



COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 183 OF 2024 (JAJ)

IN THE MATTER OF SECTION 147 OF THE COMPANIES ACT (2023 REVISION)

BETWEEN

(1) SIMON CONWAY, ANTHONY MANTON AND MOHAMMED FARZADI AS JOINT  
OFFICIAL LIQUIDATORS OF  
ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

(2) ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

Plaintiffs

AND

AIR ARABIA PJSC

Defendant

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WRIT OF SUMMONS

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TO: Air Arabia PJSC of Air Arabia Head Office, Building A1, Sharjah International Airport, P.O. Box 132, United Arab Emirates

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiffs in respect of the claim set out on the next page.

Within such later time for writs served out of the jurisdiction or where otherwise extended (see Order 12, r 5) after the service of this Writ on you, counting the day of service, you must either satisfy the

claim or return to the Court Office, P.O. Box 495G, George Town, Grand Cayman, the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

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

Issued this 14th day of June 2024.

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

Dated this 14th day of June 2024



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CAREY OLSEN  
Attorneys-at-Law for the Plaintiffs

This WRIT was issued by Carey Olsen, Attorneys for the Plaintiffs, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands, KY1-1001 (Ref: PS/KD/1066200.0007).

**IMPORTANT**

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

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD OF 2024

IN THE MATTER OF SECTION 147 OF THE COMPANIES ACT (2023 REVISION)

BETWEEN

(3) SIMON CONWAY, ANTHONY MANTON AND MOHAMMED FARZADI AS JOINT  
OFFICIAL LIQUIDATORS OF  
ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

(4) ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

Plaintiffs

AND

AIR ARABIA PJSC

Defendant

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STATEMENT OF CLAIM

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**A. Introduction**

1. Section 147(1) of the Companies Act vests in the liquidators of a company the right to apply to the Court for a declaration under section 147 if, in the course of the winding up of that company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose.
2. Pursuant to section 147(2) of the Companies Act, the Court may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in section 147(1) are liable to make such contributions, if any, to the company's assets as the Court thinks proper.
3. As more fully set out below, by this Statement of Claim the First Plaintiffs seek a declaration that the Defendant is liable to make a contribution to the Second Plaintiff's assets, as the Defendant

was knowingly a party to the Second Plaintiff's business being carried on with intent to defraud creditors and/or for a fraudulent purpose.

4. In addition or in the alternative, the Second Plaintiff brings a claim in dishonest assistance against the Defendant.

#### **B. Abraaj Holdings and related entities and funds**

5. Abraaj Holdings (formerly known as Abraaj Capital Holdings Limited) (the "**Company**" or "**AH**") was incorporated in the Cayman Islands on 1 September 2006. At all times relevant to these proceedings (from 3 March 2013 to 18 June 2018, being the "**Relevant Period**") the Company served as the ultimate holding company for the Abraaj group of companies (the "**Abraaj Group**"). The Abraaj Group was founded by Arif Naqvi in 2002. The Abraaj Group carried on business as a private equity firm specialising in emerging markets.
6. On 18 June 2018, the Company was placed into provisional liquidation by order of the Grand Court of the Cayman Islands, and Messrs Simon Conway, Michael Jervis and Mohammed Farzadi were appointed as joint provisional liquidators of the Company.
7. On 11 September 2019, the Company was ordered to be wound up and placed in official liquidation under section 95 of the Companies Law (2018 Revision) (as revised, the "**Companies Act**"). Messrs Conway, Jervis and Farzadi were at that time appointed as joint official liquidators of the Company (the "**JOLs**"). On 15 February 2024, following the passing of Mr Jervis, Mr Anthony Manton was appointed as an additional JOL.
8. The Abraaj Group comprised a number of private equity funds (the "**Abraaj Funds**") and companies which acted individually and/or collectively as sponsor, manager and investor in the Abraaj Funds and their operational subsidiaries.
9. The Abraaj Funds included:
  - 9.1. The Abraaj Growth Markets Health Fund L.P., now known as GHF Fund L.P., an exempted limited partnership domiciled in the Cayman Islands (the "**Healthcare Fund**").
  - 9.2. Abraaj Private Equity Fund IV L.P., an exempted limited partnership domiciled in the Cayman Islands (formerly known as Abraaj Buyout Fund IV L.P. and now known as Neoma Private Equity Fund IV L.P.) ("**APEF IV**").

- 9.3. The Infrastructure and Growth Capital Fund, an exempted limited partnership domiciled in the Cayman Islands ("**IGCF**").
10. The main investment management entity within the Abraaj Group was Abraaj Investment Management Limited (in Official Liquidation) ("**AIML**") (formerly known as Abraaj Capital (Cayman) Limited). AIML acted as investment manager for over thirty of the Abraaj Funds. AIML was incorporated in the Cayman Islands on 19 August 1998, and was a wholly owned subsidiary of the Company throughout the Relevant Period. On 18 June 2018, AIML was placed into provisional liquidation by order of the Grand Court of the Cayman Islands. On 11 September 2019, AIML was ordered to be wound up and placed in official liquidation.
11. As further particularised below, the Company was able to inflate the Abraaj Group's consolidated cash balances without recognising corresponding liabilities by raising funds via "off balance sheet" entities and then transferring those funds to the Abraaj Funds and/or other entities in the Abraaj Group. In particular, the Company raised funds via the following "off balance sheet" entities:
- 11.1. Menasa Capital Management Holdings Limited (formerly known as Abraaj SPV 31 Limited and subsequently Abraaj Capital Investments Limited) ("**MCMHL**"), which was incorporated in the Cayman Islands on 11 September 2006.
- 11.2. Abraaj SPV 46 Limited ("**Abraaj SPV 46**") which was incorporated in the Cayman Islands on 12 July 2007. Abraaj SPV 46 was a wholly owned subsidiary of MCMHL from 23 December 2009.
12. During the Relevant Period, Mr Naqvi exercised plenary control over the Company and the wider Abraaj Group. Mr Naqvi was the directing mind and will of the Company and his knowledge and state of mind is therefore to be attributed to the Company. Mr Naqvi was assisted by certain trusted senior executives within the Abraaj Group, including Messrs Mustafa Abdel-Wadood, Waqar Siddique, Rafique Lakhani, Sivendran Vettivetpillai, Narayanan Rajagopalan, and Ashish Dave.

#### Particulars

- 12.1. Mr Naqvi was the Founder and Chief Executive of the Abraaj Group, the Chief Executive Officer and Vice Chairman of the Company, a director of both the Company and AIML, and the Chairman of the Abraaj Group's Global Investment Committee.
- 12.2. The Company had a board of directors comprising, at the material times, between 12 and 14 directors. The board met quarterly. However, the board was dependent on Mr Naqvi

for information about the Company and the Abraaj Group. Further, management of the Company was carried out by the management under the control and direction of Mr Naqvi.

