceedings on 11 July 2018 on the instruction of and/or following the advice of and/or in agreement with Mr Williams, in accordance with whose wishes he was accustomed to act.
- (vii) Mr Williams assisted with the retention of Global Advocacy on 13 May 2020 on behalf of TPF and Port Link in respect of a claim for compensation against Noor Bank following the freezing of funds (the "**13 May 2020 Global Advocacy Retention Letter**"). The 13 May 2020 Global Advocacy Retention Letter was marked "FAO Mark Williams" and was sent to "markericwilliams@aol.com". Global Advocacy were also engaged by TPF and/or Port Link to provide legal services in respect of the DIFC Proceedings. No copy of Global Advocacy's retention letter in respect of the DIFC Proceedings has been disclosed, but irrespective of the terms of any such letter it is appropriate to infer, and is inferred and alleged, that Mr Williams was involved in instructing Global Advocacy on behalf of Port Link and TPF in relation to the DIFC Proceedings.

(viii) Given that Port Link's payment instruction to Noor Bank regarding transferring the DIFC Judgment Monies to Wellspring pre-dated EMPEML's letter to Port Link requesting the same, it is appropriate to infer, and it is inferred and alleged, that Port Link gave the payment instruction to Noor Bank regarding the DIFC Judgment Monies on the instruction of and or in accordance with the wishes of and/or with the knowledge of Mr Williams.

(ix) Mr Williams continued to be responsible for providing instructions to certain law firms on behalf of Port Link and TPF for the duration of 2019 and until at least May 2020.

*Duties owed by Mr Williams*

143 In his capacity as a de facto alternatively shadow director further or alternatively officer further or in the further alternative agent of Port Link, Mr Williams owed duties to Port Link and/or TPF to:

(i) Only exercise his powers for the purpose for which they were conferred.

(ii) Act in good faith and in a manner most likely to promote the success of Port Link for the benefit of its members as a whole and of TPF for the benefit of the Limited Partners.

(iii) Exercise independent judgment.

(iv) Exercise reasonable skill and care.

(v) Avoid a situation in which he had or could have a direct or indirect interest that conflicted or possibly may have conflicted with his duties to and/or the interest of Port Link and TPF.

(vi) Not accept a benefit from a third party conferred by reason of his being a director, agent or officer, or his doing or not doing anything as a director, agent or officer.

(vii) Declare any interest that he had in a proposed or existing transaction or arrangement with Port Link.

144 Further or alternatively Mr Williams in his capacity as a de facto director alternatively shadow director further or alternatively officer further or in the further alternative agent of Port Link was a trustee of such of Port Link and TPF's assets and property as was in his possession or control.

Unlawful conduct by Mr Williams

146 The means by which Mr Williams dishonestly assisted Port Link's breaches of trust and/or its breaches of the fiduciary duty referred to in paragraph 112 above further or alternatively knowingly procured Port Link's breaches of its contractual obligations are set out below. By the same conduct, Mr Williams fraudulently, alternatively wilfully, further or in the further alternative negligently, breached the duties referred to in paragraph 143 above. Those means included Mr Williams (without limitation):

- (i) Instructing Crowell & Moring on behalf of both Port Link and EMPEML in respect of the DIFC Proceedings.
- (ii) Instructing Walkers Dubai on behalf of Port Link in respect of the DIFC Proceedings in circumstances where he was also instructing Walkers (Cayman) LLP on behalf of EMPEML and/or otherwise aware that EMPEML was a client of Walkers (Cayman) LLP.
- (iii) Instructing Clyde & Co on behalf of EMPEML in respect of the DIFC Proceedings.
- (iv) Failing to obtain any or any adequate legal advice on behalf of Port Link or TPF regarding the merits of the DIFC Claim or any aspect thereof.
- (v) Procuring that Port Link's only de jure director resolve to admit the DIFC Claim despite (i) the advice that was provided by Walkers Dubai on 2, 3, and 4 July 2018 and/or (ii) the absence of any further legal advice being obtained after service of the DIFC Claim form and or facilitating the same.
- (vi) Procuring that Port Link (i) submitted to the jurisdiction of the DIFC and/or (ii) admitted liability for the Admitted Amount and or facilitating the same.
- (vii) Failing to address the obvious and insoluble conflict of interests between EMPEML and Port Link/TPF in the DIFC Proceedings which made it inappropriate for (1) Walkers Dubai or Crowell & Moring to act for or advise either party in relation to the proceedings, and (2) Mr Williams to give instructions in relation to the proceedings on behalf of both parties.

147 To the extent that further particulars of Mr Williams' dishonesty further or alternatively other unlawful conduct can be provided by the Plaintiffs, they are set out below.

## PARTICULARS OF DISHONESTY AND OTHER UNLAWFUL CONDUCT

### Instructing Crowell & Moring on behalf of both Port Link and EMPEML in respect of the DIFC Proceedings

- 148 The Plaintiffs have been provided with various invoices issued to TPF including by (1) Crowell & Moring, dated 17 July 2018 (the “C&M July Invoice”) and (2) Walkers Dubai, also dated 17 July 2018 (the “Walkers July Invoice”). Both the C&M July Invoice and the Walkers July Invoice contain entries that relate to the DIFC Proceedings.
- 149 The C&M July Invoice and the Walkers July Invoice demonstrate that in June and July 2018 Mr Williams was authorised or alternatively held himself out as being authorised to provide instructions to Walkers Dubai and Crowell & Moring on behalf of Port Link. They also demonstrate that at the same time he was authorised or alternatively held himself out as being authorised to provide instructions to Walkers (Cayman) LLP (“Walkers Cayman”) and Crowell & Moring on behalf of EMPEML. As pleaded above, Walkers Dubai is the Dubai office of Walkers Cayman.
- 150 The C&M July Invoice includes the following entries:
- (i) On 15 June 2018, Justin Kingsolver spent a total of 4.2 hours on the following matters: “Conference with Mr. Hammond re case background and drafting assignment; prepare DIFC complaint review legal standards re DIFC jurisdiction and breach of contract claim; review supporting materials provided by Mr Williams.”
  - (ii) On 17 June 2018, Mr Kingsolver spent 0.4 hours on the following matters: “Review and revise KGLI complaint; compile supporting materials.” This reference to “KGLI” is a reference to EMPEML under its original name, KGLI Cayman Ltd.
- 151 On 16 June 2018 EMPEML sent a demand notice to Port Link demanding payment of the Allegedly Unpaid Carry subsequently claimed in the DIFC Proceedings (the “First Demand Letter”).
- 152 By reason of the facts and matters in paragraphs 148 to 151 above, it is appropriate to infer, and it is inferred and alleged, that:

