IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION **CAUSE NO. FSD 383 OF 2021 (RPJ)**

BETWEEN:

(1) THE PORT FUND L.P.

(2) GENERAL RETIREMENT AND SOCIAL INSURANCE AUTHORITY

Plaintiffs

AND:

WALKERS (DUBAI) LIMITED LIABILITY PARTNERSHIP

Defendant

AMENDED WRIT OF SUMMONS

TO: Walkers (Dubai) Limited Liability Partnership, of PO Box 506513, Level 14, Burj Daman, Dubai International Financial Centre, Dubai, UAE

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

Within 14 days after the service of this Amended 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.

This AMENDED WRIT OF SUMMONS was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is PO Box 472, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-005) 1

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

Issued this 30th day of December 2021
Amended this 3rd day of February 2022

TRAVERS THORP ALBERGA
Attorneys for the Plaintiffs

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

IMPORTANT

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

This **AMENDED** WRIT OF SUMMONS was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is PO Box 472, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-005)

AMENDED STATEMENT OF CLAIM

A. Introduction

1. The First Plaintiff, the Port Fund L.P., (the "**Port Fund**" or the "**Fund**") is an exempted limited partnership ("**ELP**") within the meaning of section 2 of the Exempted Limited Partnership Act (the "**ELP Act**") (and references below to the ELP Act are references to the revision in force at the time of the pleaded events unless otherwise stated). Port Link GP Ltd ("**Port Link**") is, and was at all material times, the general partner of the Port Fund.

2. The Second Plaintiff, the ~~Gulf~~ General Retirement and Social Insurance Authority ("**GRSIA**"), is an enterprise owned by the state of Qatar and is responsible for administering the Qatari social security system. GRSIA is, and was at all material times, a limited partner of the Port Fund.

3. The Defendant ("**Walkers**") is a DIFC Limited Liability Partnership which is (and has been since 6 December 2005) registered in the public register of the Dubai Financial Services Authority under reference no. F000072. It holds itself out as a full service law firm providing legal services in a number of core practice areas including commercial dispute resolution and offshore funds.

4. The claims for negligence and breach of fiduciary duty in this action are brought by GRSIA on behalf of the Port Fund pursuant to section 33(3) of the ELP Act because Port Link has without cause failed or refused to institute proceedings against Walkers. GRSIA is aware that another two limited partners of the Port Fund, Kuwait Ports Authority and the Public Institution for Social Security ("**KPA/PIFSS**"), have in Cause No. FSD 0097 of 2021 also instituted proceedings against Walkers asserting those causes of action arising out of the same or similar facts as are the subject of

the present proceedings. Walkers have served a Defence in those proceedings dated 6 December 2021 in which Walkers set up defences which are particular to the identity and circumstances of those plaintiffs. In such circumstances GRSIA cannot rely upon the claims in Cause No. FSD 0097 of 2021 as providing it with a safe mechanism for providing a collective remedy for the ELP and so, in turn, the limited partners. Hence it maintains claims in these proceedings in negligence and breach of fiduciary duty.

5. The claim for dishonest assistance in this action is likewise brought by GRSIA on behalf of the Port Fund pursuant to section 33(3) of the ELP Act because Port Link has without cause failed or refused to institute proceedings against Walkers. But it is also brought by GRSIA against Walkers in its own name and on its own behalf because Walkers dishonestly assisted Port Link to breach the equitable duty of utmost good faith which Port Link owed to it directly. As at the date of this pleading, no claim in dishonest assistance is brought against Walkers by KPA/PIFSS whether directly or derivatively.

B. The Port Fund

6. On 21 March 2007 the Port Fund was created pursuant to a limited partnership agreement bearing that date and registered as an ELP, for the purpose of a private placement of capital commitments of US $500m and as a vehicle for investment in the port management industry. In its capacity as one of the limited partners of the Fund (as to which see below) GRSIA made capital contributions of US $9,852,000 to the Port Fund and took an ownership interest of 5.86% in the Fund.

Port Link

7. On 8 March 2007 Port Link was incorporated under the Companies Act of the Cayman Islands as an exempted limited company and registered under company registration no. 183434. For the following periods the following individuals acted as *de jure* directors of Port Link:

(1) From 26 April 2007 until 24 May 2018 Mr Saeed Dashti was a director. He is a Kuwaiti national and was at all material times the Chairman of the KGL group of companies which included the Investment Management Company and KGL Kuwait (as defined below) (the "**KGL Group**").

(2) From 8 March 2007 until 24 May 2018 Ms Maria or Marsha Lazareva was also a director. Between 8 March 2007 and 4 February 2019 she was also the sole director of the Investment Management Company (as defined below). At all material times until 27 March 2019 she was also the Vice Chair and Chief Executive Officer of KGL Kuwait (again, as defined below).

(3) From 18 November 2010 until 28 March 2021 Mr Abdulghfoor Alwadhi was also a director; and from 24 May 2018 until 29 January 2020 he was the sole director of Port Link.

(4) From 29 January 2020 Mr Andrew Childe and Mr Christopher Rowland were also directors. On 28 October 2020 Mr Rowland resigned as a director and on 3 November 2020 he was replaced by Mr Richard Lewis.

Port Link Holdings

8. On 29 May 2018 Port Link Holdings USA, Inc ("**Port Link Holdings**") was incorporated under the law of the state of Delaware and registered under company registration no. 6908085. Port Link Holdings was incorporated by Mr Mark Williams, who was its sole incorporator, to hold the shares in Port Link and to the best of the Second Plaintiff's knowledge the entire issued share capital of Port Link was (and still is) owned by Port Link Holdings. The Second Plaintiff believes that Mr Williams owns and/or controls Port Link Holdings.

The Investment Management Company

9. On 8 March 2007 KGL Investment Cayman Ltd (the **"Investment Management Company"**) was also incorporated under the Companies Act of the Cayman Islands as an exempted limited company and registered under company registration no. 183412. At all material times before June or July 2018:

   (1) The Investment Management Company had the same registered office as Port Link.

   (2) 100% of its A shares were owned by the KGL Investment Company KSCC of Kuwait ("**KGL Kuwait**"), which was the administrator and placing agent of the Fund and also a member of the KGL Group.

   (3) 200 B shares (or 40%) were legally and beneficially owned by Ms Lazareva and, as stated above, from 8 March 2007 until 4 February 2019, she was the Investment Management Company's sole director.

   (4) 149 B shares (or 29.8%) were legally and beneficially owned by Mr Williams.

10. By the Letter of Claim dated 7 July 2018 (as to which see below) Clyde & Co LLP ("**Clyde & Co**") wrote to Port Link stating that the Investment Management Company had changed its name to Emerging Markets PE Management Ltd ("**EMPEML**"). To the best of the Second Plaintiff's knowledge that is correct. But for ease of reference the company is referred to as the "Investment Management Company" throughout this Statement of Claim.

Wellspring

11. On 9 September 2013 Wellspring Capital Group, Inc ("**Wellspring**") was incorporated under the law of the state of Florida. On 5 May 2020 it was converted into a Georgia corporation and re-registered under company registration no.

1910779. The sole shareholder of Wellspring has at all material times been the Mark E Williams Living Trust, of which Mr Williams has been at all material times a trustee. The Second Plaintiff believes that Mr Williams (and/or members of his family) were at all relevant times beneficiaries of the Mark E Williams Living Trust.

Mr Williams

12. Between 2007 and 2019 Mr Williams also held the following offices, positions and appointments in Port Link, the Investment Management Company and their associates:

(1) At various times he was the Director of Investments for the Port Fund and a member of the Fund's investment committee.

(2) He was the Investment Director of the Investment Management Company and on and after 20 June 2018 he was an authorised signatory of the Investment Management Company.

(3) From 29 May 2018 he was the sole director of Port Link Holdings.

(4) From 27 August 2018 he was the Chief Executive Officer, the Chief Financial Officer, President, Vice-President, Treasurer and Secretary of Wellspring.

13. It is also the Plaintiffs' case that Mr Williams was a shadow or *de facto* director and directing mind and will of Port Link for (at the very least) the period between 1 June 2018 and 11 July 2018. During that period, and for much longer, Mr Williams was the person who gave instructions to Walkers ostensibly on behalf of Port Link. In support of these allegations the Plaintiffs will rely (*inter alia*) on invoices dated 17 July 2018 submitted by Walkers and by Crowell & Moring, a US law firm, to the Port Fund. The time entries supporting each invoice show that both firms were accustomed to take instructions from him in relation to, *inter alia*, the potential

liabilities of Port Link to the Investment Management Company and the DIFC Claim (as defined below).

The LPA

14. By a limited partnership agreement dated 21 March 2007 (and amended and restated on 14 July 2008) (the "**LPA**") and made between Port Link as the general partner of the Fund (1) and Roderick L. Palmer who was then the sole limited partner (2) the partners of the Fund agreed to the following terms on which the limited partnership would be managed and operated:

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

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

(3) The term "**Initial Closing Date**" was defined as 31 July 2007 or such earlier or later date as determined by the general partner.

(4) The term "**Investment Manager**" was defined as the Investment Management Company or any entity wholly owned by it.

(5) The term "**Partnership Law**" was defined as the ELP Act (2003 Revision) as amended from time to time.

(6) The registered office of the partnership was to be the registered office of Walkers SPV Ltd, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9002: see clause 2.2(a).

(7) The partnership was to continue until December 31 following the fifth anniversary of the Initial Closing Date unless (a) extended at the discretion of the general partner for up to two consecutive additional one year periods from and after such date to permit orderly dissolution; or (b) terminated in accordance with the terms of the LPA: see clause 2.4.

(8) Except as otherwise provided in the LPA, the management and operation of the partnership was to be vested in Port Link as the general partner which had the power to carry out any and all of the purposes of the partnership and to perform all acts and enter into and perform all contracts and other undertakings that it deemed necessary or advisable or incidental thereto: see clause 3.1(a).

(9) Except as otherwise provided in the LPA, Port Link had full authority in its discretion to exercise on behalf of and in the name of the partnership all the rights and powers of a general partner of a limited partnership under the Partnership Act and without limitation was authorised and empowered in the name of and on behalf of the partnership:

(a) to sue, prosecute, settle or compromise all claims against third parties, to compromise, settle or accept judgment in respect of claims against the partnership and to execute all documents and make all representations, admissions and waivers in connection therewith: see clause 3.1(b)(vi).

(b) to deposit, withdraw, invest, pay, retain and distribute the partnership's funds in a manner consistent with the LPA: see clause 3.1(b)(vii).

(c) to retain the Investment Manager and any sub-advisors to provide management, advisory and related services to the partnership: see clause 3.1(b)(xii).

(10) Limited partners were to have no right to, and would not, take part in the management or control of the partnership's business or to act for or bind the partnership provided that the limited partners were to have all of the rights, powers and privileges granted to them in the LPA and, where not inconsistent with the terms of the LPA, under the Partnership Law: see clause 3.3.

(11) Clause 3.7(a) provided that the partnership was to pay the following management fees to the Investment Manager (the "**Management Fee**"):

(a) 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;

(b) 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.

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

(13) Distributions were to be made to limited partners in the general partner's sole discretion: see clause 4.3(a).

(14) Clause 4.3(b) provided that distributions from exited Fund Investments were to 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 each limited partner received 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 each limited partner received (*pro rata* on the basis of a 365 day year) a compounded 8% per annum return on its Capital Contribution employed in that particular Fund Investment; then

(c) 100% to the Investment Manager until it received 20% of the amount allocated to the limited partners pursuant to (b) 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 (defined as the "**Carry**" because it was interest "carried" by the Fund).

