In the name of
**His Highness Sheikh Mohamed bin Zayed Al Nahyan**
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE**
**COMMERCIAL AND CIVIL DIVISION**
**BETWEEN**

**UNION PROPERTIES P.J.S.C**
First Claimant

**UPP CAPITAL INVESTMENT CO. L.L.C.**
Second Claimant

and

~~**TRINKLER & PARTNERS LTD**~~
~~First Defendant~~

**THOMAS PIERRE TRINKLER**
Second Defendant

~~**PATRICK ALBERT HELD**~~
~~Third Defendant~~

**FIRST FUND MANAGEMENT LIMITED**
Fourth Defendant

**JORG KLAR**
Fifth Defendant

**PARESH CHANDRASEN KHIARA**
Sixth Defendant

~~**AMNA HASAN ALI SALEH ALHAMMADI**~~
~~Seventh Defendant~~

~~**DAHI YOUSEF AHMED ABDULLA ALMANSOORI**~~
~~Eighth Defendant~~

~~**NASER BUTTI OMAIR YOUSEF ALMHEIRI**~~
~~Ninth Defendant~~

~~**KHALIFA HASAN ALI SALEH ALHAMMADI**~~
~~Tenth Defendant~~

~~**STEFAN DUBACH**~~
~~Eleventh Defendant~~

**AHMED YOUSEF ABDULLA HUSSAIN KHOURI**
Twelfth Defendant

~~**HASSAN ASHOOR AL MULLA**~~
~~Thirteenth Defendant~~

**JUDGMENT OF JUSTICE SIR ANDREW SMITH**

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| **Neutral Citation:** | [2026] ADGMCFI 0010 |
| **Before:** | Justice Sir Andrew Smith |
| **Decision Date:** | 6 March 2026 |
| **Decision:** | 1. The claims against the Second Defendant, Fourth Defendant, Fifth Defendant, Sixth Defendant and Twelfth Defendant are dismissed.<br><br>2. Any application in respect of costs or any other consequential matters (save for any application for permission to appeal, which shall be governed by the provisions of the *ADGM Court Procedure Rules 2016*) shall be made by **5.00 pm GST on 23 March 2026**. |
| **Hearing Dates:** | 27 and 28 November 2025 and 3, 8, 9, 11, 12, 15 and 16 December 2025 |
| **Date of Order:** | 6 March 2026 |
| **Catchwords:** | Pleading fraud. Late pleading amendments. Participatory Notes (P-Notes). Deceit. Negligent misstatement. Dishonest assistance. FSMR claims. Unlawful means conspiracy. Intentionally causing harm by unlawful means. Breach of directors' duties. Settlement agreement. |
| **Legislation and Other Authorities Cited:** | *ADGM Court Procedure Rules 2016*<br><br>*ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*<br><br>*ADGM Financial Services and Markets Regulations 2015*<br><br>*ADGM Application of English Law Regulations 2015*<br><br>*ADGM Financial Services Regulatory Authority's General Rulebook*<br><br>*ADGM Financial Services Regulatory Authority's Conduct of Business Rulebook*<br><br>*ADGM Practice Direction 8*<br><br>*UAE Federal Law No. 2 of 2015 on Commercial Companies (as amended)*<br><br>*UAE Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law*<br><br>*UAE Securities and Commodities Authority Governance Rules*<br><br>*Private International Law (Miscellaneous Provisions) Act 1995 (UK)*<br><br>*Practice Direction 32 (UK)*<br><br>*Street on Torts* (16th Ed, 2021)<br><br>*Clerk & Lindsell on Torts* (24th Ed, 2023)<br><br>*Mumford & Grant, Civil Fraud: Law, Practice & Procedure* (2018) |