- (i) On or around 15 June 2018, Mr Williams instructed Crowell & Moring to draft the First Demand Letter;
- (ii) On 15 June 2018 or 16 June 2018 Crowell & Moring provided a copy of the First Demand Letter to Mr Williams;
- (iii) Mr Williams arranged for the 16 June Demand Letter to be sent from EMPEML; and
- (iv) On or around 17 June 2018 Mr Williams instructed Crowell & Moring to progress the matters raised in the First Demand Letter.

Instructing Walkers Dubai on behalf of Port Link in respect of the DIFC Proceedings in circumstances where EMPEML was a client of Walkers (Cayman)

153 The Walkers July Invoice indicates the following:

- (i) During July 2018 Walkers Dubai were instructed to carry out various tasks for EMPEML relating to its own corporate governance and/or shareholdings, including (1) drafting a resolution to appoint Mr Williams as its authorised signatory, (2) making preparations to change its name from KGL Cayman to EMPEML, (3) making arrangements for the shareholdings in EMPEML to be transferred to an unknown third party on or before 7 July 2018. None of these matters were for the benefit of Port Link or TPF.
- (ii) Walkers Dubai were instructed by Mr Williams in relation to the claims made by EMPEML in the DIFC Proceedings on behalf of Port Link. The work carried out by them included:
  - (i) Liaising with Clyde & Co, EMPEML's legal counsel in the DIFC Proceedings on 21 June 2018 and 1 July 2018. Given that Clyde & Co first wrote to Port Link and TPF regarding the DIFC Proceedings on 7 July 2018 (the "Second Demand Letter"), it is appropriate to infer, and it is inferred and alleged, that Mr Williams was (1) responsible for, alternatively was involved with, instructing both Walkers Dubai and Clyde and Co and (2) instructed both legal firms to discuss the DIFC Proceedings before they were issued. Alternatively and at the very least, Mr Williams was aware that Clyde & Co had been instructed by EMPEML before they first wrote to Port Link on 7 July 2018.

(ii) Advising on potential claims that EMPEML could bring against Port Link, including in respect of Carry and Management Fees. As described in more detail below, although this advice was framed as being provided to Port Link, the tone of the advice indicates that Walkers Dubai were instructed to seek reasons to justify making these payments to EMPEML, rather than to consider what defences Port Link/TPF might raise to EMPEML's claims.

(iii) Drafting the resolution of the sole de jure director of Port Link admitting the DIFC Claim on 10 July 2018 and assisting with other procedural aspects required for Port Link to admit the claim, which required several telephone calls with Mr Williams. The wording of that resolution included a statement that "in the opinion of the Director, the merits of the Claim and the amount of the Outstanding Debt is valid."

Instructing Clyde & Co on behalf of EMPEML in respect of the DIFC Proceedings.

154 Given Mr Williams' role in instructing Walkers Dubai on behalf of Port Link set out above and their involvement with Clyde & Co prior to 7 July 2018, it is appropriate to infer and it is inferred and alleged that Mr Williams instructed Clyde & Co on behalf of EMPEML including regarding (1) the drafting of the Second Demand Letter, (2) the DIFC Claim Form and (3) seeking default judgment and/or was involved with the decision to so instruct them.

Failing to obtain any or any adequate legal advice regarding the merits of the DIFC Claim or any aspect thereof

155 By letter dated 9 October 2020, Walkers Dubai stated that "no written legal advice was provided to the Port Fund Entities and that such legal advice was provided via telephone conference only" regarding the DIFC Proceedings, and that there were no contemporaneous notes of these calls.

156 Having received the Walkers July Invoice and noting that it refers to written advice being given regarding EMPEML's potential claims under the IMA, the Plaintiffs wrote to Walkers Dubai on 11 December 2020 again requesting copies of any written advice provided in the DIFC Proceedings.

157 In its response dated 14 January 2021 Walkers Dubai stated the following:

- (i) “Walkers Dubai did not provide advice with respect to the merits of the DIFC Proceedings” because they only advised on Cayman law, and “the DIFC Proceedings were governed by the laws of the DIFC.” This latter statement is incorrect: the substance of the DIFC Proceedings was a contractual dispute regarding the terms of the IMA, which is governed by Cayman law; and
- (ii) “Whilst Walkers Dubai did not provide legal advice to the Fund and the GP with respect to the DIFC Proceedings, Walkers Dubai provided advice to the directors of the GP between 2 and 4 July 2018 with respect to (i) potential claims that the IM may have against the Fund and the GP under the terms of the IMA and (ii) the payment by the Fund of management fees to the IM. Such advice was provided by Walkers Dubai prior to the commencement of the DIFC Proceedings and therefore plainly could not have related to the DIFC Proceedings.” The advice dated 2 and 4 July 2018 were provided together with that letter. This statement is not realistically maintainable given that (1) the First Demand Letter refers to commencing the claim in Dubai, (2) Walkers Dubai had already liaised with Clyde & Co by this stage, and (3) the advice given manifestly relates to the claims that EMPEML brought in the DIFC Proceedings only days later.

158 On 2 July 2018 Walkers Dubai produced a memorandum addressed to the board of directors of Port Link (the “**Memorandum on Carry**”). The scope of the Memorandum on Carry was to advise Port Link on any potential claims which EMPEML may have against Port Link and/or TPF, including in respect of unpaid distributions owed to the Limited Partners. It relevantly concluded that under the terms of the IMA “we consider that [EMPEML] has the right to bring a claim against Port Link GP on the grounds that it has breached clause 5.2(d) of the IMA and failed to make distributions from exited investments within 60 calendar days from receipt of the proceeds from such exited investments.”