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

(16) Clause 4.3(f) provided that:

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

(i) the sum of all the Carry received by way of distribution to the Investment Manager; and

(ii) such amount as would return to each Limited Partner the aggregate of its Capital Contributions together with an amount equal to 8% per annum (compound interest) thereon from the date of drawdown to the date such sums are returned."

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

(18) The partnership was to be dissolved upon the first to occur of a number of events including the end of the term of the partnership (as provided in clause 2.4): see clause 9.1(a).

(19) The LPA was to be construed in accordance with the laws of the Cayman Islands: see clause 11.10.

15. GRSIA, as a limited partner in the Fund, made capital contributions to the Fund totaling $9,852,000 between the period 15 July 2007 and 9 September 2008.

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

17. Section 3 of the ELP Act provides that the rules of equity and common law applicable to partnerships, as modified by the ELP Act (excluding certain sections which are not relevant to these proceedings), shall apply to an exempted limited partnership

except where they are inconsistent with the express provisions of the ELP Act. In the premises, Port Link also owed the following duties:

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

(2) It owed a duty pursuant to section 4(3) of the ELP Act as originally enacted in 1991 and subsequently section 19(1) of the ELP Act (2014 Revision) and all subsequent revisions of the ELP Act to act at all times in good faith and in the interests of the Fund, and so the limited partners in the Fund.

(3) It owed a fiduciary and/or common law duty to the Port Fund and the limited partners of the Port Fund to protect, preserve and manage the assets of the Fund for the benefit of the Fund and its limited partners.

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

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

The Investment Manager: appointment

19. By written resolutions signed in or about April 2007 Mr Dashti and Ms Lazareva, acting in their capacity as the directors of Port Link, resolved to appoint the Investment Management Company as the Investment Manager of the Fund and to enter into the IMA (as defined below). They also resolved to appoint Walkers as legal counsel to Port Link (as general partner of the Fund). The Second Plaintiff understands that Walkers acted in that capacity from 2007 onwards.

The IMA

20. By an agreement dated 28 June 2007 (the "**IMA**") and made between Port Link, acting as general partner of the Fund (1) and the Investment Management Company (2), Port Link appointed the Investment Management Company to be the Investment Manager of the Port Fund on the following terms:

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

    (2) Clause 5.1 provided that the general partner would pay the Investment Manager a "**Management Fee**" on the same terms as clause 3.7(a) of the LPA (see above).

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

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

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

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

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

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

(9) Clause 15.1 provided that any notice under the IMA was to be in writing, in the English language and to be served by hand or by post or by telex, email or fax to the address of the other party as set out immediately below. The address for the Fund set out below the clause was the registered office of Port Link, as pleaded above. However, no telephone, fax or email address was given for Port Link.

(10) The IMA and the rights and obligations of the parties were to be governed by and construed in accordance with the law of the Cayman Islands: see clause 18.1.

(11) The parties also agreed that the courts of the Cayman Islands would have jurisdiction to hear and determine any action or proceedings arising out of or in connection with the IMA and for that purpose irrevocably submitted to the court's jurisdiction and agreed that the process by which any such action or proceedings were begun could be served on it by being delivered to its registered address (as above): see clause 18.2.

Expiry of the Term

21. By a resolution of Port Link dated 28 July 2012 the term of the Fund was extended for two years pursuant to clause 2.4 of the LPA and on 31 December 2014 the term expired. The audited financial statements for the year ended 31 December 2015 recorded the expiry of the term and reported that the Investment Manager was exiting the Fund's investments and winding up its operations during 2016.

C. The Noor Bank Funds

22. On 31 March 2015 GGDC Holdings, an exempted limited company incorporated in the Cayman Islands and registered under company registration no. 296045, became the legal and beneficial owner of the entire issued share capital of Global Gateway Development Corporation ("**GGDC**"), which was also an exempted limited company incorporated in the Cayman Islands and registered under company registration no. 208498. Both companies shared the same registered office as both Port Link and the Investment Management Company. On 29 December 2015 Port Link, as trustee of the property of the Port Fund, became the legal owner of the sole issued share in GGDC Holdings for the benefit of the exempted limited partnership.

23. By a share purchase agreement dated 31 July 2017 and made between the Port Fund acting by Port Link (1) and Udenna Development Corporation ("**UDEVCO**"), a corporation organised under the law of the Republic of the Philippines (2) the Port Fund agreed to sell the single share in GGDC Holdings to UDEVCO for US $655,000,000 on or before 31 August 2017. Recitals (A) to (C) recorded the company information set out immediately above in relation to GGDC Holdings and GGDC. Recital (D) also recorded that on 16 July 2008 GGDC had been granted a lease by Clark International Airport Corporation of approximately 167 hectares located within the Clark Civil Aviation Complex, Clark Freeport Zone, Pampanga.

24. By a deed dated 13 November 2017 and entitled "**Closing Memorandum**" the parties set out the terms on which they had agreed to complete the sale of the share. It recorded that on 11 August 2017 UDEVCO designated Clark Global City Corporation ("**CGCC**") (its wholly owned subsidiary) as the purchaser of the share. It is also recorded that the completion date was 14 November 2017. Schedule 2, Part A, paragraph 2(a) also provided that CGCC was to procure that BDO Unibank Inc, Trust and Investments Group ("**BDO Trust**") paid the sum of US $496,429,777 into account no. 02410890280039 in the name of Port Link at the Dubai branch of Noor Bank PJSC ("**Noor Bank**" / the "**Noor Bank Account**").

25. By an agreement dated 14 November 2017 and made between the Port Fund acting by Port Link (1), UDEVCO (2) and CGCC (3) the parties agreed to vary the purchase price payable under the share purchase agreement (above) to US $711,156,885.[1]

26. On or about 15 November 2017 BDO Trust attempted to make a wire transfer of US $496,429,767 to Port Link's Noor Bank Account through Citi Bank New York. However, on the same day Noor Bank made a suspicious activity report to the Financial Intelligence Function at the Central Bank of the UAE (the "**FIF**") relating to the wire transfer.

[1] The audited consolidated financial statements of UDEVCO as at 31 December 2016 and 2017 state that when CGCC acquired GGDC Holdings, the "[c]onsideration paid amounted to U.S.$980.0 million". Accordingly, the Plaintiffs reserve their rights as to the actual consideration paid for the share in GGDC Holdings.

27. Between 15 and 21 November 2017 the FIF and Noor Bank each reported the transfer to the office for Public Prosecution in Dubai (the "**Public Prosecutor**") and on 21 November 2017 the Public Prosecutor issued a resolution to freeze Port Link's bank account and form a joint committee of various legal entities to prepare a joint report on its activities. On 5 February 2019 the account was finally unfrozen and the sum of US $496,429,767 was credited to Port Link's Noor Bank Account. Until that date the monies were held by Noor Bank, had not been credited to or deposited in the Noor Bank Account, and had not been received by Port Link/the Fund.

28. From 5 February 2019 Port Link held the sum of US $496,429,767 upon trust for the Port Fund pursuant to section 16(1) of the ELP Act (2018 Revision) which provided as follows:

> *"Any rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement."*

(Before that date Port Link held the chose in action representing its entitlement to sums due under the Closing Memorandum on trust for the Port Fund.)

D. The DIFC Claim

The Demand

29. By letter dated 16 June 2018 (the "**Demand**") the Investment Management Company wrote to Port Link (and the Fund) at Port Link's registered office demanding payment of the "Carry" supposedly due under clause 4.3(b)(iv) of the LPA. The Demand stated as follows:

> *"The Partnership exited all Fund Investments in late 2017 and informed KGLI Cayman [i.e. the Investment Management Company] that it would be wiring $45,462,000 in Carry to KGLI Cayman's account. KGLI Cayman understands that BDO Unibank, Inc of the Philippines on November 14, 2017 wired US$496,429,777 to Port Link's account at Noor Bank in Dubai, a portion of which would have been used to pay KGLI Cayman the Carry. It has been over seven months since that time and Port Link has failed to pay KGLI Cayman its $45,462,000 in Carry.*
>
> *KGLI Cayman hereby demands that Port Link, as the General Partner of the Partnership, pay the above Carry amount by not later than 10:00 AM Dubai time on Monday, June 18, 2018 or it will institute immediate legal action to [sic] against Port Link and the Partnership to recovery [sic] the Carry, including seeking an order to enjoin Port Link and the Partnership from dissipating or disposing of any asset available to satisfy a judgment in the amount of the Carry plus interest and other damages."*

30. No demand for any form of Management Fee was made by the Investment Management Company in the Demand (or in any other communication) prior to the Clyde & Co letter dated 7 July 2018 referred to below.

Port Link/the Port Fund: the retainer of Walkers

31. On or after 20 June 2018 Port Link (in its capacity as general partner) instructed Walkers to advise it and the Port Fund in relation to the Investment Management Company's potential claims and in respect of the Investment Management Company's entitlements under the IMA. Walkers accepted those instructions. Walkers have not disclosed copies of the relevant engagement letter or any correspondence giving rise to the retainer. But in support of this allegation, the Plaintiffs will rely upon the following documents:

    (1) The invoice dated 17 July 2018 which Walkers submitted to the Port Fund at its registered office in which Walkers charged Port Link US$37,161.71 (less Trust Funds of US$27,849.90) for legal services which included advice in relation to the DIFC Claim (below).

(2) A letter dated 6 January 2021 to Travers Thorp Alberga ("**TTA**"), in which Walkers stated that they provided advice to the directors of Port Link (as general partner of the Fund): see paragraph 7.

32. It was an express alternatively an implied term of the contract of retainer (to be implied as a matter of necessity and/or in order to give business efficacy thereto) that Walkers would exercise the skill and care to be expected of a reasonably competent attorney qualified under the laws of the Cayman Islands and professing expertise in commercial dispute resolution and offshore funds.

Port Link/the Port Fund: duty of care owed by Walkers

33. Further or alternatively Walkers owed a duty of care to Port Link (as general partner) and the Fund actionable in the tort of negligence to exercise the skill and care to be expected of a reasonably competent attorney qualified under the laws of the Cayman Islands and professing expertise in commercial dispute resolution and offshore funds.

Port Link/the Port Fund: fiduciary duties owed by Walkers

34. Further or alternatively Walkers also owed fiduciary (and/or implied contractual) duties to Port Link (as general partner) and the Fund: (1) to act loyally and in good faith; (2) not to make a profit out of their trust; (3) not to place themselves in a position where their duty to the Port Fund and their interests (or their duty to another client) might conflict; (4) not to prefer the interests of any other client over those of the Fund; (5) not to act for their own benefit or the benefit of a third person in relation to the Fund without the Fund's informed consent (which required that of the limited partners); and (6) if an actual or potential conflict arose to advise Port Link to seek and obtain the informed consent of the limited partners and in any event to disclose it to the limited partners.

The Investment Management Company: retainer of Walkers

35. At all material times after at the latest 20 June 2018 (and possibly before) Walkers acted as attorneys not only for the Port Fund (and Port Link as general partner) but also, and at the same time, as attorneys for the Investment Management Company. In support of this allegation the Plaintiffs will rely, *inter alia,* upon the time entries set out in the invoice dated 17 July 2018 and the letter dated 6 January 2021 (above). In particular, in that letter Walkers stated that it had been agreed between the Fund and the Investment Management Company that any advice provided to the Investment Management Company would be billed to the Fund and that the Fund and the Investment Management Company would be responsible for conducting the necessary reconciliation following the receipt of any invoices from Walkers.