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| | *Dicey, Morris and Collins, The Conflict of Laws (14th Ed, 2022)* |
| **Cases Cited:** | *Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2025] ADGMCFI 0016*<br>*Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2025] ADGMCFI 0015*<br>*Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2024] ADGMCFI 0014*<br>*Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2024] ADGMCFI 0006*<br>*Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2023] ADGMCFI 0011*<br>*Union Properties P.J.S.C & Anor. v Trinkler & Partners Ltd & Others [2023] ADGMCFI 0009*<br>*Dubai Court of Cassation, Appeal No. 309 of 2016 (Civil Appeal)*<br>*Redstone Mortgages Limited v B Legal Limited [2014] EWHC 3398 (Ch)*<br>*PRA Group (UK) Ltd v Goodinson [2021] EWCA Civ 957*<br>*Wiszniewski v Central Manchester Hbrookealth Authority [1998] PIQR 324*<br>*Efobi v Royal Mail Group Ltd [2021] UKSC 33*<br>*Elena Baturina v Alexander Chistyakov [2017] EWHC 1049 (Comm)*<br>*Davy v Garrett (1878) 7 Ch D 473*<br>*King v Stiefel [2021] EWHC 1045 (Comm)*<br>*Elite Property Holdings Ltd & Another v Barclays Bank Plc [2019] EWCA Civ 204*<br>*Ahmed & Anor v Ahmed [2016] EWCA Civ 686*<br>*Hague Plant Ltd v Hague and ors [2014] EWCA Civ 1609*<br>*CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd [2015] EWHC 1345 (TCC)*<br>*Allied Maples Group Limited v Simmons & Simmons [1995] 4 All ER 907*<br>*Snook v London and West Riding Investments Ltd [1967] 2 QB 786*<br>*National Westminster Bank Plc v Jones [2000] 6 WLUK 556*<br>*Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch)*<br>*Maple Leaf Macro Volatility Master Fund v Rouvroy [2009] EWHC 257 (Comm)*<br>*Akerhielm v De Mare [1959] AC 789* |

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| | *Angus v Clifford [1891] 2 Ch 449*<br>*Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1997] AC 254*<br>*Banca Nazionale del Lavoro SpA v Playboy Club London Ltd [2018] UKSC 43*<br>*Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830*<br>*FM Capital Partners Ltd v Marino [2018] EWHC 1768 (Comm)*<br>*ED&F Man Capital Markets v Come Harvest Holdings Ltd [2022] EWHC 229 (Comm)*<br>*Jafari-Fini v Skillglass Ltd (In Administration) [2007] EWCA Civ 261*<br>*In re Dellow's Will Trusts [1964] 1 WLR 451*<br>*Brown & Anor v Bennett & Ors [1999] BCC 525*<br>*Marino v FM Capital Partners Ltd [2020] EWCA Civ 245*<br>*Townsend v Stone Toms & Partners (No. 2) (1984) 27 BLR 26*<br>*Heaton v Axa Equity & Law Life Assurance Society Plc [2002] UKHL 15*<br>*Sainsbury's Supermarkets Ltd v Visa Europe Services LLC [2020] UKSC 24*<br>*Gladman Commercial Properties v Fisher Hargreaves Proctor & Ors [2013] EWCA Civ 1466* |
| **Case Number:** | ADGMCFI-2022-265 |
| **Parties and Representation:** | Mr Nils de Wolff with Mr Nassif BouMalhab of Greenberg Traurig Limited, Mr Hussain Almatrood of Al Tamimi & Co. and Mr Watson Pringle of Counsel for the Claimants<br>Dr Beat Ammann of About Law GmbH for the Second Defendant<br>Ms Ivana Daskalova of Counsel for the Fourth and Sixth Defendants<br>Dr Clemens Daburon of Daburon & Partners Legal Consultants LLP for the Fifth Defendant<br>Mr Jeremy Richmond KC with Mr Benjamin Joseph of Counsel for the Twelfth Defendant |

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## Glossary

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| **"Addendum"** | The Addendum to the Investment Management Agreement dated 24 September 2018 |
| **"ADGM"** | Abu Dhabi Global Market |
| **"AGM"** | Annual General Meeting |
| **"Albion"** | Albion Finance SA |
| **"Ardent"** | Ardent Advisory & Accounting |
| **"ARQ"** | ARQ P Notes BV |
| **"ARQ Bahrain"** | ARQ P Notes Bahrain WLL |
| **"Arqaam"** | Arqaam Capital Limited |
| **"BRI"** | Blue Rock Investments LLC |
| **"BSCI"** | Blue Stone Capital Investments LLC |
| **"BSCI Laptop"** | see paragraph 31(b) |
| **"Cash Settlement"** | see paragraph 158 |
| **"Category A Documents"** | see paragraph 31(a) |
| **"Category B Documents"** | see paragraph 31(b) |
| **"Category C Documents"** | see paragraph 31(c) |
| **"CEO"** | Chief Executive Officer |
| **"CFO"** | Chief Financial Officer |
| **"CMC"** | The Case Management Conference on 21 May 2025 |
| **"Conduct of Business Rules"** | ADGM Financial Services Regulatory Authority's Conduct of Business Rulebook |
| **"CPR"** | ADGM Court Procedure Rules 2016 |
| **"DFM"** | The Dubai Financial Market |
| **"DIFC"** | The Dubai International Financial Centre |
| **"FFM"** | First Fund Management Limited |
| **"FSMR"** | ADGM Financial Services and Markets Regulations 2015 |
| **"FSRA"** | ADGM Financial Services Regulatory Authority |
| **"General Rules"** | ADGM Financial Services Regulatory Authority's General Rulebook |
| **"Global Gate"** | Global Gate Financial Services |
| **"Greenberg Traurig"** | Greenberg Traurig Limited |
| **"IMA"** | Investment Management Agreement |