159 The Memorandum on Carry did not consider (1) possible defences to such a claim, (2) the quantum of such a claim or (3) the basis on which EMPEML could seek interest or compound interest on any outstanding amount.

160 On 3 and 4 July 2018 Walkers Dubai emailed Mr Williams in relation to the construction of clause 5.1(b) of the IMA (the “**Emails on Management Fees**”). The Emails on Management Fees included the following:

- (i) By email dated 3 July 2018 timed at 14.19, Walkers Dubai advised that “in our view, the proper construction of this clause is that termination relates to the end of the term of the Fund and accordingly we do not consider that KGL [i.e. EMPEML] could reasonably continue to claim the Management Fee under the terms of the IMA and the LPA”. It follows from this (obviously correct) construction that EMPEML was not entitled to a contractual Management Fee after 31 December 2014.
- (ii) By email dated 4 July 2018 timed at 17.43, Walkers Dubai further advised that “On a proper construction of Clause 5.1(b) of the IMA (although we again note that there is some ambiguity as to whether termination is intended to mean the dissolution of the Fund rather than the end of the term of the Fund), KGL will be entitled to receive an annual management fee equal to 1.5% of the Fund’s aggregate Capital Commitments until the termination of the Fund, and therefore any management fees paid after 31 December 2014 could be construed as a breach of the IMA and the LPA (where the clause is replicated).”
- (iii) The email of 4 July 2018 goes on to state that, if EMPEML continued to provide discretionary investment management services after 31 December 2014, “we consider that the GP could seek to justify the payment of the Management Fee to KGL between 31 December 2014 and the time when the Fund exited its final investments” by relying on EMPEML’s duties under clause 4 of the LPA and its fiduciary duties to act in the best interests of the Fund. The email of 4 July 2018 concludes that “As such, provided the GP is comfortable that KGL continued to provide investment management services for the final investments of the Fund and retaining KGL to carry out this role was in the best interests of the Fund, we consider that the GP could seek to justify the payment on such grounds.”

161 The Emails on Management Fees did not consider (1) the quantum of any such claim or (2) the possibility of seeking interest or compound interest on any outstanding amount.

162 In the premises, it is appropriate to infer, and is inferred and alleged, that:

- (i) Regarding the Memorandum on Carry, Mr Williams instructed Walkers Dubai to identify any potential causes of action that EMPEML could justifiably bring against Port Link, rather than instructing them to identify potential defences to any such claim.

- (ii) Regarding the Email on Management Fees, Mr Williams instructed Walkers Dubai to identify any possible ways to justify Port Link paying EMPEML Management Fees after 31 December 2014, rather than instructing them to identify potential defences to any such claim.
- (iii) So far as the Plaintiffs are aware, no advice was sought or received by Mr Williams and/or any other individual on behalf of Port Link or TPF regarding (1) the quantum of the Allegedly Unpaid Carry in the DIFC Proceedings, (2) the quantum of the Allegedly Unpaid Management Fees in the DIFC Proceedings, (3) the possibility of claiming interest or compound interest of 8% or of any amount on the Allegedly Unpaid Carry and the Allegedly Unpaid Management Fees, or (4) whether it should submit to the jurisdiction of the DIFC.

Procuring Port Link's only de jure director to make the resolution dated 11 July 2018 or facilitating the same

163 Mr Williams was or should have been aware of the advice given in the Memorandum on Carry and the Emails on Management Fees. Notwithstanding this, he was closely involved in instructing Walkers Dubai to draft the resolution of the sole de jure director of Port Link submitting to the jurisdiction of the DIFC and admitting the whole DIFC Claim. The wording of the resolution included a statement that "in the opinion of the Director, the merits of the Claim and the amount of the Outstanding Debt is valid."

164 Neither the Walkers July Invoice nor the C&M July Invoice nor to the best of the Plaintiffs' knowledge any other document refers to Mr Alwadhi being involved in obtaining or being provided with any legal advice in respect of the DIFC Proceedings, including the legal advice provided by Walkers Dubai.

165 In the premises of paragraphs 148 to 164 above, it is appropriate to infer, and it is inferred and alleged, that Mr Williams procured Mr Alwadhi to make the written resolution dated 11 July 2018 and/or facilitated the same.

Procuring that Port Link (i) submitted to the jurisdiction of the DIFC and/or (ii) admitted liability for the Admitted Amount and or facilitating the same.

166 Port Link and TPF were represented by Global Advocacy in the DIFC Proceedings.

167 As pleaded above, Global Advocacy was engaged by Port Link on 13 May 2020 to assist with a claim against Noor Bank following the freezing of funds in the Noor Account, and Mr Williams assisted with this retention as outlined in the 13 May 2020 Global Advocacy Retention Letter. Global Advocacy was also engaged by TPF and/or Port Link to provide legal services in respect of the DIFC Proceedings. The last sentence of subparagraph 142(vii) above is repeated. In the premises, it is inferred and alleged that Mr Williams gave, approved or was otherwise involved in giving instructions on behalf of Port Link and TPF to: (1) file the Acknowledgement of Service, (2) admit the Admitted Amount, and (3) take no steps to set aside the DIFC Judgment.

*Failing to address the conflict of interests between EMPEML and Port Link and TPF in the DIFC Proceedings*

168 As with any piece of contentious litigation, there was a direct and irreconcilable conflict of interest between the interests of Port Link and TPF and the interests of EMPEML in the DIFC Proceedings.

169 Mr Williams did not seek or obtain the informed consent of the Limited Partners to Walkers Dubai advising Port Link and TPF in relation to the claims in the DIFC Proceedings in circumstances where EMPEML was a client of Walkers Dubai and Walkers (Cayman).