- 12.3. The Articles of Association of the Company granted Mr Naqvi “*full power and authority in operating [the Company] and [he] shall have full authority to take all day-to-day decisions for the running and operation of [the Company]*” (Article 151).
  - 12.4. The Articles of Association of the Company also provided that Mr Naqvi could approve investment decisions: (i) “*for the Abraaj Funds, up to the maximum limits permitted under the respective Abraaj Fund’s mandate*”; and (ii) “*for the Company, or any subsidiary thereof, up to a maximum equity investment of US\$100 million*” (Article 153).
  - 12.5. The Articles of Association of the Company further provided that the Company’s directors could “*delegate to any managing director or any Director holding any other executive office such of their powers as they consider desirable to be exercised by him...*” (Article 142).
  - 12.6. The Articles of Association of the Company further specifically provided that “*The Board of Directors may from time to time delegate all or some of its powers and authorities to [Mr Naqvi] for such term and at such remuneration...as they think fit*” (Article 115).
  - 12.7. All major decisions relating to the management of the Company and the Abraaj Group were made by Mr Naqvi, and the senior management of the Company and the Abraaj Group universally and/or routinely acted on Mr Naqvi's instructions and/or allowed Mr Naqvi to undertake transactions without oversight or control.
  - 12.8. Specifically, Mr Naqvi exercised close control and supervision over the financial position of the Company and the Abraaj Group. From at least January 2009, Mr Naqvi received regular email updates from various Abraaj Group executives regarding the cash balance deficits of the Company and the Abraaj Group. In response, Mr Naqvi would direct how funds could be used or moved and how certain liabilities and expenses could be deferred to close the gap.
  - 12.9. In the premises, the board of directors of the Company, in practice, delegated all of their powers of management to Mr Naqvi (as they were entitled to do).
13. During the Relevant Period, Mr Naqvi also exercised plenary control over MCMHL and its subsidiaries, including Abraaj SPV 46.

#### Particulars

- 13.1.1. Prior to 28 September 2009, MCMHL was a wholly-owned subsidiary of the Company.
- 13.1.2. On or around 28 September 2009, the Company's single share in MCMHL was repurchased and shares were issued to each of the shareholders of the Company in approximately equal proportions to their contemporaneous shareholding in the Company. Consequently, from that date, MCMHL was no longer a subsidiary of the Company (and did not form part of the Abraaj Group for accounting purposes), but was owned by the same group of shareholders that owned the Company.
- 13.1.3. At all times from 28 September 2009, Mr Naqvi and companies under his control, including (among others) Abraaj Employees 2 Limited ("**AE2L**"), held approximately 38.29% of the shares in MCMHL. Mr Naqvi was the sole shareholder (and, together with Mr Siddique, one of only two directors) of AE2L.
- 13.1.4. Under the terms of MCMHL's Articles of Association adopted pursuant to a special resolution passed on 10 September 2009 (the "**MCMHL Articles**"), AE2L was the "Delegate" of MCMHL, with the following powers:
- (a) To appoint the Chief Executive Officer of MCMHL (Article 1). The Chief Executive Officer in turn had the following powers:
    - i Full power and authority (subject to the review of MCMHL's board of directors and the powers delegated to him or her) in operating MCMHL, full authority to take all day-to-day decisions for the running and operation of MCMHL, and such authority levels as are required or necessary to execute the strategic, financial and business plans of the MCMHL's board of directors or as may be determined by MCMHL's board of directors from time to time (Articles 154 and 155).
    - ii Being fully empowered to approve investments (Article 156).
  - (b) To establish "*at his discretion*" a Supervision Committee from amongst the "*Designated Director*", Executive Directors and/or employees of the Group. Mr Naqvi was to be the Supervision Committee Chairman, with the power to determine, "*in his sole discretion*" and irrespective of the fund investment value, whether for strategic or size reasons certain fund investments need to be referred to MCMHL's board of directors. (Articles 157, 161)

- (c) To establish "*at his discretion*" an advisory board on such terms as "*he*" from time to time deemed appropriate (Article 158).
  - (d) To appoint the "*Designated Director*" of MCMHL, who could not be removed otherwise than by the "*Delegate*" (Articles 1, 122, 123 and 127).
- 13.1.5. Mr Naqvi was the "*Designated Member*" of MCMHL without whose presence (provided he remained a member of MCMHL) no General Meeting of the Company could properly be convened (Articles 1, 88).

### **C. Air Arabia PJSC**

14. The Defendant is a public company, having been listed on the Dubai Financial Market on 16 July 2007. The Defendant was incorporated in the United Arab Emirates and, at all times during the Relevant Period, carried on the business of operating an airline. The Defendant's head office is at Air Arabia Head Office, Building A1, Sharjah International Airport, P.O. Box 132, United Arab Emirates.
15. During the Relevant Period:
- 15.1. Mr Adel Ali was the Chief Executive Officer of the Defendant, having been appointed in 2003.
  - 15.2. Mr Paul Suckling was the Chief Financial Officer of the Defendant, having been appointed in 2006.
  - 15.3. Mr Manish Agarwal was the Group Treasurer and Head of Fuel Procurement of the Defendant, having been appointed in March 2011.
  - 15.4. Mr Naqvi was a director of the Defendant, having been appointed in or around March 2007. Mr Naqvi resigned as a director of the Defendant on 31 July 2018.
16. In addition, Mr Abdel Wadood was a director of the Defendant, having been appointed in or around March 2007, until at least (pending discovery) 2010.

### **D. The relationship between the Defendant and the Abraaj Group**

17. From at least 2007, Mr Ali and Mr Naqvi had a close friendship and consulted with each other on business and financial affairs. During the Relevant Period, Mr Ali, Mr Suckling and Mr Agarwal

also had regular meetings and/or discussions with Mr Naqvi and/or other senior executives of the Abraaj Group, including Messrs Lakhani, Abdel-Wadood and Rajagopalan.

18. Prior to the Relevant Period, the Defendant and entities within the Abraaj Group entered into several financial arrangements with each other, including:

18.1. Investments made by IGCF in the share capital of the Defendant made prior to the Defendant's public listing on the Dubai Financial Market in 2007.

18.2. Investments made by the Defendant in certain Abraaj Group entities, including:

18.2.1. IGCF, in the amount of US\$100 million, made by way of capital contribution at some point prior to 2008; and

18.2.2. ABOF IV Fund Investor Limited, in the amount of US\$100 million, made by way of purchase of preferred shares at some point prior to 2011 (the "**APEF IV Investment**").