36. In particular during June and July 2018:

(1) Walkers undertook various tasks for the Investment Management Company relating to its own corporate governance and/or shareholdings, including:

(i) drafting a resolution to appoint Mr Williams as its authorised signatory;

(ii) making preparations to change its name from KGL Investment Cayman Ltd to EMPEML; and

(iii) making arrangements for the shareholdings in the Investment Management Company (by then known as EMPEML) to be transferred to an unidentified third party in or around 7 July 2018.

(2) Further, as set out below, Walkers also acted for and advised the Investment Management Company in respect of the Demand, in drafting the notice of termination that the Investment Management Company served on Port Link on 7 July 2018 to terminate the IMA and in advising on the DIFC Proceedings.

37. None of these tasks was for the benefit of Port Link (as general partner) or the Fund; indeed they were in the context of ostensibly adversarial proceedings against those entities. Yet Walkers billed the Fund for this work and the Fund paid for that work. Hence, to Walkers' knowledge, the Fund (at the instigation of Port Link) financed the prosecution of ostensibly adversarial claims against it.

Memorandum of Advice

38. By a memorandum of advice (the "**Memorandum of Advice**") dated 2 July 2018 and addressed to the board of directors of Port Link (as general partner of the Fund) Walkers gave advice that they did not consider that the Investment Management Company had a claim under the LPA and had no standing to bring claims on behalf of the limited partners. In relation to any claim under the IMA, they gave the following advice:

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

Emails dated 3 and 4 July 2018

39. By email dated 3 July 2018 (timed at 2.19pm) (the "**3 July email**") Mr Luke Petith, an associate at Walkers, wrote to Mr Williams, copying in Mr Daniel Wood, who was (and remains) the managing partner of Walkers. He advised Mr Williams (ostensibly acting on behalf of Port Link/the Fund) that Walkers did not consider that the Investment Management Company could reasonably continue to claim the Management Fee under the IMA and the LPA. It is not clear why this advice was tendered, or why the phrase "continue to" was utilized, in circumstances where, so far as the Second Plaintiff is aware, no claim for a Management Fee had previously

been intimated by the Investment Management Company (see above). In particular Mr Petith wrote:

(1) *"…..it may be difficult for [the Investment Management Company] to argue that it continues to provide investment management services to the Fund – although happy to discuss this point if you take the view that it is the IM (as opposed to the GP) that has been working tirelessly for the release of the frozen funds."*

(2) *"…the GP will potentially open itself up to legal action by the LPs if it continues to pay [the Investment Management Company] the Management Fee…"*

(3) *"In addition to the requirement to provide investment management services in accordance with IMA, it will also be necessary to conclude that the Fund has not yet terminated….in our view, the proper construction of this clause [i.e. cl. 5.1(b)] is that termination relates to the end of the term of the Fund and accordingly we do not consider that [the Investment Management Company] could reasonably continue to claim the Management Fee under the terms of the IMA and the LPA for the reasons outlined above."*

40. Upon receipt of that email Mr Williams and Mr Wood had a telephone call, the contents of which are presently unknown to the Plaintiffs. However by email dated 4 July 2018 (timed at 5.43pm) (the "**4 July email**"), Mr Petith wrote to Mr Williams, again copying in Mr Wood, and now setting out a number of reasons why Port Link could justify the payment of the Management Fee to the Investment Management Company:

"However, notwithstanding the above [i.e. a paragraph of the email where Mr Petith summarised the advice provided in the 3 July email], and on the basis that KGL continued to provide discretionary investment management services after 31 December 2014, we consider that the GP could seek to justify the payment of the Management Fee to KGL between 31 December 2014 and the time when the Fund exited its final investments by relying on (i) its powers and duties under clause 3 of the LPA and (ii) its fiduciary duties to act in the best interests of the Fund. Specifically, clause 3.1(a)(xii) provides the GP with the express power to "retain the Investment Manager and any sub-advisors to provide management, advisory and related services to the Partnership" in addition to the general powers to pay Fund expenses as the GP determines to be necessary. As such, provided the GP is comfortable that KGL continued to provide investment management services for the final

investments of the Fund and retaining KGL to carry out this role was in the best interests of the Fund, we consider that the GP could seek to justify the payment on such grounds."

41. In the 3 and 4 July emails Mr Petith ostensibly advised Mr Williams in his capacity as an officer or agent of Port Link and the Fund; yet both emails were written from the perspective of the Investment Management Company and were concerned to provide Mr Williams with reasons to justify the Investment Management Company's claim; so were also directed at Mr Williams in his capacity as an officer or agent of the Investment Management Company. Moreover, in neither email did Mr Petith consider or advise Mr Williams adequately or at all what defences would be available to the Port Fund; nor did he make clear, as was the case, that it was or would be improper for Port Link to seek ways of justifying payment of sums belonging to the Fund to third parties given the duties of Port Link pleaded above and its role as trustee.

42. It is the Plaintiffs' case that Walkers gave the advice in these emails negligently and in breach of their fiduciary duties to the Port Fund (for the reasons set out below).

Letter of Claim

43. By letter of claim dated 7 July 2018 (the "**Letter of Claim**") and addressed to both Port Link and the Port Fund Clyde & Co wrote to both parties (by email alone) stating that the firm had been instructed by EMPEML (formerly KGL Investment Cayman Ltd, i.e. the Investment Management Company). Clyde & Co asserted that Port Link had committed breaches of the IMA by failing to pay the Carry and the Management Fee and demanded payment of US $56,784,054 (inclusive of interest apparently due on both sums).

44. In the Letter of Claim Clyde & Co also asserted that the Fund had committed material and fundamental breaches of the IMA by failing to pay the Carry and the Management Fee and gave notice that the IMA was terminated with immediate effect under clause 12.2(c) (wrongly stated to be 12.2(a) in the Letter of Claim) of

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

The Claim Form

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

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

(2) Compound interest on the allegedly unpaid Carry of 8% per annum;

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

(4) Compound interest on the allegedly unpaid Management Fees of 8% per annum.

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

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

"The Court of First Instance may hear and determine any civil or commercial claims or actions where the parties agree in writing to file such claim or

action with it whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

48. Finally, in the Claim Form Clyde & Co expressly stated that both Port Link and the Port Fund had expressly submitted to the jurisdiction of the DIFC Court:

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

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

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

Walkers' time entries

50. Between 20 June 2018 and 11 July 2018 Mr Wood recorded, *inter alia*, the following time entries on the Port Fund's file:

(1) *20 June 2018:* Telephone Mark re authorised signatory. Email Keith re authorised signatory. Reviewing and amending authorised signatory resolutions. Email David Hammond.

(2) *25 June 2018:* Telephone Mark Williams re authority letter. Reviewing and issuing director authority letter for TPF.

(3) *1 July 2018:* Telephone Mark re DIFC proceedings. Telephone Keith at Clyde & Co re DIFC proceedings; Cayman law queries. Considering LPA and IMA re queries from Mark and David re IM suing for monies owed to LPs. Amending advice to Mark; email Mark re no ability for IM to seek return of LP distributions. Conference call with Mark and David.

(4) *2 July 2018:* Meeting Luke to discuss various queries from Mark and David; reviewing IMA. Reviewing and amending memo of advice. Telephone Mark. Considering name change. Reviewing draft termination notice and email advice on termination of IMA. Telephone Mark. Telephone and email Mark re name change resolutions.

(5) *3 July 2018*: Meeting Terry-Ann to discuss SPA. Considering draft advice to Mark re ability for IM to receive the MF under the IMA. Reviewing and amending SPA for shares in KGLI Cayman [i.e. the Investment Management Company]. Reviewing and amending SPA. Amending SPA for KGLI Cayman shares. Telephone Mark re IM fees.

(6) *4 July 2018*: Checking name change resolutions. Considering requests from Mark re Damietta; email Mark. Email Mark. Email Mark [sic]. Reviewing advice re payment of MF; telephone Mark.

(7) *5 July 2018*: Reviewing and amending assignment agreement. Reviewing assignment deed and GP resolutions with TAA.

(8) *9 July 2018:* Telephone Mark Williams. Reviewing Clyde & Co demand letters to TPF.

(9) *10 July 2018*: Telephone Mark re GP resolutions re DIFC claim; meeting TAA to discuss GP resolutions. Email Mark re content of GP resolutions. Considering DIFC court processes; requirements for TPF to admit claim. Reviewing resolutions; telephone Mark.

(10) *12 July 2018*: Email Mark Williams.

51. "Luke" was a reference to Mr Petith; "David Hammond" and "David" were references to Mr David Hammond of Crowell & Moring; and "Terry-Ann" and "TAA" were references to Ms Terry-Ann Arch, senior counsel at Walkers.

52. Between 1 July 2018 and 10 July 2018 Mr Petith also recorded, *inter alia,* the following time entries on the Port Fund's file:

(1) *1 July 2018:* Preparing for call with Clyde & Co. Call with Clyde & Co. Discussions with D Wood following the call. Detailed review of LPA and IMA in respect of the DIFC Proceedings being pursued by the Investment Manager. Preparing email advice to go to the client.

(2) *2 July 2018:* Meeting with D Wood to discuss call with the client; Drafting memorandum of advice; Incorporating D Wood's comments into memorandum of advice and sending final memo to the client; Instructions from D Wood re termination of the Investment Management Agreement; Reviewing and considering the terms of the IMA; Drafting advice email to go to the client; Drafting Notice of Termination; Incorporating D Wood's comments into email advice and Notice of Termination and sending out to the client.

(3) *3 July 2018*: Discussions with D Wood. Reviewing the IMA and LPA in respect of whether KGL can claim a management fee under the IMA. Drafting advice to the client. Incorporating comments from D Wood and sending advice to the client.

(4) *4 July 2018*: Reviewing the Fund documents in respect of payment of the Management Fee since December 2014. Drafting email advice to the client and incorporating comments from D Wood.

(5) *10 July 2018*: Reviewing email with attachments from DIFC claim; Discussions with D Wood re DIFC claim.

53. Between 20 June 2018 and 11 July 2018 Ms Arch also recorded, *inter alia*, the following time entries on the Port Fund's file:

(1) *20 June 2018:* Drafting resolutions for KGLI Cayman appointing MW as authorised signatory.

(2) *21 June 2018:* Phone call with Victoria from Clyde & Co. Arranging CORIS search. Emails – compliance re KYC requested. Emails – Clyde & Co and Mark Williams.

(3) *2 July 2018:* Reviewing M&A and registers for KGL Investment Cayman Ltd. re change of name requirements. Email to Mark Williams. Email correspondence with Mark Williams re resolutions.

(4) *3 July 2018:* Drafting SPA and consent in relation to sale of shares in KGL Investment Cayman Ltd. Discussing with DW. Email to Mark Williams.

(5) *4 July 2018:* Email correspondence with Mark Williams re change of name of KGLI Cayman.

(6) *10 July 2018:* Drafting loan agreement and GP resos [sic]; Email correspondence with Mark Williams; Emails – Simon Leefatt.

(7) *11 July 2018:* Email correspondence with Simon Leefatt re KYC. Emails – Mark Williams re GP resos [sic].

The Resolutions

54. By written resolutions dated 11 July 2018 and signed by Mr Alwadhi, who was now the sole statutory and *de jure* director of Port Link, Port Link passed a number of resolutions on behalf of the Port Fund. In this Statement of Claim each one is referred to as a "**Resolution**" and they are referred to together as the "**Resolutions**". The document which Mr Alwadhi signed containing the Resolutions is referred to as the "**Minutes**" of the Resolutions (even though no actual meeting took place).