### **Liability of Mr Williams**

170 In the premises of paragraphs 138 to 169 above, Mr Williams is liable to pay equitable compensation to TPF equal to the Wellspring Payment alternatively the difference between the Wellspring Payment and EMPEML's true entitlement as against Port Link/TPF (net of such counterclaims as Port Link and/or TPF is found to have had as against EMPEML). Mr Williams' liability in conspiracy is addressed below.

### **The claim against Wellspring**

171 As pleaded above, the Section 22 Disclosure revealed that Wellspring was the recipient of the DIFC Judgment Monies.

- 172 On 2 February 2019 Port Link issued a payment request to Noor Bank requesting transfer of USD 59,990,461.30 to Wellspring. The transfer has the reference “Fund Manager – Performance Fees.”
- 173 By letter dated 4 February 2019 EMPEML requested that Port Link transfer the sum of USD 59,990,416.30 and provided Wellspring’s bank account details for receipt of the payment. That letter was signed by Building Smart Limited, which became a director and the sole director of EMPEML on 4 February 2019. Prior to 4 February 2019 the sole director of EMPEML was Ms Lazareva. On 18 February 2020 EMPEML was placed into voluntary liquidation, with Henry Ayliffe appointed as the voluntary liquidator. The payment to Wellspring was confirmed by Noor on 7 February 2019.
- 174 By reason of (1) the facts and matters alleged in paragraphs 138 to 169 above, (2) Mr Williams’ beneficial ownership of Port Link (through Port Link Holdings), (3) Mr Williams’ position as a de facto or shadow director of Port Link and/or (4) Mr Williams’ legal and/or beneficial ownership of Wellspring, it is appropriate to infer, and it is inferred and alleged, that:
- (i) Mr Williams requested that Port Link make the transfer to Wellspring on or around 2 February 2019; further or alternatively
  - (ii) On behalf of Port Link, Mr Williams authorised and/or was aware of and/or did not object to the payment of the DIFC Judgment Monies to Wellspring; further or alternatively
  - (iii) On behalf of Wellspring, Mr Williams was and is aware of the circumstances of the transfer.
  - (iv) On behalf of EMPEML, Ms Lazareva was aware of and or complicit in and or did not object to the Wellspring Payment.
  - (v) The Wellspring Payment was intended to, and did, (1) benefit Mr Williams and (2) place that money beyond the reach of EMPEML’s creditors (3) damage TPF and its Limited Partners.

Wellspring’s Knowledge

- 175 Through its sole director Mr Williams, Wellspring had actual alternatively constructive knowledge that Port Link's conduct of the DIFC Proceedings was in breach of its fiduciary duties to TPF.
- 176 At all material times, Mr Williams was the directing mind and will of Wellspring. The Plaintiffs will rely on the following facts and matters in support of this allegation:
- (i) He is listed in its Amended and Restated Articles of Incorporation dated 27 August 2018 as its CEO, CFO, President, Vice President, Treasurer and Secretary and as the CEO on Wellspring's website.
  - (ii) He is one of the three trustees of its 100% shareholder, the Mark Williams Trust, together with his wife Laura Williams and brother Dylan Williams.
- 177 Further or alternatively, by reason of the matters set out below, it is appropriate to infer, and is inferred and alleged, that Wellspring had actual alternatively constructive knowledge that the Wellspring Payment was made by Port Link in breach of its fiduciary duties independent of the knowledge of Mr Williams:
- (i) Wellspring must have communicated with EMPEML and/or Port Link prior to receiving the DIFC Judgment Monies in order to provide its bank details.
  - (ii) Wellspring was aware that the reference on Port Link's transfer request to Noor Bank reads "Fund Manager – Performance Fees" which ought to have prompted them to make enquiries of Port Link and EMPEML as to the basis for those fees and why they were not paid in the ordinary course of business. This is particularly so given the amount of the Wellspring Payment.
  - (iii) Wellspring was aware that Mr Williams was its legal owner and (it is inferred and alleged) indirectly beneficially interested in it with the result that the payment of the DIFC Judgment Monies to Wellspring would benefit Mr Williams personally. Wellspring also knew or ought to have known that Mr Williams was associated with EMPEML and Port Link and or should have conducted enquiries as to his role at those companies and in the Wellspring Payment.
  - (iv) There is no evidence that Wellspring was a creditor of EMPEML either in the amount of the Wellspring Payment or at all. It therefore appears to have received that money as a

gratuitous windfall. This in itself ought to have prompted Wellspring to make enquiries as to who at EMPEML and Port Link authorised the payment, the source of the Wellspring Payment, the basis on which it was payable to EMPEML, and the reason why EMPEML designated Wellspring as the recipient.

178 In the premises, it would be unconscionable for Wellspring to retain the Wellspring Payment or any part thereof.

### **Liability of Wellspring**

179 In the premises of paragraphs 171 to 178 above, Wellspring is liable to account to TPF for the Wellspring Payment alternatively to pay TPF equitable compensation equal to the Wellspring Payment on the grounds that it knowingly received the proceeds of Port Link's, further or alternatively given Mr Williams' breaches of trust and/or breaches of fiduciary duty. Wellspring's liability in conspiracy and under the Fraudulent Dispositions Act is addressed below.

179 Further or in the further alternative, the Plaintiffs are entitled to follow and trace the Wellspring Payment and seek a declaration that the partners of TPF have a proprietary interest in the Wellspring Payment further or alternatively the traceable proceeds thereof.

### **Unlawful means conspiracy**

180 In the premises of paragraphs 101 to 133 and 138 to 169 above, it is appropriate to infer, and is inferred and alleged, that on a date unknown to the Plaintiffs but prior to 16 June 2018 Port Link, EMPEML and Mr Williams (inter alios) entered into an agreement, arrangement or combination pursuant to cause loss to the Limited Partners and/or TPF by unlawful means by instigating and conducting the DIFC Proceedings as a sham with a view to obtaining a judgment that could be used as a pretext to justify making a payment out of TPF's funds purportedly for EMPEML's benefit in a sum that far exceeded any legitimate entitlement on the part of EMPEML.