19. The Defendant has lodged two proofs of debt in the liquidation of the Company:

19.1. On 4 July 2018, in the amount of US\$78,779,687.50, in connection with the AH 2018 \$75m Investment (as such term is defined in Schedule A hereto); and

19.2. On 12 April 2019, in the amount of US\$108,473,833.33, in connection with the APEF IV Investment.

#### **E. Liquidity problems and “commingling” of cash across the Abraaj Group**

20. The Abraaj Group was managed as a single unit on a divisional basis, rather than on the basis of separate legal personalities. Cash within the Abraaj Group was centrally managed, and cash belonging to particular entities within the Abraaj Group was routinely and extensively “commingled”, meaning it was transferred from those entities’ bank accounts to meet the cash requirements of other entities.

21. From at least June 2012, the Company and the Abraaj Group suffered from an ongoing shortage of cash, which the Company sought to conceal from creditors of the Company and/or creditors of the Abraaj Group and/or investors in the Abraaj Funds through a combination of: (i) borrowing, including from the Defendant as particularised in paragraph 27 below; (ii) deferring or delaying payments; and (iii) the “commingling” of funds across entities within the Abraaj Group and the Abraaj Funds to meet the liquidity needs of particular entities. The “commingling” included (but was not limited to):

- 21.1. A lack of segregation of Abraaj Group and Abraaj Fund cash, which was frequently pooled in a number of bank accounts in the name of AIML; and
  - 21.2. The capital contributions of investors in certain of the Abraaj Funds (including the Healthcare Fund and APEF IV) being used to meet the needs of other Abraaj Group or Abraaj Fund entities.
22. During the Relevant Period, the Company borrowed heavily to fund losses in various entities across the Abraaj Group and to replace cash that was "missing" from Abraaj Funds (being cash that was recorded as being held by the Abraaj Funds, but was not held in bank accounts belonging to the Abraaj Funds in question either as a result of the practice of commingling, or because the performance of the Abraaj Fund had been inflated), including, materially, by way of the Loans made by the Defendant, as defined and further particularised in paragraph 27 below.
23. The Abraaj Group nevertheless suffered from a continuing chronic shortage of cash, which Abraaj Group executives reported to Mr Naqvi through regular cash update emails, and of which chronic cash shortage Mr Naqvi was, therefore aware throughout the Relevant Period.

#### F. The Loans

24. During the Relevant Period, the Defendant made several loans in the total sum of approximately US\$981 million to MCMHL, Abraaj SPV 46 and entities within the Abraaj Group (the "**Loans**"). A number of the Loans were "rolled over" on multiple occasions, whereby the Defendant would agree to extend the term of a Loan at the Company's request. The Loans, and where applicable, subsequent roll-overs of the Loans, are set out in Schedule A to this Statement of Claim
25. The Loans, and (where applicable) the subsequent roll-overs of the Loans, were negotiated and arranged on behalf of the Defendant by Mr Ali, and/or Mr Suckling, and/or Mr Agarwal, further and/or alternatively on the instruction and at the direction of Mr Ali, and/or Mr Suckling, and/or Mr Agarwal, with Mr Naqvi, and/or with other Abraaj Group executives acting on the instruction and at the direction of Mr Naqvi.
26. The Loans were made in accordance with the understanding and arrangement between the Company and the Defendant set out in an agreement between the Company and the Defendant on or around 3 March 2013 (the "**2013 Umbrella Agreement**"), which provided:

*"Air Arabia PJSC, from time to time, invests in various financial instruments to increase the return on its surplus cash. Primarily, it's been deployed in fixed deposits with various UAE banks. However, given the global interest rates being low and from a risk management*

*perspective in order to limit exposure to individual banks, Air Arabia is exploring relationship [sic] with other financial institutions with similar products that provide better yields with capital protection.*

*Abraaj Holdings, having a robust balance sheet, has been a valuable partner to Air Arabia PJSC from 2008 and therefore Air Arabia PJSC would like to explore short term deposits with the company.*

*Knowing the nature of business if Abraaj Holdings is private equity, Air Arabia's investments would be restricted to fixed deposits with an assured return on investment and 100 percent capital protection. In order to cover Air Arabia's risk, from time to time, the company might require additional guarantees from various investment companies owned by Abraaj Holdings. In addition to the above, if deemed necessary, Air Arabia PJSC may also request for personal guarantee of the Abraaj Holdings promoter based on the tenor, amount and nature of each investment. Investments could be short term (from 15 days to 6 months) or medium term (6 months to 1 year). Rates on each investment would be mutually agreed based on the prevailing market conditions."*

27. The Loans were used by the Company to conceal the chronic cash shortfall in the Company and the Abraaj Group from creditors of the Company and/or the Abraaj Group.

#### Particulars

- 27.1. The Company and/or other entities within the Abraaj Group were frequently faced with an urgent shortage of cash. Mr Naqvi would be updated on the internal Abraaj Group cash position and Mr Naqvi would subsequently approach, and/or instruct another Abraaj Group executive to approach, Mr Ali and/or Mr Agarwal and/or Mr Suckling for the Defendant to provide a short-term Loan or to rollover an existing Loan.
- 27.2. The Defendant either provided a Loan or allowed the rollover of an existing Loan on the terms set out in Schedule A to this Statement of Claim.
- 27.3. The Defendant would pay money into the account requested by the Company in order to cover up the cash shortfalls within the Abraaj Group.
- 27.4. The amount of the Loans, alongside interest and/or fees as applicable, would be returned to the Defendant shortly after the Loan had been advanced, once the purpose of the Loan had been fulfilled, or the Company would defer repayment of the Loans on a rolling basis in agreement with the Defendant.

27.5. For example, the following Loans were used by the Company to window dress the accounts of entities within the Abraaj Group:

27.5.1. The MCMHL 2016 \$195m Deposit was used by the Company to window-dress the year-end accounts of APEF IV and the consolidated year-end accounts of the Company:

- (a) The financial year-end of the Company and APEF IV was 30 June 2016.
- (b) The Company and/or AIML had removed monies from APEF IV and utilised it for other purposes and/or for the benefit of the other entities in the Abraaj Group. Prior to APEF IV's financial year-end, a total of US\$195 million was missing from APEF IV's bank accounts.
- (c) In order to avoid (i) the deficit of US\$195 million being disclosed in APEF IV's audited financial statements as at 30 June 2016; and (ii) a corresponding liability to repay APEF IV being disclosed in the Company's consolidated audited financial statements as at 30 June 2016, Mr Naqvi arranged or alternatively directed that a short-term loan be arranged of US\$195 million from the Defendant.
- (d) On or around 20 June 2016, the Defendant entered into a loan agreement with MCMHL, AIML and the general partner of APEF IV, Abraaj GP VIII (the "**APEF IV General Partner**"), for the provision of a short-term Loan of US\$195 million, which included the following terms:
  - i The Defendant would deposit US\$195 million into an account held by MCMHL with the Commercial Bank of Dubai (on or before 25 June 2016).
  - ii The deposit would be repaid to the Defendant by 15 July 2016, along with a US\$4.9 million flat fee, equating to an annual interest rate on the Loan of approximately 57.29%.<sup>1</sup>