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| **"Investment Services Representation"** | see paragraph 313(b) |
| **"ISIN"** | International Standard Identification Number |
| **"Julius Baer"** | Bank Julius Baer & Co. Ltd |
| **"Julius Baer Version"** | see paragraph 174 |
| **"Khiara P-Notes Representations"** | see paragraph 349(b) |
| **"Khiara Trading Representations"** | see paragraph 349(c) |
| **"Klar P-Notes Allegation"** | see paragraph 334(c) |
| **"Klar Trading Allegation"** | see paragraph 334(d) |
| **"Mandate Agreement and IMA Allegation"** | see paragraph 334(a) |
| **"May 2019 Version"** | see paragraph 123 |
| **"MIS"** | Management Information System |
| **"PHD"** | Palm Hills Development |
| **"PHD Fund"** | Palm Hills Development Fund |
| **"Physical Settlement"** | see paragraph 158 |
| **"Pleaded Version"** | see paragraph 174 |
| **"P-Notes"** | Participatory Notes |
| **"Premier"** | Premier Financial Brokerage |
| **"PTR"** | The Pre-Trial Review on 31 October 2025 |
| **"SCA"** | The UAE Federal Securities and Commodities Authority |
| **"SCA Governance Rules"** | UAE Securities and Commodities Authority Governance Rules |
| **"SEO"** | Senior Executive Officer |
| **"September 2019 Version"** | see paragraph 123 |
| **"Settlement Agreement"** | An agreement between the Claimants and the "Settling Parties" dated May 2023 |
| **"SICO"** | SICO BSC |
| **"SLA"** | The Service Level Agreement dated 4 September 2018 between First Fund Management Limited and Mr Thomas Pierre Trinkler |
| **"SLA Allegation"** | see paragraph 334(b) |
| **"SLA Representation"** | see paragraph 349(a) |

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| **"Specialist Fund Representation"** | see paragraph 313(a) |
| **"TAP"** | Trinkler & Partners Ltd |
| **"Trinkler P-Notes Representations"** | see paragraph 313(c) |
| **"Trinkler Trading Representations"** | see paragraph 313(d) |
| **"TRS"** | Total Return Swap |
| **"UAE"** | United Arab Emirates |
| **"UAE CCL 2015"** | UAE Federal Law No. 2 of 2015 on Commercial Companies (as amended) |
| **"UAE Civil Code"** | UAE Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law |
| **"UAE Focus Fund"** | A local Julius Baer fund |
| **"Union Properties"** | Union Properties PJSC |
| **"UPP Capital"** | UPP Capital Investment Co LLC |
| **"011 Issue"** | see paragraph 167 |
| **"280 Warrants" or the "280 Issue"** | see paragraph 176 |
| **"348 Warrants" or the "348 Issue"** | see paragraph 157 |

## JUDGMENT

### Introduction

1. This is my judgment following the trial of the claims brought by the Claimants, Union Properties PJSC ("**Union Properties**") and UPP Capital Investment Co LLC ("**UPP Capital**"), against the five Defendants against whom the proceedings are still live. A broad statement of the nature of the claims is set out at paragraphs 2, 3 and 4 of the Claimants' Re-Amended Particulars of Claim:

> "*2. … . The claim relates to and arises from a fraudulent scheme for the misappropriation of Union Properties' assets (via UPP Capital) orchestrated by* [Mr Khalifa Hasan Ali Saleh Alhammadi, the Tenth Defendant].
>
> *3. In outline, the scheme involved the unlawful and unauthorised use of AED 320,717,867.84 belonging to Union Properties to purchase (via UPP Capital) 391,789,341 units of participatory notes (P-Notes) whose underlying investments were made up almost exclusively of shares in Union Properties. The shares were then sold, and for some two and a half years (between February 2019 and June 2021) the proceeds were falsely described as having been invested in various stocks whose supposed performance was falsely reported to the Claimants. In fact, the proceeds of sale were diverted.*
>
> *4. As matters stand, with one exception, none of Union Properties' misappropriated funds have been recovered. The exception relates to 6.6 per cent of the total number of P-Notes acquired, in respect of which equities corresponding to the converted proceeds of 25.84 million units of P-Notes were transferred to an account of UPP Capital on or around 10 September 2018*".

### The Parties at the Trial

2. Union Properties is a major real estate development company registered in Dubai. UPP Capital is a private limited company registered in Dubai, and it is wholly owned by Union Properties.

3. The trial was about the claims against these Defendants: Mr Thomas Trinkler, the Second Defendant; First Fund Management Limited ("**FFM**"), the Fourth Defendant; Mr Jorg Klar, the Fifth Defendant; Mr Paresh Chandrasen Khiara, the Sixth Defendant; and Mr Ahmed Yousef Abdulla Hussain Khouri, the Twelfth Defendant.

4. FFM is a private limited company registered in the Abu Dhabi Global Market ("**ADGM**"). It was incorporated on 14 March 2018 by Mr Naser Butti Omair Yousef Almheiri, the Ninth Defendant, and Mr Alhammadi who was Union Properties' Chairman, and it was wholly owned by Blue Rock Investments LLC ("**BRI**"). Between 26 April 2018 and 20 October 2020, FFM was regulated by the ADGM Financial Services Regulatory Authority ("**FSRA**").

5. Mr Trinkler was the Chief Executive Officer of the First Defendant, Trinkler & Partners Ltd ("**TAP**"), an asset management company, which he was party to incorporating in Zurich, Switzerland, on 27 November 2013. From 22 May 2018 until 20 October 2020, he was a director of FFM.

6. Mr Klar was the Vice-President, Finance at UPP Capital from January 2018 until November 2021 and a director of Union Properties from December 2019 until November 2021. He was a director of FFM from March 2018 to date.

7. From September 2017 until June 2020, Mr Khiara was employed by Blue Stone Capital Investments LLC ("**BSCI**"), which he described as Mr Alhammadi's company, as its Chief Financial Officer ("**CFO**"). He joined Union Properties in March 2020, and he was its CFO from June 2020. He was the Interim Senior Executive Officer ("**SEO**") of FFM from January 2019 to April 2019. He was a director of FFM from February 2020 until June 2020.

8. Mr Khouri was the Chief Executive Officer ("**CEO**") of Union Properties from May 2017 until June 2018, and he was a director from his appointment on May 2018 until December 2019. He was its Managing Director from July 2018 until December 2019. Further, from June 2017 until December 2019, he was a Director of UPP Capital.

**The Claimants' Case about the Fraud in Outline**

9. None of the Defendants disputed that the Claimants have been the victims of a substantial fraud (although Mr Trinkler argued that some of their loss is or might be attributable to market forces). In outline, and by way of introduction, this is the Claimants' pleaded case about how it was carried out.

10. On 10 July 2017, UPP Capital opened an account with Bank Julius Baer & Co. Ltd ("**Julius Baer**") in Switzerland. In early 2018, Union Properties, through UPP Capital, transferred AED 336,422,981.02 into the account with Julius Baer, and AED 286,592,960.89 was invested in what the Claimants describe in their pleading as "*a local Julius Baer fund*" (the "**UAE Focus Fund**"), pending a planned investment in the Palm Hills Development (the "**PHD**" and the "**PHD Fund**"), an Egyptian development. On 19 June 2018, the Investment Committee of UPP Capital decided to postpone investment in the PHD Fund and to withdraw from the UAE Focus Fund because, it is said, of its poor performance. The investments in the UAE Focus Fund were redeemed by Julius Baer on 5 and 9 July 2018 for AED 271,000,067.79 and the proceeds were credited to UPP Capital's account with Julius Baer.