181 The unlawful means that were used in furtherance of the conspiracy included (without limitation) (i) breaches of trust by Port Link, further or alternatively (ii) breaches by Port Link of the duties that it owed to the Limited Partners and/or TPF (which duties are set out in paragraph 34 above), further or in the further alternative (iii) breaches by Mr Williams of the duties that he owed to Port Link and/or TPF (which duties are set out in paragraph 143 above).

- 182 The parties to the conspiracy intended to cause loss to the Limited Partners and/or TPF either as an end in itself or as a means to an end (the end being to benefit themselves at the expense of the Limited Partners).
- 183 Further, in the premises of paragraphs 171 to 178 above, it is appropriate to infer, and is inferred and alleged, that on a date unknown to the Plaintiffs but before the Wellspring Payment was made Wellspring (acting through Mr Williams) joined the conspiracy.
- 184 As from the date that Wellspring joined the conspiracy, Mr Williams participated in the conspiracy (i) in his personal capacity, (ii) in his capacity as sole director and the controlling mind of Wellspring, and (iii) in his capacity as trustee of the MW Trust.
- 185 The conspiracy culminated in the Wellspring Payment, which payment caused loss to the Limited Partners and TPF.
- 186 In the premises of paragraphs 180 to 185 above, Port Link, Mr Williams and Wellspring are jointly and severally liable to pay damages (to be assessed) to compensate the Limited Partners for the loss that their conspiracy caused them further or alternatively to pay damages (to be assessed) to the Limited Partners on behalf of TPF to compensate TPF for the loss that their conspiracy caused it. For the avoidance of doubt, Mr Williams is so liable in his personal capacity and in his capacity as trustee of the MW Trust.

### **Claims under the Fraudulent Dispositions Act**

- 187 The Wellspring Payment constituted a disposition of property that was held on trust by Port Link for the benefit of the partners of TPF further or alternatively TPF. Accordingly, the Limited Partners further or alternatively TPF were creditors of Port Link for the purposes of the Fraudulent Dispositions Act.
- 188 In the premises of paragraphs 101 to 133 and 138 to 169 above, it is appropriate to infer, and is inferred and alleged, that the Wellspring Payment was a disposition:
- (a) made by Port Link with an intent to defraud the Limited Partners and/or TPF; and
  - (b) at an undervalue because (i) no consideration was provided for the Wellspring Payment, alternatively (ii) the value in money or money's worth of such consideration as was

provided for the Wellspring Payment was significantly less than the value of the Wellspring Payment.

189 In the premises, the Limited Partners are entitled to and claim:

(a) an order setting aside the Wellspring Payment pursuant to section 4(1) of the Fraudulent Dispositions Act; further or alternatively

(b) an order that Port Link and Wellspring are jointly and severally liable to pay the Limited Partners (on behalf of TPF) the value of the Wellspring Payment; further or in the further alternative

(c) such other relief pursuant to the Fraudulent Dispositions Act as the court sees fit.

### **Claims against KGLI Asia**

190 KGLI Asia and TPF entered into an administrative support agreement effective 1 December 2017 (the "ASA") pursuant to which KGLI Asia undertook to provide administrative and personnel support to TPF in consideration of remuneration of USD 125,000 per month.

191 By December 2017, TPF had no active investments:

(i) By that date TPF had sold the last of the four known investments that it made during its seven-year term, being its interest in Clark City, and Port Link had received the purported proceeds of sale;

(ii) TPF had sold its only other profit-making investment, in a Filipino shipping and logistics company called Negros Navigation Company Incorporated, in November 2016;

(iii) TPF's two other known investments had been written off by Port Link as total losses.

192 To the Plaintiffs' knowledge, TPF did not make any further investments after December 2017.

193 The Plaintiffs therefore do not understand what substantial administrative support services TPF required. TPF was not transacting any business.

- 194 Further and in any event, such needs as TPF had for administrative support services should have been capable of being met internally by Port Link and/or by EMPEML.
- 195 At no time during the currency of the ASA can TPF have required external administrative support services that would have remotely justified remuneration on the scale provided for under the ASA.
- 196 The principal activity in which TPF engaged from December 2017 involved seeking the release of the funds in the Noor Account, which funds were released in February 2019.
- 197 The services that KGLI Asia undertook to provide pursuant to the ASA included in particular (under paragraph 3.1(a)) administrative and personnel support to TPF in regards to the fulfilment of obligations and representations made by TPF to CGCC.
- 198 The Plaintiffs do not know what services it was contemplated KGLI Asia would provide in respect of CGCC; still less what services (if any) KGLI Asia actually provided.
- 199 At all material times, KGLI Asia was closely related to Port Link, EMPEML and TPF. In particular (and without limitation):
- (i) At all material times until 29 May 2018 KGLI was the 100% owner of Port Link;
  - (ii) KGLI is the sponsor, placement agent and administrator of TPF;
  - (iii) KGLI is also a limited partner in TPF;
  - (iv) Mr Williams was (as he apparently remains) a director of KGLI Asia. He was Investment Director of KGLI and CEO of KGLI Asia ROHQ;
  - (v) Mr Williams was the Director of Investments for TPF;
  - (vi) Until July 2018 Mr Williams was a shareholder of EMPEML, holding 14.9% of the issued shares. In early July 2018, the entire share capital of EMPEML was transferred to an unknown third party or parties. This transfer appears to have been organised by Mr Williams;
  - (vii) Port Link is now owned by Port Link Holdings. Mr Williams was the sole incorporator of Port Link Holdings, and has since its incorporation been its sole director and shareholder.

200 In the light of the web of interconnections between KGLI, KGLI Asia (including KGLI Asia ROHQ), Port Link and EMPEML, it is plain that neither the execution of the ASA (which was signed by Mr Williams on behalf of KGLI Asia) nor any payments made by Port Link to KGLI Asia ROHQ (whether purportedly under the ASA or otherwise) were arm's length transactions. To the contrary: they were transactions by which Mr Williams and/or KGLI benefitted.