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<sup>1</sup> Annualised interest rate =  $(1 + \frac{I}{P})^{\frac{365}{N}} - 1$

Where:

I = flat fee

P = principal amount

N = repayment period in number of days

- iii Further, at the express request of Mr Agarwal (who was consulting internally with Mr Ali in respect of the MCMHL 2016 \$195m Deposit):
    - a. Prior to the Defendant depositing the US\$195 million with MCMHL, MCMHL would instruct the Commercial Bank of Dubai to onwards transfer the deposit to AIML, and subsequently from AIML to APEF IV General Partner.
    - b. Mr Ali and Mr Suckling were appointed signatories (together with Mr Naqvi) to the bank account held by APEF IV General Partner (to which account the US\$195 million was ultimately to be transferred).
  - (e) On or around 22 June 2016, the Defendant transferred the sum of US\$195 million to an account in the name of MCMHL. This sum was subsequently transferred from MCMHL to AIML, and then on to a bank account in the name of the APEF IV General Partner.
  - (f) On around 30 June 2016, APEF IV reported a cash balance of US\$195.7 million in its year-end financial statements and produced a bank balance confirmation as at 30 June 2016 for audit purposes.
  - (g) The liability of the Company and/or AIML to repay APEF IV was not reflected in the Company's consolidated financial statements as a payable owing to APEF IV.
  - (h) The Loan was repaid to the Defendant on 5 July 2016.
  - (i) On 20 July 2016, the flat fee of US\$4.9 million was paid to the Defendant.
  - (j) Accordingly, the MCMHL 2016 \$195m Deposit enabled the Company to conceal the fact that US\$195 million had been withdrawn from APEF IV and that the Company and/or AIML was liable to return this money.
- 27.5.2. The AGHF GP 2017 \$196m Deposit was used by the Company to window-dress the year-end accounts of the Healthcare Fund and the consolidated year-end accounts of the Company:
- (a) The financial year-end of the Company and the Healthcare Fund was 30 June 2017.

- (b) The Company and/or AIML had removed monies from the Healthcare Fund and utilised it for other purposes and/or for the benefit of the other entities in the Abraaj Group. Prior to the Healthcare Fund financial year-end, a total of US\$225 million was missing from the Healthcare Fund's bank accounts.
- (c) In order to avoid (i) the deficit being disclosed in the Healthcare Fund's audited financial statements as at 30 June 2017; and (ii) a corresponding liability to repay the Healthcare Fund being disclosed in the Company's consolidated audited financial statements as at 30 June 2017, Mr Naqvi arranged or alternatively directed that a short-term loan be arranged of US\$195 million from the Defendant, which the Defendant later agreed to increase to US\$196 million.
- (d) On or around 21 June 2017, the Defendant entered into a loan agreement with the general partner of the Healthcare Fund, Abraaj Growth Markets Health Fund General Partner Limited (the "**AGHF GP**"), and Mr Naqvi, for the provision of a short-term Loan of US\$196 million on the following terms:
- i The Defendant would deposit US\$196 million into an account held by the Abraaj Healthcare Group Limited ("**AGHF**"), a wholly owned subsidiary of the Healthcare Fund.
  - ii The Loan would be repaid to the Defendant by 19 July 2017, along with a US\$7 million flat fee, equating to an annual interest rate on the Loan of approximately 58%.<sup>2</sup>
  - iii Mr Naqvi guaranteed the repayment of the Loan by the AGHF GP.
- (e) On or around 22 June 2017, the Defendant transferred the sum of US\$196 million to a bank account in the name of AGHF.
- (f) On or around 13 August 2017, the Commercial Bank of Dubai issued an audit confirmation in respect of balances outstanding in its books for AGHF, showing that US\$224 million was held by AGHF in time deposits as at 30 June 2017.

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<sup>2</sup> Calculated in accordance with the formula at footnote 1.

- (g) The liability of the Company and/or AIML to repay the Healthcare Fund was not reflected in the Company's consolidated financial statements as a payable owing to AGHF.
- (h) The Loan was repaid to the Defendant on 19 July 2017.
- (i) On 20 July 2017, the flat fee of US\$7 million was paid to the Defendant.
- (j) Accordingly, the AGHF GP 2017 \$196m Deposit enabled the Company to conceal the fact that US\$196 million had been withdrawn from the Healthcare Fund and that the Company and/or AIML was liable to return this money.

27.5.3. The AGHF GP 2017 \$140m Deposit was used by the Company to mislead Healthcare Fund investors as to the true financial position of the Healthcare Fund and the Abraaj Group:

- (a) In September and October 2017, certain investors in the Healthcare Fund, apparently suspicious that their capital investments had been drawn down for some time, but not yet utilised by the Healthcare Fund for the purposes for which they had been invested, asked for evidence that their cash was still held by the Healthcare Fund.
- (b) On 30 November 2017, Mr Andrew Farnum of the Gates Foundation, on behalf of certain investors in the Healthcare Fund, requested, amongst other things, confirmation from the Healthcare Fund's banks that invested funds were not held subject to third party interests by way of collateral or otherwise.
- (c) Mr Naqvi requested a loan from the Defendant, in order to enable a certificate to be sent to Healthcare Fund investors confirming that funds held by the Healthcare Fund were not held subject to third party interests by way of collateral or otherwise.
- (d) On 3 December 2017, Mr Naqvi emailed Mr Ashish Dave: *"AA is easy to give us 100 on Monday into a designated account for a week to enable a certificate to be sent; with the balance from the 50, Can we make it work? Ie show more as spent? Can you call me around 10am London time?"*.
- (e) On or around 4 December 2017, the Defendant entered into a loan agreement with the AGHF GP and Mr Naqvi, for the provision of a short-term Loan of US\$140 million on the following terms:

- i The Defendant would deposit US\$140 million into an account held by AGHF.
  - ii The deposit would be repaid to the Defendant by 12 December 2017, along with a US\$5.6 million flat fee, equating to an annual interest rate on the Loan of approximately 499%.<sup>3</sup>
  - iii Mr Naqvi guaranteed the repayment of the Loan by the AGHF GP.
- (f) On or around 5 December 2017, the Defendant paid the sum of US\$140million into a bank account held by AGHF.
  - (g) On 7 December 2017, AGHF obtained confirmation that it held a bank balance of US\$169,975,946.66 as at 7 December 2017 and that this sum was not subject to any restrictions and was not being held as collateral or subject to third party interest or liens (the "**AGHF December Confirmation**").
  - (h) The AGHF December Confirmation was provided to certain Healthcare Fund investors on 15 December 2017.
  - (i) The Loan was repaid to the Defendant on 13 December 2017.
  - (j) On 8 January 2018, the flat fee of US\$5.6 million was paid to the Defendant.