55. Walkers drafted the Minutes and the Resolutions and gave advice to Mr Williams in relation to their contents (as recorded in their time entries above). Paragraphs 3.1(e) to (h) of the Minutes recorded the following alleged facts:

> *"(e) in connection with the Claim, the Director has received and carefully reviewed the following documents which were delivered to the registered office provider of the Partnership by the legal counsel of the Investment Manager (together, the "**Documents**"):*
>
> *(i) a letter from Clyde & Co LLP dated 7 July 2018 addressed to the Company and the Partnership setting out certain breaches by the Partnership of the terms of the IMA and demanding payment of certain fees owed to the Investment Manager;*
>
> *(i) [sic] a letter from Clyde & Co LLP dated 7 July 2018 addressed to the Company and the Partnership requesting agreement to submit to the jurisdiction of the DIFC Courts with respect to claims under the IMA and LPA;*
>
> *(ii) a letter from Clyde & Co LLP dated 7 July 2018 [sic] addressed to the Company enclosing:*
>
> *(A) a Claim Form – Court of First Instance as filed and sealed by the DIFC Courts setting out the brief details of the claim being brought by the Investment Manager and remedy sought; and*
>
> *(B) a procedural timetable from the DIFC Courts upon issuance of the claim;*
>
> *(f) pursuant to the Documents, the Investment Manager is seeking payment of the Carry in the sum of US $45,462,000.00 plus accrued interest at 8% per annum and the Management Fee in the sum of US $8,106,360.00 and*

*accrued interest at 8% per annum which the Company has calculated to be US $56,808,005.00 as of July 9th, 2018 (the "**Outstanding Debt**");*

(g) the Director has carefully considered the Claim, its merits and the amount of the Outstanding Debt; and

*(h) pursuant to Rule 7.35 of the Rules of the DIFC Court (the "**RDC**"), (a) a form for defending the claim, (b) a form for admitting the claim; or (c) a form for acknowledging service of the claim must now be filed by the Partnership as Defendant to the Claim, using the DIFC Courts' e-filing system, within the timeframe prescribed by the RDC."*

56. The Minutes then record that Mr Alwadhi purported to pass the Resolutions on behalf of Port Link (as general partner of the Port Fund). Resolutions (a) to (c) provided as follows:

"(a) in the opinion of the Director, the merits of the Claim and the amount of the Outstanding Debt is valid:

(b) the submission to the jurisdiction of the DIFC Courts be and is hereby ratified, confirmed, approved and adopted in all respects as fully as if such actions had been presented for approval, and approved by, the Director prior to such actions being taken;

(c) the Company and/or the Partnership submit a form admitting the Claim using the DIFC courts' e-filing system within the prescribed timeframe;".

57. Resolutions (d) to (f) purported to authorise Port Link and the Port Fund to deliver instructions and to make, sign or execute any other documents (defined as the "**Ancillary Documents**") in such form as any "**Attorney**" or "**Authorised Signatory**" might determine. Paragraph 4 of the Minutes contained general authorisation (the "**General Authorisation**") for any Attorney or Authorised Signatory to sign, make, execute, deliver, issue or file any document with any governmental authority.

Acknowledgment of Service

58. On 11 July 2018 Global Advocacy and Legal Counsel ("**Global Advocates**"), a firm of local counsel licensed to practice in Dubai and other Middle Eastern jurisdictions, acknowledged service on behalf of Port Link and the Port Fund. In the

Acknowledgment of Service Global Advocates did not challenge the jurisdiction of the DIFC Court.

59. The Second Plaintiff does not know who instructed Global Advocates (and when they were instructed) to act on behalf of the Port Fund and Port Link in relation to the DIFC Claim but will contend that either Mr Williams or Mr Alwadhi instructed them directly or instructed Walkers or Crowell & Moring to instruct them on behalf of Port Link and the Fund. The Second Plaintiff believes that Global Advocates provided no advice to Port Link or the Fund and acted purely as directed (and Walkers knew that to be the case); but rather that Port Link looked to Walkers for advice.

Admission

60. On 11 July 2018 Global Advocates also submitted an Admission form (the "**Admission**") on behalf of both Port Link and the Port Fund in which they admitted liability for US $56,808,005 and did not request time to pay this sum. The Statement of Truth was signed by Ms Sharon Lakhan of Global Advocates.

Judgment

61. On 12 July 2018 the Investment Management Company filed a Request for Default Judgment for Admissions in the DIFC Proceedings for the Admitted Amount. Port Link and the Port Fund did not take any steps to resist this request.

62. By order dated 25 July 2018 (and amended on 31 July 2018) (the "**Judgment**"/the "**DIFC Judgment"**) the DIFC Court gave judgment on admissions against both Port Link and the Port Fund to the Investment Management Company for the sum of US $56,999,978 (which consisted of the admitted sum of US $56,808,005 and interest at 8% on a compound basis from 9 July 2018): see paragraph 15(a). Further:

(1) At paragraph 12 of the Judgment it was stated that Port Link and the Fund had "agreed to submit to the jurisdiction of the DIFC Courts in specific, clear and express terms".

(2) At paragraph 15(b) Port Link and the Fund were ordered to pay the Investment Management Company's costs, to be assessed if not agreed.

(3) At paragraph 16 the Court also ordered both Port Link and the Fund to pay interest at 9% per annum from the date of judgment to the date of payment.

So far as the Second Plaintiff is aware this judgment involved no independent judicial assessment but was a purely administrative act. The terms of the judgment were prescribed by the parties.

Payment

63. On 2 February 2019, presumably in anticipation of the events pleaded above in the second sentence of paragraph 29, Port Link instructed Noor Bank to pay the Judgment debt to Wellspring and on 7 February 2019 Port Link paid the total sum of US $59,990,461 (being the sum of $56,999,978 together with interest accruing thereon from 25 July 2018) to Wellspring out of the funds which had by now arrived in its account. Port Link gave such instructions to Noor Bank before it had received written notice from the Investment Management Company on 4 February 2019 designating Wellspring as the recipient and payee of the Judgment debt.

64. Neither Port Link nor Walkers disclosed to the limited partners at any time prior to satisfying the DIFC Judgment: (i) the Demand and the ensuing DIFC Proceedings; (ii) its intention to admit the Admitted Amount; (iii) its intention to satisfy the DIFC Judgment by making the Wellspring Payment; (iv) the existence of the conflict of interest faced by Walkers and that no action was being taken to address that conflict; and (v) the fact that Walkers had advised both sides to the dispute in the DIFC Proceedings.

The Investment Management Company: Dissolution

65. On 18 February 2020 the Investment Management Company was placed into voluntary administration and Mr Roland Henry Ayliffe was appointed as the liquidator. On 22 June 2020 the Investment Management Company was dissolved. No notice of these events was given to the limited partners of the Port Fund.

The 2017 Financial Statements

66. On 30 April 2020 BDO Al Nisf & Partners and Moore Stephens Al Bahar & Co, the joint auditors, signed the audit report for the audited financial statements of the Port Fund for the year ended 31 December 2017 (the "**2017 Financial Statements**"). On 30 April 2020 Mr Alwadhi, Mr Childe and Mr Rowland also authorised and approved the 2017 Financial Statements.

67. Note 17 to the 2017 Financial Statements recorded as a subsequent event that the ownership of the Investment Management Company (which had changed its name to EMPEML) was sold during 2018 and that the new owner (which was not identified) was entitled to claim the amount due to the Investment Manager. The note then continued:

> *"On 7 July 2018, EMPEML provided a termination notice to the General Partner under section 12.2(a) of the 28 June 2007 IMA between KGLI Investment Cayman Ltd. [i.e. the Investment Management Company] and the General Partner. The termination notice claimed breaches of the IMA and demanded immediate payment under section 12.5 of the IMA of the unpaid carried interest, unpaid management fees under section 5.1 of the IMA, and applicable interest. On 9 July 2018, EMPEML filed a civil claim in the Dubai International Financial Centre Court of First Instance ("DIFC") (Claim No. CFL-050-2018) against the Fund and the General Partner asserting the same claims, and on 25 July 2018 the DIFC entered a judgment against the defendants in the amount USD 56,999,978 plus interest at 9% per annum until paid. After the Fund's monies were unfrozen in February 2019, the General Partner paid the DIFC judgment, plus applicable interest, in the amount of USD 59,990,461."*

E. Walkers' role and conflict: Overview

68. Based on Walkers' time entries in its invoice dated 17 July 2018 it is apparent that Walkers was involved in directly advising the Investment Management Company, and assisting Clyde & Co, in respect of the DIFC Proceedings on behalf of the Investment Management Company, whilst also purportedly advising Port Link and the Fund in respect of the DIFC Proceedings. When pleading its Defence Walkers is expected to provide precise and full particulars and explanations of the work it did which was the subject of the time entries pleaded above at paragraphs ~~0 0~~ 50-53 (and which the Fund - and hence indirectly the limited partners - paid for).

69. In correspondence sent by Walkers to Ogier (as Cayman attorneys for KPA/PIFSS) dated 14 January 2021 Walkers has contended that it did not give advice to Port Link in relation to the merits of the DIFC Proceedings. This is incorrect, for at least the following reasons:

(1) Walkers knew of the proposed DIFC proceedings from the beginning of July 2018. Indeed Mr Wood recorded in the invoice dated 17 July 2018 that on 1 July 2018 he telephoned both Mr Williams and Clyde & Co "re DIFC proceedings." Mr Petith recorded similar work on that day.

(2) Walkers gave the advice on 2, 3 and 4 July 2018, as pleaded above.

(3) Further, Mr Wood recorded in his time entries in the invoice dated 17 July 2018 that on 9 July 2018 he reviewed the Clyde & Co letters to the Fund and on 10 July 2018 he considered the DIFC Court processes and the requirements for the Fund to admit the claim. Similarly Mr Petith on 10 July 2018 recorded that he reviewed email attachments relating to the DIFC Proceedings and discussed the matter with Mr Wood (see above).

(4) It is inferred that Global Advocates did not give any advice but acted simply on instructions.

70. From at the latest 20 June 2018 Walkers placed themselves in a position of irreconcilable and acute conflict between their duties to the Investment Management Company and their duties to Port Link and the Fund. Walkers must have been aware of that conflict and also must have been aware of the conflict faced by Mr Williams, who was purporting to give instructions to Walkers on behalf of both the Investment Management Company and Port Link/the Fund at a time when their respective interests were wholly incompatible and adversarial. Walkers additionally knew that Mr Williams had a personal interest in extracting money out of the Fund, which would ensure to his personal benefit, under the guise of a spurious claim for Management Fees and Carry (as Walkers knew). Yet they were willing to (and did) assist and connive in his bringing that spurious claim, to the obvious detriment of the Fund and the limited partners. In such circumstances Port Link (as general partner) could not waive the conflict or give informed consent to Walkers' acting for both it and the Investment Management Company. Walkers deliberately preferred the interests of the Investment Management Company and Mr Williams over those of Port Link (as general partner), the Fund and the limited partners.

71. The Plaintiffs note that in its Defence to the claim brought by KPA/PIFSS Walkers have asserted, in the vaguest terms, the existence of a so-called "Common Strategy", being apparently the existence of a "common interest in the taking of steps to (i) prevent the misappropriation of the funds held by Noor Bank in Dubai by the State of Kuwait and/or the Plaintiffs and (ii) secure the release of such funds to Port Link as General Partner" (paragraph 5(b)(ii)). This is inexplicable:

(1) The sole beneficiary of the steps taken in June and July 2018 was the Investment Management Company (and so indirectly Mr Williams), which obtained a judgment against Port Link, as general partner, and the Fund, which it had no entitlement to.

(2) The direct consequence of those steps was that the Fund was burdened with a very substantial judgment together with accruing interest, and ultimately paid

to the Investment Management Company significantly more than it had a right to receive.