201 Given the facts and matters set out above, it is appropriate to infer, and it is inferred and alleged, that:

(i) The terms of the ASA and the payments made by Port Link to KGLI Asia (whether purportedly under the ASA or otherwise) were commercially disadvantageous to TPF;

(ii) Port Link failed to consider properly or at all whether KGLI Asia was an appropriate entity to engage to provide such services as it purportedly provided;

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

202 As at the date of this Amended Statement of Claim, the Plaintiffs have identified net payments from Port Link to KGLI Asia totalling around USD 3.3 million. The relevant payments appear to have been made to KGLI Asia's regional operating headquarters in the Philippines.

203 The invoices that were disclosed in the Section 22 Disclosure indicate that some USD 1.949 million was paid to KGLI Asia purportedly under the ASA. All but one of the relevant invoices refer to "Advisory Services Fee[s]" and "Various Expenses". An invoice dated 9 February 2019 in the sum of USD 975,000 refers to "Retainer against Consulting Contract Monthly Fees". The ASA did not contemplate KGLI Asia providing advisory or consulting services.

204 The Plaintiffs have not seen any documents that purport to justify the balance of the net payments by Port Link to KGLI Asia (in a total sum of around USD 1.35 million)

205 In the premises of paragraphs 191 to 201 above, it is appropriate to infer, and is inferred and alleged, that KGLI Asia provided no alternatively no substantial legitimate services to TPF. For the avoidance of doubt, the Plaintiffs have not seen any documentary evidence of KGLI Asia

providing such services (but note the evidence of Mr Childe in paragraph 40 of his second affidavit).

206 In the further alternative, it is appropriate to infer, and is inferred and alleged, that the net payments made by TPF/Port Link to KGLI Asia far exceeded the market value of any legitimate services that KGLI Asia provided to TPF.

207 In the premises of paragraphs 200 and 201 above, Port Link acted in breach of trust and/or breach of fiduciary duty in making the payments to KGLI Asia referred to in paragraph 198 above. Port Link is therefore liable to pay equitable compensation to the Plaintiffs alternatively to TPF to compensate them for the loss that the payments to KGLI Asia caused them.

208 At all material times the knowledge of TPF should be imputed to KGLI Asia through Mr Williams. Up until 29 May 2018 the knowledge of Port Link should be imputed to KGLI Asia through KGLI's common ownership of the two entities (and Mr Williams' directorships of KGLI and KGLI Asia); thereafter the knowledge of Port Link should be imputed to KGLI Asia through Mr Williams.

209 Accordingly, to the extent that Port Link paid monies to KGLI Asia in breach of trust and/or fiduciary duty, KGLI Asia is liable in knowing receipt (and may also be liable for dishonestly assisting in the relevant breaches by Port Link).

210 On either basis, KGLI Asia is liable to account for the payments that it received from Port Link as if it were constructive trustee, and to pay equitable compensation to our clients (on behalf of TPF) to compensate TPF for the loss that the payments caused to it.

## **Interest**

~~211438~~ The Plaintiffs are entitled to and claim compound interest pursuant to the Court's equitable jurisdiction alternatively simple interest pursuant to section 34 of the Judicature Act (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 on such sums as are found to be due to them and/or TPF at such rate(s) for such period(s) and with such rest(s) as to the Court seem fit.

AND THE PLAINTIFFS CLAIM:

### **As against the First to Third Defendants:**

- (i) Equitable compensation (to be assessed) payable to them direct alternatively to TPF;
- (ii) Damages (to be assessed) payable to them direct alternatively to TPF;

**As against the First Defendant:**

- (iii) Accounts in equity on the footing of wilful default alternatively common accounts as aforesaid;

**As against the First and Third Defendants:**

- (iv) The relief under the Fraudulent Dispositions Act particularised in paragraph 189 above:

**As against the Third Defendant:**

- (v) A declaration that it holds the Wellspring Payment or the traceable proceeds thereof on constructive trust for TPF or the partners therein;

**As against the Fourth Defendant:**

- (vi) Equitable compensation payable to TPF in an amount to be assessed;

**As against all the Defendants:**

- (vii) Interest as aforesaid;
- (viii) Costs;
- (ix) Further or other relief.

Dated this 14th day of October 2020

Amended this 12<sup>th</sup> day of February 2021



**OGIER**

Attorneys for the Plaintiffs

**Annex 1**

Recipient	Amount paid (USD) from the Noor Bank Account <sup>1</sup>	Description of work undertaken <sup>2</sup>
Squire Patton Boggs LLP	1,405,930.69	Engaged to provide legal and other services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Navigant Consulting, Inc.	229,593.56	Engaged to provide services in support of legal advice to the Fund and the GP.
Brownstein Hyatt Farber Schreck LLP	561,500.00	Engaged to provide legal and other services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Marathon Strategies, LLC	260,795.18	Engaged to provide services to assist in Fund's efforts to unfreeze the \$496 Million held by Noor and protect the reputation of the Fund.
diGenova & Toensing, LLP	23,875.00	Engaged to provide services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Fahmy Hudome International LLC	565,000.00	Engaged to provide services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Neil Bush	1,085,833.33	Engaged to provide services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Triple Canopy Media LLC	135,000.00	Engaged to provide services to the Fund in support of the Fund's efforts to unfreeze the \$496 Million held by Noor.