28. The circumstances in which the Loans were made, and where applicable, subsequently rolled over, were highly unusual, and the Loans and the roll-overs were artificial, uncommercial and designed to disguise the real financial position of the Company and the Abraaj Group.

#### Particulars

28.1. The Loans were often arranged, and rolled over, informally and in short order over the course of oral discussions and a small number of emails between individuals from the Company, including Messrs Naqvi, Lakhani, Abdel-Wadood and/or Rajagopalan, and individuals from the Defendant, including Mr Ali, and/or Mr Suckling, and/or Mr Agarwal.

28.2. A number of the Loans were mislabelled as "*investments*" made under a "*discretionary mandate*".

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<sup>3</sup> Calculated in accordance with the formula at footnote 1.

- 28.3. A number of the Loans were only documented after the monies had been advanced, and the agreements documenting the Loans were all, or substantially all, drafted without the assistance of lawyers.
- 28.4. The majority of the Loans were provided to entities which were controlled by Mr Naqvi but were not recorded on the balance sheet of the Abraaj Group and which did not form part of the Abraaj Group for accounting consolidation purposes, namely Abraaj SPV 46 and MCMHL. These 'off balance-sheet' entities were not subject to annual financial audits, and the Company was therefore able to inflate the consolidated cash balances of the Abraaj Group without recognising corresponding liabilities by raising funds via these entities and passing the proceeds to the Abraaj Funds and/or other entities in the Abraaj Group.
- 28.5. The Defendant did not conduct any, or any substantial, due diligence in respect of the Loans. In particular, where the Loans were made to entities within the Abraaj Group other than the Company, the Defendant did not make any, or any substantial, enquiries as to the nature of the relationship between that entity and the Company before making the relevant Loan.
- 28.6. The Loans were provided to entities which were controlled by Mr Naqvi in circumstances where:
- 28.6.1. During the Relevant Period, Mr Naqvi sat on the board of directors of the Defendant and therefore:
- (a) Had a conflict of interest in respect of the Loans; and
  - (b) Was a "*related party*", as defined in Article 1 of the Defendant's Articles of Association (amended following a resolution issued by its General Assembly on 13 March 2016) (the "**Air Arabia Articles**").
- 28.6.2. Article 31.a. of the Air Arabia Articles required, in circumstances of any transaction referred to the Defendant's board of directors for approval, Mr Naqvi to notify the Defendant's board of his conflict of interest and for the Defendant's board of directors to enter Mr Naqvi's acknowledgement of his conflict of interest into the relevant board minutes.
- 28.6.3. Article 32.b. of the Air Arabia Articles prohibited the Defendant from granting a loan to any company where a member of the board of directors (or his spouse, children or

any of his said relatives up to the second degree) held, jointly or severally, over 20% of the capital of that company.

28.6.4. Article 34 of the Air Arabia Articles provided: "*The company may not make transactions with the related parties without the consent of the BOD not exceeding 5% of the capital of the company and with the consent of the General Assembly of the company for the excess thereof. Otherwise, the transactions shall be assessed by an assessor approved by the authority.*"

28.7. Notwithstanding that the Loans were made to related parties of the Defendant, during the Relevant Period:

28.7.1. The Defendant's annual reports and investor presentations were silent as to the existence (and extent) of the relationship between the Defendant and the Company and the Abraaj Group. None of the Defendant's annual reports or investor presentations during the Relevant Period contained any reference to Air Arabia having loaned money to, or invested with, the Company or the Abraaj Group.

28.7.2. The Defendant's audited financial statements did not refer by name to the Company, the Abraaj Group or any other entity within the Abraaj Group.

29. The terms of the Loans, and the subsequent roll-overs, were highly unusual and uncommercial.

#### Particulars

29.1. The Loans were all provided on a short-term basis, with the longest term of any of the Loans being one year.

29.2. Further, three of the Loans had terms of one month or less, and were entered into over the financial year-end of entities within the Abraaj Group or, in the case of the AGHF GP 2017 \$140m Deposit, were provided for a short period to enable the Healthcare Fund to obtain the AGHF December Confirmation (as particularised in sub-paragraph 27.5 above):

29.2.1. The MCMHL 2016 \$195m Deposit, which was entered into on 15 June 2016 and had a repayment date of 15 July 2016.

29.2.2. The AGHF GP 2017 \$196m Deposit, which was entered into on 21 June 2017 and had a repayment date of on or before 19 July 2017.

29.2.3. The AGHF GP 2017 \$140m Deposit, which was entered into on 4 December 2017 and had a repayment date of on or before 12 December 2017.

29.3. The Loans were provided and/or rolled over at high interest rates or for a substantial flat fee, as set out in Schedule A to this Statement of Claim.

**G. AH's business was carried on with intent to defraud creditors and/or for a fraudulent purpose**

30. During the Relevant Period, the Company's business was carried on with an intent to defraud creditors of the Company and creditors of the Abraaj Group, in that it was carried on with the intention wilfully to defeat the obligations of the Company and/or the Abraaj Group to creditors, and/or the Company's business was carried on for a fraudulent purpose within the meaning of section 147(1) of the Companies Act.

Particulars

30.1. Paragraph 12 above is repeated.

30.2. Mr Naqvi, and therefore the Company, knew that the Company and the Abraaj Group were suffering from a perpetual shortage of cash.

30.3. Mr Naqvi carried on the business of the Company in order to conceal the perpetual shortage of cash of the Company and the Abraaj Group from creditors of the Company and the Abraaj Group, as particularised in paragraphs 21 to 22 and 27 above.

30.4. The effect of the concealment of the perpetual shortage of cash from the creditors of the Company and the Abraaj Group was to defeat, hinder or delay the payment of the creditors of the Company and the Abraaj Group in circumstances where the Company and the Abraaj Group were suffering from a chronic shortfall of cash, as Mr Naqvi, and therefore the Company, knew.

30.5. In the premises, Mr Naqvi and therefore the Company, knew that the effect of the concealment of the perpetual shortage of cash from the creditors of the Company and the Abraaj Group would be to defeat, hinder or delay the payment of creditors of the Company and the Abraaj Group or Mr Naqvi was recklessly careless that the carrying on of the Company's business would have such effect, and Mr Naqvi, and therefore the Company, acted dishonestly in carrying on the Company's business.