(3) The Strategy was not therefore "Common" in any meaningful way. It was a strategy (to which Port Link was party by reason of Mr Williams being its guiding mind) designed to extract money from the Fund for the indirect benefit of, amongst others, Mr Williams, and to the detriment of the limited partners.

(4) Accordingly, at no stage thereafter (so far as the Second Plaintiff is aware) was the DIFC Judgment deployed "in an attempt to prevent the release of the [sums which had been remitted to Noor Bank]…whether formally by an Attachment to [those sums] or informally by using the existence of the same to apply pressure to Noor Bank and/or the Dubai authorities not to give in the State of Kuwait's demands….", in contradiction of the so-called "Judgment Strategy" pleaded by Walkers in the Defence to the KPA/PIFSS claim (at paragraph 43(b)). Indeed the so-called Judgment Strategy on its face makes no sense: the only sums the DIFC Judgment could conceivably protect were the amount of that Judgment itself, and so it could only ever be deployed to benefit the judgment creditor, being the Investment Management Company.

(5) Further, contrary to what is pleaded by Walkers (Defence, paragraph 41), the so-called Common Strategy was not "pursued in accordance with the LPA and in the best interest of [the Fund] and the Limited Partners as a whole."

72. For the avoidance of doubt Port Link could not properly give "informed consent" to the so-called Common or Judgment Strategies even if they existed.

F. Port Link: Breaches of Duty/Trust

(1) Breach of the duty of good faith and loyalty etc

73. In breach of its statutory and equitable duties of good faith and loyalty to the Port Fund (and the other duties pleaded above at paragraphs ~~0 and 0~~ 16 and 17), and/or in breach of its equitable duty of utmost good faith and loyalty (and the other duties pleaded at paragraph ~~0~~ 17) to GRSIA (as one of the limited partners), Port Link made or entered into Resolutions (a) to (c) set out above, and acted upon them.

PARTICULARS

Resolution (a)

(1) As at 11 July 2018 the DIFC Claim was not valid and the Port Fund did not owe the Outstanding Debt (or any part of it) to the Investment Management Company. In particular:

(a) As at 11 July 2018 Port Link had not received the sum of US $496,429,767 into its Noor Bank Account because that sum had been frozen by the Public Prosecutor. Further or alternatively there was a significant risk that Port Link would never receive that sum unless the account was unfrozen.

(b) Accordingly, as at 11 July 2018 the Investment Management Company was, on any view, not entitled to the payment of any Performance Fee under clause 4.3(b) of the LPA or clause 5.2 of the IMA and could not become entitled, in any circumstances, to a Performance Fee until 60 or 90 days after the account had been unfrozen and the sum of US $496,429,767 had been received by Port Link.

(c) Yet further, the Investment Management Company was not entitled to a Performance Fee at all unless and until all of the distributions in clause

4.3(b)(i) and (ii) of the LPA (as mirrored by clause 5.2(d)(i) and (ii) of the IMA) had actually been made to the limited partners. Moreover the Investment Management Company's entitlement could not be calculated until after prior distributions had been made to the limited partners (and hence the amounts of those distributions calculated).

(d) Yet further, to the extent that a Carry may have otherwise been payable to the Investment Management Company pursuant to clause 4.3(b)(iv) of the LPA and clause 5.2(d)(iv) of the IMA, given the terms of clause 4.3(f) of the LPA and clause 6 of the IMA, such amount should not have been paid in circumstances where (i) the Fund had exited all of its investments and (ii) the limited partners had received back less than their Capital Contributions together with an amount equal to 8% per annum (compound interest) thereon from the drawdown of each Capital Contribution to the date such sums were returned.

(e) Yet further, the Investment Management Company was not (and knew it was not) entitled to the payment of a Management Fee under clause 3.7 of the LPA and clause 3.1 of the IMA because the termination of the Fund had taken place on 31 December 2014 and the Fund should have been dissolved under clause 9.1(a).

(f) The purported termination of the IMA contained in the Letter of Claim was invalid and bogus and the letter itself was a sham. The Fund had committed no material breaches of its obligations under the IMA.

(g) Finally, there was no basis for the Investment Management Company's claim for interest because the IMA imposed no obligation upon Port Link to pay interest on unpaid fees to the Investment Management Company and no basis for the claim to recover interest at 8%.

(2) Mr Alwadhi (and Mr Williams) knew that the claims for both a Performance Fee and Management Fee had no merit and the Outstanding Debt (together with interest on it) was not due or valid. In support of this allegation the Plaintiffs will rely on the facts and matters set out in (1) (above) but also upon the following:

(a) Note 7 to the audited financial statements of the Fund for the years ended 31 December 2015 and 31 December 2016 stated that the Investment Management Company was not eligible or entitled to charge a Management Fee after 31 December 2014 and the Investment Management Company had signed both sets of financial statements acknowledging their accuracy.

(b) It is the Plaintiffs' case that as the sole statutory and *de jure* director of Port Link Mr Alwadhi knew and approved those audited financial statements and fully understood that the Investment Management Company was not entitled to the Management Fee claimed in the DIFC Claim.

Resolution (b)

(3) The statements made in the second paragraph 3.1(i) of the Minutes were untrue because Port Link and the Port Fund had not submitted (or purported to submit) to the jurisdiction of the DIFC Court and it was not in the interests of Port Link/the Fund to ratify, confirm, approve and adopt such an action. In particular:

(a) By order dated 26 August 2020 of the Grand Court of the Cayman Islands Port Link was ordered to disclose all written communications from the Investment Management Company to Port Link relating to demand notices and any information and documents pertaining to the DIFC Claim.

(b) However, Port Link (whether acting by Walkers or otherwise) has not disclosed either a letter dated 7 July 2018 (or indeed bearing any other date) from Clyde & Co requesting Port Link and the Fund to submit to the jurisdiction of the DIFC Court or a reply to Clyde & Co from Port Link (whether acting by Walkers or otherwise).

(4) Mr Alwadhi (and Mr Williams) knew that the statements made in the second paragraph 3.1(i) of the Minutes were untrue. In particular, he knew that he had not received or carefully reviewed a letter dated 7 July 2018 from Clyde & Co addressed to Port Link and the Fund requesting them to submit to the jurisdiction of the DIFC Court with respect to claims under the IMA and LPA.

(5) But even if (which is denied) Port Link (whether acting by Walkers or otherwise) had replied to Clyde & Co's letter dated 7 July 2018 purporting to submit to the jurisdiction, it was not in the interests of Port Link/the Fund to ratify, confirm, approve or adopt that action. The IMA contained an exclusive jurisdiction clause by which the parties had irrevocably submitted to the jurisdiction of the Courts of the Cayman Islands and it was not in the interests of Port Link/the Fund to waive its contractual rights under clause 18.2.

(6) Mr Alwadhi (and Mr Williams) knew that it was not in the interests of Port Link/the Fund to ratify, confirm, approve or adopt that action. In support of this allegation the Plaintiffs will rely on the fact that the Minutes did not state either that it was in the interests of Port Link/the Fund to submit to the jurisdiction or that it was in Port Link/the Fund's interests to ratify that action or explain why or what advantage Port Link/the Fund would gain by doing so.

(7) Further, it is implicit in Resolution (b) that Walkers or Global Advocates or some other agent had replied to Clyde & Co purporting to submit to the jurisdiction on behalf of Port Link/the Fund and without their authority. No honest and reasonable director would have ratified conduct of this nature

taken by a legal adviser or other agent without instructions or, alternatively, would have ratified conduct of this nature without an adequate explanation. The Minutes contained no such explanation.

Resolution (c)

(8) Furthermore, it was not in the interests of Port Link/the Fund to admit the DIFC Claim. The DIFC Claim had no prospects of success, the Fund had a good defence and the DIFC Court had no jurisdiction. Further, even if (which is denied) the DIFC Claim had a real prospect of success, it was in the Fund's interests to challenge jurisdiction and defend the claim.

(9) Mr Alwadhi (and Mr Williams) knew that it was not in the interests of Port Link/the Fund to admit the DIFC Claim. It is the Plaintiffs' case that no reasonable general partner would have submitted to the jurisdiction and admitted the claim in full (or at all) in circumstances where Port Link/the Fund was entitled to challenge jurisdiction and had a good defence or, alternatively, a good arguable defence. Moreover by admitting the claim Port Link/the Fund became ostensibly liable under the Judgment to paying interest at 9% on the Judgment debt from the date of the Judgment until payment.

Resolutions (a) to (c)

(10) But even if (which is denied) Mr Alwadhi did not know that the DIFC Claim was not valid and that Port Link/the Fund did not owe the Outstanding Debt to the Investment Management Company and/or that the statements made in the second paragraph 3.1(i) of the Minutes were untrue and/or that it was not in the interests of the Fund for Port Link to make or enter any of Resolutions (a) to (c) (above), then the Plaintiffs will contend that Mr Alwadhi passed those resolutions and signed the Minutes recklessly and not caring whether they were true or false or in the interests of the Fund. It is the Plaintiffs' case that he signed the minutes on the instructions and at the direction of Mr Williams

(who did know the matters pleaded earlier in this sub-paragraph) and in support of this allegation the Plaintiffs will rely upon, amongst other things, the following facts and matters:

(a) Mr Wood took instructions in relation to the preparation of the Minutes from Mr Williams and advised him about its contents: see the time entries set out in paragraph ~~0~~ 50 (above).

(b) Further, the time entries of Mr Wood, Mr Petith and Ms Arch do not record that Walkers provided any information to Mr Alwadhi (including any of the documents referred to in the Minutes themselves) or took any instructions from him or gave him any advice. Indeed they appear to have had no communications whatsoever with Mr Alwadhi. Contrary to resolution (a) it is denied that Mr Alwadhi had the opinion stated.

(c) The Minutes do not record that Mr Alwadhi had received the Memorandum of Advice from Walkers or the 3 or 4 July emails or that he had either read or considered them. If he had done so, Walkers would have recorded this in the Minutes.

Collusive action

(11) Finally, the Plaintiffs will contend that the DIFC Claim was a collusive and sham action in which both the Claimant (the Investment Management Company) and the Defendants (Port Link and the Port Fund) were controlled by Mr Williams and that the purpose of the claim was to enable him to use the Judgment both to disguise or cloak the dishonest misappropriation of US $59,990,461 from the Port Fund and thereby cause loss and damage to the limited partners. Port Link was a party to this dishonest scheme and thereby breached its duties (as pleaded above) to the Fund and the limited partners.

(12) Mr Williams exercised *de facto* control over both the Claimant and the Defendants in the DIFC Claim and gave instructions to Walkers and Clyde & Co on behalf of the Claimant and to Walkers on behalf of the Defendants. It is believed that he and/or his family (at least partially) owned and controlled Wellspring (or the shareholder of Wellspring) to whom the Judgment sum was paid. Accordingly, the Plaintiffs will invite the Court to draw the inference and find that he had the purpose set out in paragraph (11) (above). The outcome was that Mr Williams was enabled to defraud the Fund (and so the limited partners).

(13) The Plaintiffs will also contend that Mr Williams' state of mind and intention to misappropriate these funds should be attributed to Port Link either because he was a shadow director or *de facto* director of the company or because he was an officer or agent with actual or ostensible authority from Port Link to manage or conduct the DIFC Claim on its behalf. In any event it appears that Mr Alwadhi exercised no authority over Port Link, being a mere puppet of Mr Williams, and Mr Williams was its controlling mind.