<sup>1</sup> The Defendant has not provided the dates for these transactions

<sup>2</sup> Taken directly from the Disclosure Letter

Laktineh & Co Ltd	231,650.00	Engaged to provide legal services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor and general advice on UAE law.
Uzma Sarfraz dba Aurora International LLC	60,000.00	Engaged to provide services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor
American Continental Group	80,833.33	Engaged to provide services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Covington & Burling LLP	10,434.00	Engaged to provide legal services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
McCool Smith, A Professional Corporation	85,641.54	Engaged to provide legal services and assist with the Fund's efforts to unfreeze the \$496 Million held by Noor.
Crowell & Moring	2,576,349.69	Engaged to provide legal and other services to the Fund and Port Link GP.
<b>Total</b>	<b>USD 7,312,436.32</b>	

Annex 2

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>1 September 2013</u>	<u>USD 1,750,000</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>HSBC Hong Kong / Weir and Associates / 0049629614611</u>	<p><u>ABK Bank statement showing payment from the Port Fund to Weir and Associates.</u></p> <p><u>SWIFT payment message confirming payment of USD 1.75 million to Weir and Associates.</u></p> <p><u>Remittance information on the message includes a payment reference stating "For the acc of Apache Asia Macau".</u></p> <p><u>This agrees to information from a Port Fund payment instruction letter to ABK Bank and a remittance voucher confirming the transaction.</u></p>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>4 November 2013</u>	<u>USD 400,000</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>HSBC Macau / Apache Asia Limited / 001-426964-151</u>	<u>ABK Bank statement showing payment from the Port Fund to Apache Asia Limited.</u> <u>SWIFT payment message confirming payment of USD 400k to Apache Asia Limited.</u> <u>This supports information from a Port Fund payment instruction letter to ABK Bank.</u>
<u>27 Jan 2014</u>	<u>USD 100,000</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>HSBC Hong Kong / Apache Asia Limited / 652-209958-838</u>	<u>ABK Bank statement showing payment from the Port Fund to Apache Asia Limited.</u>
<u>28 Oct 2014</u>	<u>USD 23,899</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>Unknown / Apache Asia Limited / Unknown</u>	<u>ABK Bank Statement showing payment from The Port Fund to Apache Asia Limited.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>21 Aug 2016</u>	<u>USD 1,200,000</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>HSBC Hong Kong / Apache Asia Limited / 652-209958-838</u>	<u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u> <u>SWIFT payment message details confirming payment of USD 1.2 million to Apache Asia Limited.</u> <u>Mashreq Bank Funds Transfer Form directing that USD 1.2 million be paid to Apache Asia Limited's HSBC Account in Hong Kong.</u>
<u>22 August 2016</u>	<u>USD 4,980,000</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>HSBC Macau / Apache Asia Limited / 001-426964-151</u>	<u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u> <u>SWIFT payment message details confirming payment of USD 4.98 million to Apache Asia Limited.</u> <u>Mashreq Bank Funds Transfer Form directing that USD 4,980,000 be paid to Apache Asia Limited's HSBC Account in Macau.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>26 September 2016</u>	<u>USD 1,984,500</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>HSBC Macau / Apache Asia Limited / 001-426964-151</u>	<u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u>  <u>Invoice from 'apacheAsia Limitada' dated 8 September 2016 directing that USD 1,984,500 be paid to Apache Asia's HSBC Account in Macau.</u>  <u>SWIFT payment message details confirming payment of USD 1.984 million to Apache Asia Limited.</u>  <u>Mashreq Bank Funds Transfer Form dated 26 September 2016 directing that USD 1,984,500 be paid to Apache Asia Limited's HSBC Account in Macau.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>23 April 2017</u>	<u>USD 70,000</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>HSBC Macau / Apache Asia Limited / 001-426964-151</u>	<p><u>ABK Bank Statement showing payment from The Port Fund LP to Apache Asia Limited.</u></p> <p><u>SWIFT messages discussing non-receipt of funds apparently due to HSBC compliance reviews.</u></p> <p><u>However, as per ABK Bank Statements, this amount was debited from The Port Fund LP's account. See below payment for USD 70,000.</u></p> <p><u>Payment instruction letter from The Port Fund LP to ABK Bank dated 23 April 2017 directing that USD 70,000 be paid to Apache Asia Limited's HSBC account in Macau.</u></p> <p><u>Outward Remittance Voucher from ABK confirming that USD 70,000 was paid to Apache Asia Limited's HSBC account in Macau.</u></p>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>9 May 2017</u>	<u>USD 70,000</u>	<u>Al Ahli Bank of Kuwait / The Port Fund LP / 0603-493283-001</u>	<u>DBS Bank Macau Branch / Apache Asia Limited / 00000114468</u>	<u>ABK Bank Statement showing payment from The Port Fund LP to Apache Asia Limited.</u>  <u>Invoice from 'apacheAsia Limitada' dated 3 April 2017 directing that USD 70,000 be paid to Apache Asia Limited's DBS Account in Macau.</u>  <u>Payment instruction letter from The Port Fund LP to ABK Bank dated 9 May 2017 directing that USD 70,000 be paid to Apache Asia Limited's DBS Bank account in Macau.</u>  <u>Outward Remittance Voucher from ABK dated 9 May 2017 confirming that USD 70,000 was paid to Apache Asia Limited's DBS Bank account in Macau.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>24 June 2017</u>	<u>USD 1,800,000</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>HSBC Macau / Apache Asia Limited / 001-426964-151</u>	<u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u>  <u>SWIFT payment message details confirming payment of USD 1.8 million to Apache Asia Limited.</u>  <u>Invoice from 'apacheAsia Limitada' dated 15 June 2017 directing that USD 1,800,000 be paid to Apache Asia Limited's HSBC account in Macau.</u>  <u>Mashreq Bank Funds Transfer Form dated 21 June 2017 directing that USD 1,800,000 be sent to Apache Asia Limited's HSBC account in Macau.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>16 October 2017</u>	<u>USD 600,000</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>DBS Bank Macau Branch / Apache Asia Limited / 00000114468</u>	<p><u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u></p> <p><u>SWIFT payment message details confirming payment of USD 600k to Apache Asia Limited.</u></p> <p><u>Invoice from 'apacheAsia Limitada' dated 1 October 2017 directing that USD 600,000 be paid to Apache Asia's DBS Bank account in Macau.</u></p> <p><u>Mashreq Bank Funds Transfer Form dated 15 October 2017 directing that USD 600,000 be paid to Apache Asia Limited's DBS Bank account in Macau.</u></p>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>7 January 2018</u>	<u>USD 6,500,000</u>	<u>Mashreq Bank / Clark Gateway Investment Group LP / 019100065133</u>	<u>DBS Bank Macau Branch / Apache Asia Limited / 00000114468</u>	<u>Mashreq Bank Statement showing payment from Clark Gateway Investment Group LP to Apache Asia Limited.</u> <u>SWIFT payment message details confirming payment of USD 6.5 million to Apache Asia Limited.</u> <u>Mashreq Bank Funds Transfer Form dated 7 January 2018 directing that USD 6,500,000 be paid to Apache Asia Limited's DBS Bank account in Macau.</u>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>14 February 2019</u>	<u>USD 21,650,000</u>	<u>Crowell &amp; Moring LLP's DC IOLTA Trust Account for funds held on behalf of The Port Fund LP</u>	<u>OCBC Wing Hang Bank Hong Kong / Law Custodial Inc. / 487673-060</u>	<p><u>Statement of Activity of Port Fund DC IOLTA Trust Account produced by Crowell &amp; Moring LLP showing transfer to Apache Asia Limited.</u></p> <p><u>Invoice from 'apacheAsia Limitada' dated 8 February 2019 directing that USD 36.2 million be paid to the Crowell &amp; Moring DC IOLTA Trust Account.</u></p> <p><u>Instructions from 'apacheAsia Limitada' to Crowell &amp; Moring LLP to transfer USD 21.65 million of funds held on trust for Apache Asia to Law Custodial Inc's OCBC Wing Hang Bank account in Hong Kong.</u></p> <p><u>Wells Fargo Bank wire transfer report confirming payment of USD 21.65 million to Law Custodial Inc.</u></p>