11. Shortly afterwords, Mr Alhammadi and Mr Khouri instructed Julius Baer to buy for UPP Capital a total of 391,789,341 units of Participatory Notes ("**P-Notes**") for AED 320,717,867.84, using the money from the redemption of the units in the UAE Focus Fund and the cash remaining in the Julius Baer account. Julius Baer bought the P-Notes in July 2018. The underlying investments were largely shares in Union Properties, which were then

valued at AED 286,230,331.37. However, in an email dated 5 November 2018, from Mr Alhammadi to Mr Abrar Atif, Union Properties' Finance Director, and copied to Mr Khouri, Mr Alhammadi described the P-Notes as "*Diversified Notes*".

12. At about the same time as they gave instructions for the purchase of the P-Notes, UPP Capital entered into an Investment Management Agreement ("**IMA**") with TAP, whereby TAP was authorised to direct the investment of assets in UPP Capital's account with it. On 4 September 2018, TAP entered into a Service Level Agreement ("**SLA**") with FFM, whereby FFM agreed to set up an investment fund. Mr Alhammadi and Mr Khouri Instructed Julius Baer to transfer the P-Notes to TAP. In fact, as the Claimants say, no investment fund was set up; FFM and TAP did not receive any of the P-Notes or any of UPP Capital's other assets; and no investment management services were provided by TAP or FFM. Nevertheless, TAP issued invoices for professional fees and expenses for at least AED 15,411,544, which were paid by UPP Capital.

13. Between 10 September 2018 and 5 October 2018, 390,389,341 units of P-Notes were transferred to Arqaam Capital Limited ("**Arqaam**"), a financial services company incorporated in the Dubai International Financial Centre ("**DIFC**"). The P-Notes delivered to Arqaam were, as the Claimants contend, converted into shares between 10 September 2018 and 15 October 2018. On around 10 September 2018, 25,840,000 units of P-Notes were converted into shares in Al Salam Bank, Bahrain and transferred to an account of UPP Capital with SICO BSC ("**SICO**"), a Bahraini regional asset management firm: no claim is made in respect of those P-Notes or the funds used to purchase them. The other P-Notes were converted into shares in Union Properties and transferred to accounts held by Mr Hassan Ashoor Al Mulla, a lawyer and the Thirteenth Defendant. The Claimants' case is that they had been transferred to Mr Al Mulla's accounts on the instructions of Mr Alhammadi and of either Mr Khouri or Mr Almheiri.

14. Although they had received no P-Notes, TAP and FFM represented to UPP Capital that they had received and held a total of 364,549,341 units of P-Notes: the Claimants plead that this was represented in letters from FFM to TAP of 20 September 2018 and 2 October 2018, and in letters from TAP to UPP Capital dated 30 September 2018 and 11 January 2019. Further, in a letter dated 4 October 2018 addressed to Mr Trinkler, FFM stated that it was holding 390,389,341 units of P-Notes, which was untrue and which FFM cannot have reasonably believed to be true.

15. By a letter dated 3 April 2019, TAP informed UPP Capital that the P-Notes had been sold for AED 286,230,331.37 on 15 February 2019. TAP and FFM provided UPP Capital with regular security balance reports and cash flow statements, which on their face showed active trading in the United Arab Emirates (the "**UAE**"), Saudi and Egyptian stocks. There was no such trading, and the reports were generated fraudulently.

16. In October 2021, Union Properties was alerted to an investigation by the Federal Prosecution into the activities of Mr Alhammadi. On 9 November 2021, according to the

Claimants, Mr Alhammadi, Mr Klar, Mr Khiara and others were dismissed from their positions with the Claimants. Mr Khiara's evidence was that he was not dismissed but was (and remains) suspended, albeit he had not been paid: this evidence was not challenged and I accept it.

17. A new Board of directors of Union Properties was appointed in December 2021, and subsequent investigations revealed that TAP and FFM had never received the P-Notes from Julius Baer and the reports of their sale and of the trading were false.