(2) Breach of Authority

74. In breach of clauses 3.1(a) and/or clause 3.1(b) of the LPA and in breach of its equitable and statutory duty of good faith Port Link exceeded its authority and purported to pass Resolutions (d) and (e) and to give the General Authorisation to Global Advocates to submit to the jurisdiction of the DIFC Court and to file and serve the Admission.

PARTICULARS

(1) Port Link, acting by Mr Alwadhi, made or entered into Resolutions (a) to (f) and gave the General Authorisation in bad faith and for the improper purpose of enabling Mr Williams to use the Judgment of the DIFC Court to disguise or cloak the misappropriation of US $59,990,461 from the Port Fund. The particulars under paragraph ~~0~~ 73(above) are repeated.

(2) Port Link thereafter gave instructions that the jurisdiction of the DIFC Court not be contested and that the claim be admitted in full and did not oppose the entry of judgment against it.

(3) Breach of Trust

75. In breach of trust Port Link transferred the sum of US $59,990,461 (being the Judgment debt plus 9% interest running from the date of the Judgment) to Wellspring out of the Noor Bank Account on 7 February 2019.

PARTICULARS

(1) Port Link had authority to pay or distribute the Port Fund's assets but only in a manner which was consistent with the provisions of the LPA: see clause 3.1(b)(vii) (above).

(2) The payment of US $59,990,461 to Wellspring was unauthorised and inconsistent with the terms of the LPA for the following reasons:

(a) Wellspring had no right or entitlement to the payment of US $59,990,461 (or any sum) out of the Fund. It was not a limited partner and had no interest in the Fund.

(b) Wellspring was not the Investment Manager and was not entitled to the payment of any Management or Performance Fees under the IMA.

(c) It is not admitted that the Investment Management Company had purported to assign the benefit of any Management or Performance Fees to Wellspring or to authorise Wellspring to receive payment of such fees and if Walkers assert that it had done so, they are required to prove these facts.

(d) But even if (which is not admitted) the Investment Management Company had purported to assign the benefit of any Management or Performance Fees to Wellspring or to authorise Wellspring to receive payment of such fees on its behalf, the Investment Management Company was not entitled to payment of $59,990,461 for the reasons set out in the particulars under paragraph ~~0~~ 73 (above).

(3) It is not admitted either that the Investment Management Company had purported to assign the benefit of the Judgment sum to Wellspring or to authorise Wellspring to receive the Judgment sum on its behalf and if Walkers assert that it had purported to do so, they are required to prove these facts.

(4) But even if (which is not admitted) the Investment Management Company had purported to assign the benefit of the Judgment sum to Wellspring or to authorise Wellspring to receive the Judgment sum, the Judgment was and is not binding on GRSIA or Port Link/the Fund for the following reasons:

(a) GRSIA is not bound by the Judgment because it was not a party to the DIFC Claim.

(b) The Port Fund is not bound by the Judgment because the Investment Management Company procured the Judgment by (equitable) fraud or bad faith and through the dishonest collusion of the Investment Management Company and Port Link.

(c) Alternatively, the Resolutions and the Judgment are not binding on the Fund because Mr Alwadhi, to the knowledge of the Investment Management Company, exceeded his authority and himself acted in breach of his duties as director of Port Link. In particular, he breached those duties and exceeded his authority by instructing Global Advocates to submit to the jurisdiction of the DIFC Court and file and serve the

Admission for an improper purpose and knowing that the sums claimed were not due. The particulars under paragraph 74 (above) are repeated.

(d) Accordingly, the DIFC Court had no *in personam* jurisdiction to order the Port Fund to pay the Judgment sum to the Investment Management Company (or, for that matter, to Wellspring) and the Judgment is not enforceable in the Courts of the Cayman Islands.

G. Walkers: Breaches of Duty

(1) Negligence

76. Negligently and in breach of the express and implied terms of their retainer, Walkers failed to act with the skill and care to be expected of a reasonably competent attorney qualified under the laws of the Cayman Islands and professing expertise in commercial dispute resolution and offshore funds. (For the avoidance of doubt the Plaintiffs' primary claim, as pleaded below in the heading *Breach of Fiduciary Duty*, is that Walkers were aware that the various sums claimed and allegations made in the DIFC Claim were spurious. The allegation of negligence is made in the alternative.)

PARTICULARS

The DIFC Claim

(1) In the letter to Ogier dated 14 January 2021 Walkers asserted that the DIFC Claim was governed by the laws of the DIFC, that Port Link had instructed separate DIFC legal counsel to advise in relation to the proceedings and that they did not provide DIFC law advice.

(2) If (which is denied) Walkers took the view that it was not within the scope of their retainer to give advice in relation to the DIFC Claim because it was

governed by DIFC law, then Walkers were negligent to do so. They knew or ought to have known that the DIFC Claim was governed by the law of the Cayman Islands and that it was their duty to advise Port Link in its capacity as the general partner of the Port Fund, and the Port Fund, on the merits of the claim.

(3) In support of this allegation the Plaintiffs will rely on the fact that the Claim Form stated in terms that the law governing the dispute was the law of the Cayman Islands (which in any event was obvious). Further, Mr Petith's time entries record that he reviewed both the IMA and the LPA, and considered and discussed with Mr Wood the DIFC Claim; and Mr Wood's time entries record that he considered the DIFC Court processes and the requirements for the Port Fund to admit the claim.

The Memorandum of Advice

(4) In the Memorandum of Advice Walkers gave or purported to give advice to the board of directors of Port Link as general partner of the Fund. The Plaintiffs will contend that Walkers sent the Memorandum of Advice to Mr Williams (in his capacity as a shadow or *de facto* director of Port Link). But it is not admitted that Walkers provided a copy of it to Mr Alwadhi and their time entries contain no record that they sent any emails to (or otherwise communicated with) him.

The Performance Fee

(5) But in any event the advice which Walkers gave (or purported to give) to the directors of Port Link in the Memorandum of Advice was negligent for the following reasons:

(a) In paragraph 5 Walkers stated that they understood that the Fund had received the proceeds from the relevant exited investments in the bank account of Port Link (which were currently frozen). It is not clear on what

basis they asserted this supposed understanding. But they failed to take any or any reasonable care to investigate these facts and to consider what effect they had on the Investment Management Company's claim.

(b) If they had done so, they would have known that Port Link had not yet received the sum of US $496,429,767 (or any sum) into its Noor Bank Account and that there was a significant risk that it might never receive that sum.

(c) If they had appreciated this (as they ought to have done), they would not have advised Port Link that the Investment Management Company had the right to bring a claim for breach of clause 5.2(d) of the IMA because (so Walkers wrongly stated) Port Link had failed to make distributions from exited investments within 60 calendar days from receipt of the proceeds from such exited investments.

(d) Walkers failed to advise that, on the proper construction of clause 4.3 of the LPA and clause 5.2 of the IMA the Investment Management Company had no present entitlement to be paid a Performance Fee and that any Performance Fee could only be payable or calculated after payments had been calculated and made to the limited partners in accordance with waterfall provisions contained in those clauses.

(e) Alternatively, even if they had been unable to satisfy themselves that the effect of freezing the account was to prevent Port Link from receiving the funds, or even if their professed understanding were correct, they ought to have appreciated that the freezing of the funds in the Noor Bank Account (if that were the case, which it was not, because, as should have been obvious to Walkers, Port Link had not in fact received the funds at all) gave a rise to an arguable defence to any claim by the Investment Management Company with real prospects of success.

(f) Walkers failed to advise as to the provisions of clause 4.3(f) of the LPA (and the mirror provisions of the IMA) which would in any event prevent, or arguably prevent, the Investment Management Company from an entitlement to any or all Carry. Walkers further failed to interrogate the sums claimed by way of Performance Fee and advise that, putting aside all other points, they were mathematically inexplicable.

(g) But in any event, they failed to advise the Fund that not only was the IMA governed by the law of the Cayman Islands but that clause 18.2 contained an exclusive jurisdiction clause in which the parties had irrevocably agreed to submit to the jurisdiction of the Courts of the Cayman Islands.

(h) Instead of providing advice for the benefit of its client Port Link which, as Walkers knew, was the trustee of assets for the Fund, Walkers gave advice concerning ways in which claims could be brought against its own client. This was wholly inappropriate.

(6) In the premises, the advice which Walkers gave in the Memorandum of Advice was not only negligent but wrong and they ought to have advised Port Link/the Fund that the Investment Management Company's claim for a Performance Fee was (at the least) premature and had no reasonable prospect of success or, alternatively, that Port Link/the Fund had a real prospect of defending the claim and in any event should challenge the jurisdiction of the DIFC Court under clause 18.2 of the IMA.

The Management Fee

(7) Further, Walkers failed to give any or any adequate advice to the Port Fund about the claim for the Management Fee. The advice which they gave in the 4 July email was wrong and negligent for the following reasons:

(a) In the 3 July email Mr Petith advised Mr Williams that Walkers did not consider that the Investment Management Company could reasonably continue to claim the Management Fee. This advice was correct (though, as pleaded above, the use of the phrase "continue to" is not understood).

(b) However, in the 4 July email Mr Petith advised Mr Williams that there were grounds to justify the payment of the Management Fee. Mr Petith had no or no reasonable basis for changing his earlier advice to justify the payment of the Management Fee. There were no grounds to justify the payment of the Management Fee and the grounds identified by Mr Petith were (obviously) spurious.

(c) In particular, the reason which Mr Petith identified in the email, namely, that if Port Link was "comfortable" that the Investment Management Company had continued to provide investment management services, did not support a claim for a Management Fee under the IMA. The IMA prescribed the circumstances in which the Management Fee was payable.

(d) Further, although Mr Petith reviewed the Fund documents in respect of the Management Fee, he failed to consider adequately or at all the audited financial statements of the Port Fund for the years ended 31 December 2015 and 31 December 2016. If he had done so, he would have appreciated that no Management Fees had been charged since 31 December 2014 and that the Investment Management Company had accepted that it was not eligible or entitled to Management Fees since that date. Indeed Walkers knew (because that fact was recorded in the 4 July email) that no Management Fee had been charged since the end of 2014 and must or should have known that that was because it was accepted by both parties that it was not payable.

(e) Further it was wholly inappropriate for Walkers to be seeking to devise arguments in favour of its client making payments to a third party. As Walkers ought to have known, advising as to how Port Link "could seek to justify the payment of the Management Fee" (sic) was inappropriate.

(8) In the premises, the advice which Walkers gave to Port Link in the 4 July email was not only negligent but wrong and they ought to have advised the Fund that the Investment Management Company's claim for Management Fees after 31 December 2014 had no reasonable prospect of success or, alternatively, that Port Link had a real prospect of defending that claim and in any event should challenge the jurisdiction of the DIFC Court under clause 18.2 of the IMA.

Repudiation

(9) Walkers should also have advised Port Link/the Fund that there was a strong argument that the Investment Management Company had repudiated the IMA by purporting to terminate it in Clyde & Co's letter dated 7 July 2018 and that the Fund was discharged from performing any further obligations to the Investment Management Company under it.

(10) Further Walkers ought to have advised Port Link/the Fund that the purported termination contained in the Letter of Claim was misconceived and invalid, alternatively arguably so. They failed to do so.

Interest

(11) Walkers should also have advised Port Link that the Investment Management Company had no entitlement to claim interest (whether at 8% or at all) under the IMA and that it would not recover interest at 8% per annum in any event. They failed to do so.

Jurisdiction

(12) Finally, and in any event, Walkers failed to draw Port Link/the Fund's attention to clause 18.2 of the IMA and advise it that it was entitled to (and should) challenge the jurisdiction of the DIFC Court under the RDC or that if it failed to acknowledge service or submit to the jurisdiction, no judgment of the DIFC Court would be binding upon it.