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
<u>1 March 2019</u>	<u>USD 14,550,000</u>	<u>Crowell &amp; Moring LLP's DC IOLTA Trust Account for funds held on behalf of The Port Fund LP</u>	<u>Crowell &amp; Moring LLP's DC IOLTA Trust Account for funds held on behalf of KGL Investment Company KSCC</u>	<p><u>Statement of Activity of Port Fund DC IOLTA Trust Account produced by Crowell &amp; Moring LLP showing transfer to KGL Investment.</u></p> <p><u>Invoice from 'apacheAsia Limitada' dated 8 February 2019 directing that USD 36.2 million be paid to the Crowell &amp; Moring DC IOLTA Trust Account.</u></p> <p><u>Instructions from 'apacheAsia Limitada' to Crowell &amp; Moring LLP to keep in trust the balance of USD 14.55 million (see USD 21.65 million transfer above) as settlement of the obligations of Alternative Asset Management Limited towards KGL Investment KSCC.</u></p> <p><u>Crowell &amp; Moring LLP DC IOLTA Trust Account ledger report confirming the transfer of funds to be held in trust for KGL Investment Company KSCC.</u></p>

**Two Potential Further Payments**

1. The Plaintiffs note that the Section 22 Disclosure contains the evidence referred to below of further potential payments being made to Apache Asia from GGDC Holdings' Noor Bank Account in May 2017 to Apache Asia Limited's HSBC account in Macau, but they do not have bank statements for accounts held by GGDC Holdings in order to verify this.

<u>Payment Date</u>	<u>Amount</u>	<u>Ordering Bank / Customer / Account</u>	<u>Receiving Bank / Customer / Account</u>	<u>Description</u>
17 May 2017	USD 2,100,000	Noor Bank / GGDC Holdings / 02410864450039	HSBC Macau / Apache Asia Limited / 001-426964-151	Invoice from 'apacheAsia Limitada' dated 8 September 2016 directing that USD 2.123 million be paid to Apache Asia Limited's HSBC Account in Macau.  Payment instruction letter from GGDC Holdings to Noor Bank dated 17 May 2017 directing that USD 2.1 million be paid to Apache Asia Limited's HSBC account in Macau.

2. The Plaintiffs also note that a reconciliation of amounts payable to Apache Asia Limited suggests that an amount of USD 750,000 was paid by "PLH" to Apache Asia on 23 November 2011, and subsequently returned by the Port Fund LP to "PLH".

**DIRECTIONS FOR ACKNOWLEDGMENT  
OF SERVICE OF WRIT OF SUMMONS**

- 1 The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495GT, George Town, Grand Cayman KY1-1106.

- 2 A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (ie., the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

- 3 A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e., a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an Affidavit of his means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance.**

### Notes for Guidance

- 4 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
- 5 For the purpose of calculating the period of: (i) 14 days for acknowledging service on the **First and Fourth Defendants** and (ii) **28 days for acknowledging service on the Second and Third Defendants**, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
- 6 Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
- 7 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition of paragraph 1 of the description "Partner in the firm of \_\_\_\_\_" after his name.
- 8 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as \_\_\_\_\_" after his name.
- 9 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
- 10 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
- 11 A Defendant acting in person may obtain help in completing the form at the Courts Office.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 236 OF 2020 (RPJ)

B E T W E E N

(1) KUWAIT PORTS AUTHORITY

(on its own behalf and on behalf of The Port Fund L.P)

(2) THE PUBLIC INSTITUTION FOR SOCIAL SECURITY

(on its own behalf and on behalf of The Port Fund L.P)

(3) THE PORT FUND L.P.

**Plaintiffs**

and

(1) PORT LINK GP LTD.

(2) MARK ERIC WILLIAMS

(3) WELLSPRING CAPITAL GROUP, INC

(4) KGL INVESTMENT COMPANY ASIA

**Defendants**

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**ACKNOWLEDGMENT OF SERVICE**

**OF RE- AMENDED WRIT OF SUMMONS**

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If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important: Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

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1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

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2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

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**yes**

**no**

- 
3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box).

**yes**

**no**

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Service of the Writ of Summons is acknowledged accordingly.

\_\_\_\_\_  
Attorneys-at-law for the Defendant

Address for service:

**Notes on address for service:**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

Ogier  
89 Nexus Way  
Camana Bay  
Grand Cayman KY1-9009  
Cayman Islands Ref  
JJF/BYL/REF/427021.00001

Indorsement by Defendant's Attorneys (or by Defendant if defending in person) of his name, address and reference, if any, in the box below.

[Empty box for Defendant's Attorneys indorsement]