**H. The Defendant's knowledge of the carrying on of AH's business with an intent to defraud creditors and/or for a fraudulent purpose**

31. Paragraph 25 above is repeated. Mr Ali was the directing mind and will of the Defendant for the purpose of the Loans, to which his knowledge and state of mind is therefore to be attributed. Further and/or alternatively, Mr Suckling was the directing mind and will of the Defendant for the purpose of the Loans, to which his knowledge and state of mind is therefore to be attributed. Further and/or alternatively, Mr Agarwal was the directing mind and will of the Defendant for the purpose of the Loans, to which his knowledge and state of mind is therefore to be attributed.
32. During the Relevant Period, Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew that the Company was carrying on its business with an intent to defraud creditors and/or for a fraudulent purpose. Additionally or alternatively, Mr Ali, and/or Mr Suckling, and/or Mr Agarwal suspected that the Company was carrying on its business with an intent to defraud creditors and/or for a fraudulent purpose, and made a deliberate decision to avoid confirming that was the case.

Particulars

- 32.1. Mr Ali, Mr Suckling and Mr Agarwal are each highly experienced businessmen.
- 32.2. Paragraphs 17 and 23 above are repeated. In the premises:
- 32.2.1. Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew that the Company was insolvent and/or that the Abraaj Group was suffering from a chronic shortage of cash, or otherwise suspected that the Company was insolvent and/or that the Abraaj Group was suffering from a chronic shortage of cash and made a deliberate decision to avoid confirming that was the case. In particular, Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew (or suspected, and made a deliberate decision to avoid confirming) that the Company requested the Loans be rolled over, where applicable, as the Company and/or the Abraaj Group was unable to repay the Loan and/or interest and/or applicable fees on the payment date.
- 32.2.2. Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew that the circumstances in which the Loans were made were highly unusual and artificial, as particularised in paragraph 28 above.
- 32.2.3. Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew that the terms of the Loans were uncommercial and highly unusual, as particularised in paragraph 29 above.

- 32.3. Mr Ali, and/or Mr Suckling, and/or Mr Agarwal deliberately failed to conduct or cause the Defendant to conduct any, or any substantial, due diligence in respect of the Loans.
- 32.4. Mr Ali, and/or Mr Suckling, and/or Mr Agarwal deliberately failed to make any, or any substantial, enquiries about the purpose of the Loans, which enquiries would have been made by an honest and competent businessman.
- 32.5. In the premises, Mr Ali, and/or Mr Suckling, and/or Mr Agarwal knew that the Loans had no legitimate commercial or other purpose and were sought by the Company in order to conceal the true financial position of the Company and the Abraaj Group from the creditors thereof, or otherwise suspected the same and made a deliberate decision to avoid confirming that was the case. By way of non-exhaustive example:
- 32.5.1. In relation to the SPV 46 2013 \$50m Loan, on 24 June 2013, Mr Ali emailed Mr Naqvi acknowledging that the purpose of the Loan was "*to reflect in the June statement*", June 2013 being the financial year-end of the Company. It is to be inferred that Mr Ali knew the purpose of the Loan was to window-dress the Company's accounts.
- 32.5.2. On 10 April 2014, Mr Naqvi emailed Mr Ali to request a further "*last*" six month rollover of the SPV 46 2014 \$75m Loan and explained that the reason for the request was that "*we are in the final stages of a rating exercise by the rating agencies, and don't want to do anything at all at this moment that causes them to pause; the rating means that as a private company, we can term out our banking lines far cheaper and warehouse deals thru lines specifically for that purpose.*" As to this:
- (a) Mr Ali was therefore made aware that the rollover was being sought to conceal the true financial position of the Company to the relevant rating agency in order to achieve a better credit rating; alternatively
- (b) There was no or no good reason why the repayment of the SPV 46 2014 \$75m Loan at its maturity would have had any bearing or impact upon a rating exercise being conducted by a rating agency (and Mr Naqvi made no attempt to explain how that repayment would have any bearing or impact). It is therefore to be inferred that Mr Ali knew or suspected that the SPV 46 2014 \$75m Loan, did not have a legitimate commercial or other purpose.
- 32.5.3. In relation to the MCMHL 2016 \$195m Deposit, on 16 June 2016, Mr Agarwal emailed Mr Lakhani in respect of the Loan stating: "*date of fee payment has to be a certain date and not entire month of July. Latest by 15<sup>th</sup> July. We can't keep chasing for it*

*once the loan purpose is achieved.*" It is to be inferred that Mr Agarwal knew that the "loan purpose" was to window-dress the accounts of APEF IV and the Company, and that the money would be returned to the Defendant shortly after it had been transferred, once the necessary bank balance confirmations had been obtained and/or financial statements had been finalised.

### I. The Collapse of the Abraaj Group

33. In December 2017, notwithstanding that certain investors in the Healthcare Fund had been provided with the AGHF December Confirmation, those investors remained suspicious that their capital investments had been drawn down but had not yet been utilised. Accordingly, on or around 19 December 2017, Mr Naqvi agreed that the Healthcare Fund would return all unutilised capital investments to the Healthcare Fund investors.
34. In December 2017, the Company and AIML raised funds to enable the Healthcare Fund to return unutilised capital to investors through a combination of share sales and borrowing. Notwithstanding the return of unutilised capital, the Healthcare Fund investors hired Ankura Consulting Group LLC ("**Ankura**") to audit the Healthcare Fund and trace the balance of their monies invested in the Healthcare Fund (the "**Ankura Review**").
35. On 2 February 2018, the Wall Street Journal reported (among other things) the fact of the Ankura Review.
36. On 29 March 2018, the Wall Street Journal reported (among other things) that that the preliminary results of the Ankura Review had found that investors' monies had been moved out of the Healthcare Fund potentially in breach of the Healthcare Fund's constitutional documents.
37. As a result of the suspicion of financial impropriety raised by (among other things) the reporting of the Wall Street Journal, the Company was placed under significant scrutiny by its creditors, its independent board and investors in the Abraaj Funds. It was therefore not possible for the Company or AIML to raise additional borrowing or to misappropriate any further monies from the Abraaj Funds.
38. By the time of the appointment of provisional liquidators to the Company on 18 June 2018, the Company's cash was almost entirely depleted and it had a net balance sheet deficit of US\$760,526,934 (i.e. the value of its liabilities to creditors exceeded the value of its assets by US\$760,526,934).

**J. First Cause of Action: section 147 of the Companies Act**

39. Paragraphs 5 to 38 above are repeated.
40. The Company carried on its business with an intent to defraud creditors of the Company and/or creditors of the Abraaj Group, and/or for a fraudulent purpose.
41. The Defendant participated in the carrying on of the Company's business with an intent to defraud creditors of the Company and/or creditors of the Abraaj Group, and/or for a fraudulent purpose, by making the Loans.
42. The Defendant made each of the Loans, knowing that the Company's business was being carried out with the intent to defraud creditors and/or for a fraudulent purpose because the knowledge and state of mind of Mr Ali, and/or Mr Suckling, and/or Mr Agarwal, are to be attributed to the Defendant, and the Defendant therefore acted dishonestly in making the Loans.
43. But for the Defendant making the Loans, the Company would not have been able to continue carrying on its business and the losses to creditors of the Company and/or creditors of the Abraaj Group would have been less than the losses which ultimately transpired.