(13) It is the Plaintiffs' case that the RDC were freely available online and that Walkers were or should have been familiar with them. But even if it was not within the scope of their retainer to give advice in relation to a jurisdiction challenge, they ought to have advised Port Link to take local advice immediately on whether to challenge the jurisdiction of the Investment Management Company's claim.

General

(14) Walkers should have advised Port Link/the Fund that it should and indeed was obliged to contest jurisdiction and to otherwise defend the DIFC Claim (without waiving the objection to jurisdiction) and otherwise defend any claims the Investment Management Company might advance in some other jurisdiction. They failed to do so.

(15) Walkers should additionally have declined to receive instructions from Mr Williams on behalf of Port Link, given his conflict, and notified the limited partners of the existence of the proceedings and Port Link's proposed course of action and that they were inhibited or potentially inhibited from giving disinterested and conflict-free advice by reason of the conflict they faced, as identified above and additionally in view of the fact that Mr Williams, who was acting for Port Link, was clearly conflicted and had a personal interest in causing the admission by Port Link/the Fund of a spurious or dubious and in any event exaggerated claim. They failed to do so.

(2) Breach of Fiduciary Duty

77. Further or alternatively in breach of their fiduciary duties to Port Link (as general partner)/the Fund, Walkers consciously and deliberately preferred the interests of the Investment Management Company and/or Mr Williams over the interests of the Port Fund and Port Link in its capacity as general partner of the Fund, being their clients, who they thereby failed to properly advise and represent, in breach of their duty of loyalty.

PARTICULARS

(1) Throughout the period between (at the latest) 20 June 2018 and 12 July 2018 Walkers acted for both Port Link/the Fund and the Investment Management Company. Moreover, they took instructions from Mr Williams on behalf of both Port Link (as the general partner of the Fund) and on behalf of the Investment Management Company.

(2) From 16 June 2018 (at the very latest) when the Investment Management Company demanded payment of the Performance Fee there was, as Walkers knew, an actual, obvious and non-waivable conflict between the interests of the Investment Management Company and the interests of the Port Fund. It was in the Investment Management Company's interests to pursue the claim for the Performance Fee successfully and in the Port Fund's interests to challenge jurisdiction and to otherwise defend it. Similarly in relation to the Management Fee.

(3) Walkers knew that there was an actual conflict between the interests of the Investment Management Company and the interests of the Fund. In support or this allegation the Plaintiffs will rely upon, amongst others, the following facts and matters:

(a) It was obvious to both Mr Wood and Mr Petith that there must be an actual conflict between the interests of a Claimant and a Defendant in litigation or between a party who is threatening to issue proceedings and the party against whom that threat is made. Further it was obvious to both that Mr Williams, given his interest in the Investment Management Company, and the fact that he was representing it, was himself conflicted and could not properly give instructions on behalf of Port Link/the Fund.

(b) Further Rule 1.12 of the Code of Conduct for Cayman Islands Attorneys-at-Law (the "**Code**") provided that: "An attorney shall not act for more than one party in the same transaction or matter without the prior informed consent of both parties."

(c) Rule 1.13 of the Code also provided that as soon as he or she became aware of a conflict, an attorney should forthwith take the following steps: (i) advise all clients involved of the areas of conflict or potential conflict; (ii) advise the clients involved that they should take independent advice as may be appropriate; and (iii) decline to act further for any party in the matter where so acting would or would be likely to disadvantage any of the clients involved unless the parties had given their prior informed consent to the attorney continuing to act.

(4) Accordingly, Walkers should have declined to act for the Investment Management Company (alternatively both parties) on and after the service of the Demand on 16 June 2018. However, they continued to act for both parties and to take instructions from Mr Williams on behalf of both of them from that date and until (at least) 18 September 2018.

(5) The continuing conflict between the interests of the Investment Management Company and interests of Port Link (as general partner)/the Fund inhibited Walkers' duty of single-minded loyalty to Port Link (as general partner)/the

Fund and its ability to give reasonable and accurate advice. In consequence, Walkers consciously and deliberately preferred the interests of the Investment Management Company and/or the interests of Mr Williams personally over the interests of Port Link as general partner and the Port Fund by taking the steps and giving the advice pleaded above. In support of this allegation the Plaintiffs will rely upon the following facts and matters:

(a) The content and tone of the Memorandum of Advice and Walkers' 3 and 4 July emails (and the change of advice between those two emails after a telephone conversation with Mr Williams as to which see below) demonstrate that Walkers were concerned to justify the Investment Management Company's claim, so as to benefit the Investment Management Company and Mr Williams, rather than to defend it, so as to benefit the Fund.

(b) Further, Walkers' time entries show that on 3 and 4 July 2018 Mr Wood spoke to Mr Williams by telephone about the Investment Management Company's fees and that Mr Petith drafted the 4 July email incorporating Mr Wood's comments. The Plaintiffs will invite the Court to find that Walkers were persuaded by Mr Williams to change their advice in relation to the Management Fee so as to benefit the Investment Management Company and Mr Williams and provide a false justification for the admission of the claim.

(c) Mr Wood's time entry for 10 July 2018 also records: "Considering DIFC processes; requirements for TPF to admit claim". The Plaintiffs will rely on this entry as demonstrating that Mr Wood was concerned to prefer the Investment Management Company's interests by ensuring that the Fund admitted the DIFC Claim as soon as possible, notwithstanding that the Claim was, as Walkers knew, a sham and collusive action which claimed sums which were not due, claimed an interest rate which was

not payable, and would lead to a judgment carrying interest at 9% thereon, to the obvious detriment of the Fund and its limited partners.

(d) The Plaintiffs will also rely upon Walkers' failure to advise the Port Fund to challenge the jurisdiction or to protest when Mr Williams instructed them that the Fund intended to submit to the jurisdiction and admit the claim. The DIFC Court had no jurisdiction to hear the DIFC Claim unless Port Link and the Port Fund voluntarily submitted to the jurisdiction and, in the circumstances, no reasonable attorney would have advised or permitted any client to submit to the jurisdiction, acknowledge service and admit the DIFC Claim.

(e) Walkers drafted and advised on the Minutes and the Resolutions despite their containing material falsities and involving Port Link in breaches of its duties to the Fund, as pleaded above. These Minutes and Resolutions were prepared by Walkers even though they knew that: (i) they had given no advice that the Demand was valid; and (ii) there was no honest, proper or reasonable basis on which Mr Alwadhi could have formed the view that the Demand was valid or that the submission to the jurisdiction of the DIFC Court and the admission of the claim was in the best interests of the Fund and the limited partners.

78. The Plaintiffs will say that a proper discharge of its duties would have involved Walkers declining to act for the Investment Management Company (alternatively both parties), declining to receive instructions from Mr Williams on behalf of Port Link/the Fund (in view of Mr Williams' own conflict and the obvious risk that Mr Williams was actuated by his own personal interest), giving the advice set out above in the *Negligence* section, and informing the limited partners of the existence of the claim and Walkers' conflict and Mr Williams' conflict. Despite knowing that the claims advanced were spurious, and should be defended, Walkers were inhibited from taking these steps because of their own conflict and their preferring the interests of

the Investment Management Company and Mr Williams over those of their clients, Port Link (as general partner) and the Fund.

(3) Dishonest Assistance

79. Further or alternatively Walkers dishonestly assisted Port Link to commit breaches of the statutory and equitable duties of good faith etc which it owed to the Port Fund (as pleaded above at paragraphs ~~0 and 0~~ 16 and 17) and the breach of trust set out above. Walkers also dishonestly assisted Port Link to commit breaches of the equitable duty of utmost good faith (and the other duties pleaded above) which it owed to GRSIA (and the other limited partners).

PARTICULARS

The Trust

(1) Port Link owed statutory and equitable duties of good faith etc to the Port Fund. It also owed equitable duties of good faith etc to each of the limited partners including GRSIA. It also held the funds in the Noor Bank Account (once they were received) on trust for the Port Fund pursuant to section 16(1) of the ELP Act.

Breach of Duty and Trust

(2) In breach of those statutory and equitable duties Port Link passed the Resolutions and entered into the General Authorisation, and so agreed to the entry of judgment against it and the Fund; and in breach of trust it made the payment of US $59,990,461 to Wellspring. The Plaintiffs will refer generally to Section F. above.

Assistance

(3) Walkers assisted Mr Alwadhi as the sole statutory and *de jure* director of Port Link and Mr Williams as a shadow or *de facto* director of Port Link to commit those breaches by preparing the Minutes and the Resolutions and/or by giving the advice set out in the Memorandum of Advice and the 3 and 4 July emails and/or by assisting in the process whereby claims were mounted and judgment was obtained against Port Link and the Fund.

(4) In particular, Mr Wood's time entries for 10 July 2018 record that he spoke to Mr Williams about the Resolutions, met Ms Arch to discuss them and then reviewed them before speaking to Mr Williams again and that he on the same day considered the DIFC Court processes and the requirements for admitting the claim. The Plaintiffs will invite the Court to find that on that day Mr Williams instructed Mr Wood that the Port Fund intended to admit the claim and to prepare the Resolutions to give effect to that intention and to otherwise assist in the process of judgment being obtained against the Fund.

Dishonesty

(5) Walkers knew that Mr Williams was acting for both the Investment Management Company and Port Link (as general partner)/the Port Fund and that there was an actual conflict between their interests. They also knew that they could and should not continue to act for both parties on his instructions since an actual conflict of interest had arisen.

(6) Walkers also knew that the DIFC Claim was a collusive and sham action in that Mr Williams was giving instructions to the attorneys acting for both parties. In support of this allegation the Plaintiffs will rely, amongst other things, upon the following facts and matters:

(a) Mr Wood's time entries for 20 June 2018 record that he spoke to Mr Williams and emailed Clyde & Co in relation to "authorised signatory". The Plaintiffs will ask the Court to find that on that day Mr Williams instructed Mr Wood that he would be acting as the authorised signatory of the Investment Management Company and to inform Clyde & Co.

(b) Ms Arch's time entries also record that on 20 and 21 June 2018 she drafted resolutions for the Investment Management Company to appoint Mr Williams as its authorised signatory and assisted Clyde & Co to comply with its KYC checks.

(c) Mr Wood's time entries for 1 July 2018 record that he spoke by telephone to Mr Williams and to Clyde & Co "re DIFC proceedings". Mr Petith's time entries for 1 July 2018 also record that he prepared for the call with Clyde & Co, discussed it with Mr Wood after the call and then carried out a detailed review of the LPA and IMA "in respect of the DIFC Proceedings being pursued by the Investment Manager".

(d) However, as at 1 July 2018 Clyde & Co had not sent the Letter of Claim or issued and served the Claim Form and there were no such proceedings in existence. The Plaintiffs will invite the Court to find that Mr Williams instructed Mr Wood to discuss the Investment Management Company's claim with Clyde & Co and assist in its formulation in advance of the issue of proceedings.

(e) The Plaintiffs will also invite the Court to draw the inference that in the course of this call with Clyde & Co Mr Wood and Mr Petith must have informed Clyde & Co that Port Link and the Port Fund would agree to submit to the jurisdiction of the DIFC Court and/or to admit the DIFC Claim.

(7) Finally, from 7 July 2018 (at the latest, and probably by late June 2018) Walkers either knew or suspected that Mr Williams was using the DIFC Claim as a cloak or disguise for the misappropriation of funds from the Port Fund, to use the Judgment to enforce against the frozen funds for the benefit of the Investment Management Company and Mr Williams personally, and then to cover his tracks. In support of this allegation the Plaintiffs will rely upon the following facts and matters:

(a) Walkers knew that there was no connection between the Investment Management Company's claims for Management and Performance Fees against the Port Fund and the DIFC Court and that both parties had irrevocably agreed to submit any dispute to the jurisdiction of the Courts of the Cayman Islands.