Particulars

- 43.1. The business of the Company was carried on fraudulently and/or dishonestly in order to conceal the perpetual shortage of cash of the Company and the Abraaj Group from creditors of the Company and the Abraaj Group, as particularised in paragraphs 16 and 22 above.
- 43.2. Had the Defendant not made the Loans, the true financial position of the Company and the Abraaj Group (including, *inter alia*, the chronic cash shortages and the fact that investor monies had been withdrawn from the Abraaj Funds and used for other purposes) would have been discovered.
- 43.3. It is to be inferred from the events in 2018 particularised at paragraphs 34 to 39 above that if the true financial position had been discovered the Company would not have been able to continue carrying on its business and/or would have collapsed.
- 43.4. In the Relevant Period, the Company's net balance sheet deficit increased by more than US\$700,000,000.

44. Further or alternatively, by making the Loans the Defendant contributed to the losses suffered by creditors of the Company and/or creditors of the Abraaj Group as a result of the Company continuing to carry on its business.
45. The Defendant is therefore liable to make a contribution to the Company's assets in the amount of the increase in the Company's net balance sheet deficit in the Relevant Period, such sum to be determined or assessed, or in such amount as the Court thinks proper.

**K. Additional or alternative cause of action: dishonest assistance**

46. Paragraphs 5 to 38 above are repeated.
47. Mr Naqvi owed fiduciary duties to the Company in his capacity as a director of the Company. In particular, Mr Naqvi owed a fiduciary duty to the Company to exercise his powers as a director only for a proper purpose and a fiduciary duty to act in the way he considers, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole.
48. Mr Naqvi breached these fiduciary duties owed to the Company by causing the Company to carry on its business with intent to defraud creditors and/or for a fraudulent purpose.
49. The Defendant assisted Mr Naqvi's breach of his fiduciary duties to the Company by making the Loans, which enabled Mr Naqvi to continue causing the Company to carry on its business with an intent to defraud creditors and/or for a fraudulent purpose.
50. The Defendant acted dishonestly in assisting Mr Naqvi in relation to Mr Naqvi's breaches of fiduciary duty, as the Defendant made each of the Loans with knowledge that Mr Naqvi was causing the Company to carry on its business with intent to defraud creditors and/or for a fraudulent purpose because the knowledge and state of mind of Mr Ali, further and/or alternatively Mr Suckling, further and/or alternatively Mr Agarwal, are to be attributed to the Defendant.
51. As a result of the matters set out above, the Company has suffered loss and damage in the amount of the increase in the Company's net balance sheet deficit in the Relevant Period, such sum to be determined or assessed.
52. The Defendant is liable to pay the Company the amount of the increase in the Company's net balance sheet deficit in the Relevant Period, such sum to be determined or assessed, on the ground of its dishonest assistance of Mr Naqvi's breaches of fiduciary duty.

53. Further or alternatively, the Defendant is liable to pay the Company an account of the profits obtained by the Defendant as a result of its dishonest assistance of Mr Naqvi's breaches of fiduciary duty in an amount to be determined or assessed.

**AND THE PLAINTIFFS** claim:

1. A declaration that the Defendant was knowingly a party to the carrying on of the Company's business with intent to defraud creditors and/or for a fraudulent purpose under section 147(2) of the Companies Act (2023 Revision).
2. An order that the Defendant shall pay a contribution to the Company's assets in the amount of the increase in the Company's net balance sheet deficit in the Relevant Period, such sum to be determined or assessed, or such other sum as the Court thinks fit.
3. In the alternative, an order that the Defendant pay to the Company the amount of the increase in the Company's net balance sheet deficit in the Relevant Period, such sum to be determined or assessed, or such other sum as the Court thinks fit, by way of equitable compensation for dishonest assistance.
4. Further or alternatively, an account of profits.
5. Interest on the amount or amounts adjudged due pursuant to section 34 of the Judicature Act (as revised).
6. Costs.

Dated this 14th day of June 2024



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CAREY OLSEN  
Attorneys-at-Law for the Plaintiffs

Schedule A: Table of Air Arabia Loans and rollover agreements

	Date of Agreement	Document	Amount	Interest/Fee <sup>4</sup>	Repayment Terms	Parties	Bank account provided by the Company for payment
1.	24 June 2013	Loan (the "SPV 46 2013 \$50m Loan")	US\$50m	5.25% per annum	Loan to be repaid in full, with full interest, by a single payment by Abraaj within 45 days.	AA, Abraaj SPV 46 and AH (guarantor)	ABN AMRO account held by Abraaj SPV 46, with account number 6030045
2.	24 September 2013	Rollover of the SPV 46 2013 \$50m Loan	US\$50m	N/A	Loan to be repaid in full, with full interest and a conversion charge, by a single payment within 135 days from 26 June 2013 (being on or about 8 November 2013)	AA, Abraaj SPV 46 and AH	N/A
3.	13 January 2014	Investment (the "SPV 46 2014 \$75m Investment")	US\$75m	6.95% per annum	Three months from date of credit of funds.	AA and Abraaj SPV 46	ABN AMRO account held by Abraaj SPV 46, with account number 6030045
4.	19 January 2014	Investment (the "SPV 46 2014 \$25m Investment")	US\$25m	6.95% per annum	Three months from date of credit of funds.	AA and Abraaj SPV 46	ABN AMRO account held by Abraaj SPV 46, with account number 6030045
5.	14 April 2014	Rollover of SPV 46 2014 \$75m Investment	Split into two investments.  1. \$50m (SPV 46 2014 \$75m Investment Account 1) 2. \$25m (SPV 46 2014 \$75m Investment Account 2)	8.25% for SPV 46 2014 \$75m Investment Account 1  8.50% for SPV 46 2014 \$75m Investment Account 2	SPV 46 2014 \$75m Investment Account 1 rolled over for an additional 91 days, ending 14 July 2014.  SPV 46 2014 \$75m Investment Account 2 rolled over for an additional 183 days, ending 14 October 2014.	AA and Abraaj SPV 46	N/A
6.	21 April 2014	Rollover of SPV 46 2014 \$25m Investment	US\$25m	8.50% per annum	Rolled over for an additional 176 days, ending 14 October 2014.	AA and Abraaj SPV 46	N/A
7.	14 October 2014	Rollover of SPV 46 2014 \$75m Investment	US\$50m	10% per annum	Rolled over for an additional 183 days, ending 14 April 2015.	AA and Abraaj SPV 46	N/A