(b) They also knew that the funds deriving from BDO Trust had been frozen and referred to this fact in both the Memorandum of Advice and the 4 July email.

(c) They also knew that the only plausible reason for Mr Williams to wish to issue the DIFC Claim in the DIFC Court was to attempt to enforce it against the frozen funds.

(d) They also knew that there was no need for the Investment Management Company to issue proceedings (whether in the DIFC Court or at all) because Mr Williams controlled and directed both the Investment Management Company and Port Link and either he or Mr Alwadhi could have directed Port Link to pay the Investment Management Company any Management or Performance Fees and interest thereon to which it was genuinely entitled without legal action.

(e) They knew that after the service of the Demand on 16 June 2018 the Investment Management Company had changed its name to EMPEML:

see the time entries pleaded at paragraphs ~~0~~ 50(4), ~~0~~ 50(6), ~~0~~ 53(3) and ~~0~~ 53(5) (above).

(f) They knew that the shareholders of the Investment Management Company were proposing to sell or assign their shares to a third party or parties and then terminate the IMA: see the time entries pleaded at paragraphs ~~0~~ 50(4) to (7) (above).

(g) But they also knew that there was to be no change of control of the Investment Management Company. In support of this allegation the Plaintiffs will rely upon the fact that Ms Lazareva remained the sole director of the Investment Management Company until 4 February 2019 and that their time entries contain no suggestion that there was to be a change of control.

(8) For all these reasons, therefore, the Plaintiffs will contend that Mr Wood and/or Mr Petith knew that Mr Williams was involved in an elaborate scheme to misappropriate very substantial funds from the Port Fund, to use the Judgment as a means of enforcement against the frozen funds and then to cover his tracks, and that they willingly gave their support to that scheme knowing that the Judgment would be and was a sham judgment in relation to a spurious claim which should have been defended and that its likely consequence would be substantial loss to the Fund and the limited partners.

H. Causation

(1) Negligence

80. As a consequence of Walkers' negligence and breach of contract, the Port Fund has suffered loss and damage.

PARTICULARS

(1) If Walkers had not given negligent and wrong advice but had given the advice which they ought to have done, then it is likely, alternatively there is a real and substantial chance, that the Investment Management Company would not have commenced the DIFC Claim and/or Port Link would not have agreed to submit to the jurisdiction of the DIFC Court and admit liability; and in any event the Judgment would not have been obtained.

(2) It is the Plaintiffs' case that it is likely, alternatively there is a real and substantial chance, that Mr Williams and Mr Alwadhi would not have acted in the way they did because they would not have refused to follow Walkers' advice (in the terms it should have been given) and in any event no lawyer properly instructed would have agreed to admit the claim or submit to the jurisdiction of the DIFC Court; and moreover Mr Williams and Mr Alwadhi would not have been prepared to take the risk that the limited partners and the auditors of the Port Fund would investigate and challenge the DIFC Claim and/or any payment to Wellspring; and in any event the limited partners would have intervened to stop the steps which Mr Williams and Mr Alwadhi caused to be taken to divest the Fund of its assets. As it was, the auditors accepted that the claim was genuine in note 17 to the 2017 Financial Statements.

(3) Moreover Walkers would have informed the limited partners (if Port Link declined to do so) of the proceedings and those limited partners would have ensured that they were resisted.

(4) In the circumstances it is the Plaintiffs' case that it is likely, alternatively there is a real and substantial chance, that Port Link would not have paid the sum of US $59,990,461 to Wellspring on 7 February 2019.

(2) Breach of fiduciary duty

81. Further or alternatively as a consequence of Walkers' breaches of fiduciary duty, the Port Fund has also suffered loss and damage.

PARTICULARS

(1) At the latest on or soon after 16 June 2018 Walkers became aware that there was an actual conflict between the interests of the Investment Management Company and the Port Fund and that there was a conflict between Mr Williams' duty as an agent or authorised signatory (and part owner) of the Investment Management Company and his duty as an officer or shadow or *de facto* director of Port Link and agent of the Fund.

(2) Accordingly, Walkers ought to have advised Mr Williams and Mr Alwadhi of this conflict of interest and that the Port Fund ought to take independent advice in relation to the Cayman law issues arising from the DIFC Claim. They should also have declined to act for the Investment Management Company, alternatively both parties. They failed to do so. Further Walkers ought to have given the advice identified above, but were inhibited by their conflict from doing so.

(3) It is the Plaintiffs' case that if Walkers had given this advice, Mr Williams would not have instructed Clyde & Co to send the Letter of Claim or issue the DIFC Claim and Mr Alwadhi would not have passed the Resolutions or given the General Authorisation to Global Advocates. They would not have done so because they would not have felt able to act counter to legal advice and in any event for fear that Walkers would have blown the whistle to the auditors or the limited partners (or a relevant authority) in relation to their fraudulent scheme.

(4) Further or alternatively it was Walkers' duty to report the existence of the conflict of interest and the reasons for the conflict, and the fraudulent scheme,

to the Port Fund as their client. Given that Port Link (as the Fund's general partner) had no directors apart from Mr Alwadhi and/or Mr Williams and no independent directors, Walkers ought to have reported the existence of the conflict, and the fraudulent scheme, and the reasons for it to the auditors and to the limited partners.

(5) If they had done so, the limited partners would have demanded true and full information regarding the DIFC Claim from both Port Link and Walkers. Upon receipt of that information, Mr Williams's scheme would have been exposed and abandoned or the limited partners would have sought relevant undertakings and if necessary applied for and obtained an interim injunction restraining Port Link from making any payment out of the Noor Bank Account to the Investment Management Company or any payee designated by or on behalf of the Investment Management Company.

(6) The limited partners would also have agreed and resolved that the Port Fund should be voluntarily wound up pursuant to section 36 of the ELP Act on the grounds that the term of the Fund had come to an end. Upon appointment the liquidator would have taken immediate steps to defend the DIFC Claim and/or to set aside the Judgment and withdraw the Admission.

(7) Moreover, the DIFC Court would have set aside the Judgment and permitted the liquidator to challenge jurisdiction on the grounds that Global Advocates had made the admission without authority and that the Judgment had been obtained by fraud or bad faith.

(8) Accordingly, if Walkers had not committed the breaches of fiduciary duty (above), Port Link would not have made the payment of US $59,990,461 to Wellspring out of the funds held in the Noor Bank Account and these funds (alternatively a portion of these funds) would have been distributed to the limited partners on the winding up and dissolution of the Fund.

(3) Dishonest Assistance

82. Further or alternatively Walkers gave more than minimal assistance to Port Link in committing the breaches of their statutory and equitable duties of good faith and the breach of trust set out above. The Memorandum of Advice and the Resolutions disguised the fact that Mr Williams was involved in an elaborate scheme to misappropriate US $59,990,461 from the Port Fund and gave the impression that the board of directors of Port Link had taken a *bona fide* decision to submit to the jurisdiction of the DIFC Court and admit the DIFC Claim in the interests of the Fund.

83. In support of this allegation the Plaintiffs will rely upon note 17 to the 2017 Financial Statements in which Mr Alwadhi and the other directors of Port Link presented the DIFC Claim and Judgment as genuine and the auditors gave an unqualified auditors' report confirming that those statements fairly presented the financial position of the Fund in all material respects.

I. Loss and Damage

(1) Equitable Compensation

84. Accordingly, the Port Fund is entitled to equitable compensation for breach of fiduciary duty or, alternatively, dishonest assistance. Further or alternatively, as a limited partner in the Fund GRSIA is entitled to equitable compensation.

85. Further or alternatively GRSIA is entitled to recover equitable compensation for Walkers' dishonest assistance in the breaches which Port Link committed of its equitable duty of the utmost good faith to it.

86. The Plaintiffs will also claim as equitable compensation interest on the sums due to them from 7 February 2019 until the date of payment at a rate suitable or appropriate for an investment in the Fund and compounded with rests at suitable or appropriate intervals.

(2) Damages

87. Alternatively, the Plaintiffs will claim damages at common law to compensate the Port Fund for the lost opportunity to prevent Port Link making the payment of US $59,990,461 to Wellspring on 7 February 2019.

88. The Plaintiffs will also claim interest as damages on the amount to which they are found to be entitled from 7 February 2019 until the date of payment at a rate suitable or appropriate for an investment in the Fund and compounded with rests at suitable or appropriate intervals.

J. Interest

89. The Plaintiffs will also claim interest at such rate or rates and for such period or periods and whether on a compound or simple basis as the Court considers fit either pursuant to its equitable jurisdiction or pursuant to section 34 of the Judicature Act (2021 Revision).

AND THE PLAINTIFFS CLAIM:

(1) Equitable compensation for breach of fiduciary duty and/or dishonest assistance, to be assessed;
(2) Damages for breach of contract and/or negligence, to be assessed;
(3) Interest in equity and/or pursuant to section 34 of the Judicature Act (2021 Revision) as set out above;
(4) Further or other relief; and
(5) Costs.

Dated this 30th day of December 2021
Amended 3rd day of February 2022

Travers Thorp Alberga

TRAVERS THORP ALBERGA
Attorneys for the Plaintiffs

This **AMENDED** WRIT OF SUMMONS was filed by Travers Thorp Alberga, Attorneys-at-Law for the Plaintiffs, whose address for service is PO Box 472, Harbour Place, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-005)

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

1 Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.

2 For the purpose of calculating the period of 14 days for acknowledging service on the Defendant, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.

3 Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4 Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition of paragraph 1 of the description "Partner in the firm of _____" after his name.

5 Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as _____" after his name.

6 Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.

7 Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.

8 A Defendant acting in person may obtain help in completing the form at the Courts Office.

This **AMENDED WRIT OF SUMMONS** was filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address is 3rd Floor, Harbour Place, PO Box 472, Grand Cayman KY1-1107, Cayman Islands (Ref: ALP/G0787-005)

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION **CAUSE NO. FSD. OF 2021 ( )**

BETWEEN:

(1) THE PORT FUND L.P.

(2) GENERAL RETIREMENT AND SOCIAL INSURANCE AUTHORITY

Plaintiffs

AND:

WALKERS (DUBAI) LIMITED LIABILITY PARTNERSHIP

Defendant

ACKNOWLEDGMENT OF SERVICE
OF AMENDED WRIT OF SUMMONS

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

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

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

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

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

☐ **yes** **no** ☐

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** ☐

This **AMENDED WRIT OF SUMMONS** was filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address is 3rd Floor, Harbour Place, PO Box 472, Grand Cayman KY1-1107, Cayman Islands (Ref: ALP/G0787-005)

Service of the Amended Writ of Summons is acknowledged accordingly.

_____

Attorneys-at-law for the Defendant
Address for service:

Please complete overleaf

This **AMENDED WRIT OF SUMMONS** was filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address for service is Harbour Place, PO Box 472, Grand Cayman KY1-1106, Cayman Islands (Ref: ALP/G0787-005)

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.

Travers Thorp Alberga
PO Box 472
2nd Floor Harbour Place
103 South Church Street
Grand Cayman, KY1-1106
CAYMAN ISLANDS
(Ref: ALP/G0787-005)

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

This **AMENDED WRIT OF SUMMONS** was filed by Travers Thorp Alberga, attorneys for the Plaintiffs, whose address is 2nd Floor Harbour Place, PO Box 472, Grand Cayman, KY1-1106, Cayman Islands (Ref: ALP/G0787-005).