<sup>4</sup> Annualised interest rate for the flat fees has been calculated by reference to the formula: Annualised interest rate =  $(1 + \frac{I}{P})^{\frac{365}{n}} - 1$

Whereby:

- I = flat fee
- P = principal amount
- N = repayment period (in number of days)

	Date of Agreement	Document	Amount	Interest/Fee <sup>4</sup>	Repayment Terms	Parties	Bank account provided by the Company for payment
		Account 2 and SPV 46 2014 \$25m Investment					
8.	14 April 2015	Rollover of SPV 46 2014 \$75m Investment Account 2 and SPV 46 2014 \$25m Investment	US\$50m	10% per annum	Rolled over for an additional term of one year, ending 14 April 2016.	AA and Abraaj SPV 46	N/A
9.	4 April 2016	Rollover of SPV 46 2014 \$75m Investment Account 2 and SPV 46 2014 \$25m Investment	US\$50m	10% per annum	Rolled over for an additional term of one year, ending 14 April 2017.	AA and Abraaj SPV 46	N/A
10.	15 June 2016	Deposit (the " <b>MCMHL 2016 \$195m Deposit</b> ")	US\$195m	US\$4.9m flat fee, payable within one month of receiving the deposit.  Annualised interest rate of 57.29%.	Repayment date of 15 July 2016, from the APEF IV GP RBS account.	AA, MCMHL, AIML, APEF IV GP, Mr Naqvi (guarantor)	AA would pay the deposit into the CBD account held by MCMHL, with account number 1614631, on or before 25 June 2016  Prior to the deposit being made, MCMHL shall instruct CBD requiring "prompt onward transfer" of the deposit: <ul style="list-style-type: none"> <li>to AIML's CBD account, with account number ending 1833720.</li> <li>then to APEF IV GP's RBS account, with account number ending 22848436</li> </ul> APEF IV GP would also, through its Board, resolve to include two AA signatories to APEF IV GP's RBS account, and amend the list of signatories so that it would only be Mr Naqvi and the two AA signatories. Any remittance from the APEF IV GP account would need joint instructions from Mr Naqvi and one of the AA signatories.

	Date of Agreement	Document	Amount	Interest/Fee <sup>4</sup>	Repayment Terms	Parties	Bank account provided by the Company for payment
11.	10 November 2016	Investment (the "MCMHL 2016 \$75m Investment")	US\$75m	8.5% per annum	Until 27 December 2016	AA and MCMHL	CBD account held by MCMHL, with account number ending 1614631.
12.	27 March 2017	Rollover of MCMHL 2016 \$75m Investment	US\$75m	10.25% per annum  Arrangement fee of 0.75% of USD\$75 million to be paid on 27 March along with the interest due on existing loan  Fx charges : USD 5,000 to be paid on 27 March	End date of 27 September 2017.	AA and MCMHL	N/A
13.	21 June 2017	Deposit (the "GHF GP 2017 \$196m Deposit")	US\$196m	US\$7m flat fee, payable "during July 2017".  Annualised interest rate of 58%.	On or before 19 July 2017.	AA, Abraaj Growth Markets Health Fund General Partner Limited and Mr Naqvi (guarantor)	CBD account held by the Abraaj Healthcare Group Limited, with account number ending 2001640081.
14.	9 August 2017	Deposit (the "AIML 2017 \$25m Deposit")	US\$25m	US\$875,000 flat fee  Annualised interest rate of 36.87%.	On or before 18 September 2017	AA, AIML and Mr Naqvi (guarantor)	Citibank account held by AIML, with account number ending 201433037
15.	17 September 2017	Rollover of AIML 2017 \$25m Deposit	US\$25m	10.25% per annum	On or before 26 December 2017	AA, AIML and Mr Naqvi (guarantor)	N/A
16.	19 November 2017	Rollover of SPV 46 2014 \$75m Investment Account 2 and SPV 46 2014 \$25m Investment	US\$50m	10% per annum	Rolled over until 28 December 2017.	AA and Abraaj SPV 46	N/A
17.	27 November 2017	Deposit (the "AIML 2017 \$50m Deposit")	US\$50m	US\$2m flat fee.  Annualised interest rate of 58.69%.	Deposit and fee repaid by 28 December 2017	AA, AIML and AE2L	FGB account held by Abraaj Holdings, with account number ending 1888783025.

	Date of Agreement	Document	Amount	Interest/Fee <sup>4</sup>	Repayment Terms	Parties	Bank account provided by the Company for payment
18.	4 December 2017	Deposit (the " <b>GHF GP 2017 \$140m Deposit</b> ")	US\$140m	US\$5.6m  Annualised interest rate of 499%.	On or before 12 December 2017	AA, Abraaj Growth Markets Health Fund General Partner Limited and Mr Naqvi (guarantor)	CBD account held by the Abraaj Healthcare Group Limited, with account number ending 2001640081.
19.	26 December 2017	Investment (the " <b>AIML 2017 \$75m Investment</b> ")	US\$75m	10.25% per annum	From 26 December 2017 to 27 November 2018	AA, AIML and Mr Naqvi (guarantor)	N/A
20.	9 January 2018	Investment (the " <b>AH 2018 \$75m Investment</b> ")	US\$75m	10.25% per annum	Until 26 June 2018	AA, AH and Mr Naqvi (guarantor)	N/A (to be provided separately)

**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, PO Box 495G, George Town, Grand Cayman, KY1-1106, Cayman Islands.

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

If a Statement of Claim is indorsed on the Writ (i.e. 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 Plaintiffs 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 overleaf 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 for acknowledging service, 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 in 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 authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its 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.

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 183 OF 2024

IN THE MATTER OF SECTION 147 OF THE COMPANIES ACT (2023 REVISION)

BETWEEN

(1) SIMON CONWAY, ANTHONY MANTON AND MOHAMMED FARZADI AS JOINT  
OFFICIAL LIQUIDATORS OF  
ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

(2) ABRAAJ HOLDINGS (IN OFFICIAL LIQUIDATION)

Plaintiffs

AND

AIR ARABIA PJSC

Defendant

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ACKNOWLEDGMENT OF SERVICE  
OF WRIT OF SUMMONS

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

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

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

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

[Click here to enter text.](#)

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

yes

no

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

yes

no

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Service of the Writ is acknowledged accordingly

(Signed) \_\_\_\_\_

Attorneys-at-Law for [ \_\_\_\_\_ ]

**Please complete overleaf**

**Notes on address for service**

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

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

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

Carey Olsen  
Level 1, Willow House  
Cricket Square, George Town  
Grand Cayman, Cayman Islands  
Ref: PS/KD/1066200.0007

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

[Empty box for defendant's Attorney indorsement]