**The Proceedings**

18. In November 2021, Union Properties engaged Ardent Advisory & Accounting ("**Ardent**"), an independent forensic consultant based in the UAE, to assist its investigations and in the collection and analysis of relevant electronic data, and in December 2021, Ardent produced a report. It identified certain "*Actions Required*", including that:

    a. Union Properties ask Julius Baer, TAP, Arqaam and SICO to provide all information relating to their relationship with Union Properties, and commence legal proceedings against them "*where appropriate*";

    b. Union Properties bring legal proceedings against Mr Alhammadi and Mr Khiara; and

    c. Union Properties bring legal proceedings against the directors of FFM, identified as Mr Alhammadi, Ms Amna Hasan Ali Saleh Alhammadi (the Seventh Defendant), Mr Klar, Mr Khiara and Mr Trinkler.

19. These proceedings were brought by the Claimants on 14 November 2022 against thirteen Defendants. On 15 November 2022, the Claimants applied *ex parte* for freezing orders and proprietary injunctions against the thirteen Defendants and six other Respondents, and on 25 November 2022, I made freezing and proprietary injunctions against nine of the Defendants, including FFM, Mr Khiara and Mr Khouri, and the six other Respondents. I refused relief against the other four defendants, including Mr Trinkler and Mr Klar. The freezing and proprietary orders were extended by subsequent orders to 9 May 2023, but at a hearing on 9 May 2023, I declined to continue them further. In my judgment of 16 May 2023 ([2023] ADGMCFI 0011), I criticised the Claimants for not putting before the Court settlement discussions that they had held with Mr Alhammadi, and I concluded that there was no longer sufficient evidence of a risk of dissipation for the orders to be continued.

20. As I have said, the proceedings have come to trial against only five of the original thirteen Defendants. In the course of the proceedings, Mr Khouri has made applications to prevent the claims against him coming to trial. By an application of 6 February 2023, he challenged the jurisdiction of the Court to entertain the claims, an application that I refused for the reasons explained in my judgment of 1 May 2023 ([2023] ADGMCFI 0009). By an application filed on 2 August 2024, supported by a witness statement of his then legal representative, Ms Sarah Malik of SOL International Ltd, he sought to have the proceedings against him

struck out or for summary judgment dismissing them. I refused that application for the reasons explained in my judgment of 15 November 2024 ([2024] ADGMCFI 0014).

21. On 8 December 2023, the Claimants discontinued the proceedings against the Third Defendant, Mr Patrick Held, and against the Eleventh Defendant, Mr Stefan Dubach. By orders dated 15 April 2024, judgments in default of service of a notice of appearance were entered against the First Defendant, TAP; against the Seventh Defendant, Ms Alhammadi; against the Tenth Defendant, Mr Alhammadi; and against the Thirteenth Defendant, Mr Al Mulla. On 21 October 2024, TAP was dissolved by order of the Swiss Courts.

22. By an application dated 29 August 2023, the Ninth Defendant, Mr Almheiri, applied to have the claims against him struck out. At a hearing on 7 November 2023, I determined that the Claimants' pleading against him was defective, but I gave them an opportunity to amend it. On 8 December 2023, they applied to do so, and on 13 and 14 May 2024 at the restored hearing of Mr Almheiri's strike-out application, they made a further application to amend. By a judgment of 23 May 2024 ([2024] ADGMCFI 0006), I refused the Claimants' amendment applications, and I struck out the claims against Mr Almheiri.

23. On 14 June 2024, the Claimants issued a third application to amend their Particulars of Claim. By a judgment of 15 November 2024 ([2024] ADGMCFI 0014), I permitted some of the proposed amendments and refused others. On 9 December 2024, the Claimants filed a pleading that was amended in accordance with my judgment.

24. At a Case Management Conference on 21 May 2025 (the "**CMC**"), I directed that the trial should start on 27 November 2025.

25. On 30 May 2025, the Eighth Defendant, Mr Dahi Almansoori, applied for an order that the proceedings against him be struck out or for summary judgment against the Claimants on the whole of their claim against him, and by judgment dated 22 July 2025 ([2025] ADGMCFI 0016), I granted the application.

26. There was a Pre-Trial Review ("**PTR**") on 31 October 2025. The ADGM procedural regime does not include a provision corresponding to paragraph 27.2 of the English Practice Direction 32 that documents in agreed trial bundles are admissible unless otherwise ordered by the Court or a notice of objection has been given. At the PTR, I directed that, "*Documents referred to in the written or oral opening and closing submissions, examination, cross-examination or re-examination shall be admitted into evidence unless otherwise ordered by the Court*".

**The Trial**

***Representation***

27. At the trial, the Claimants were represented by Mr Nils de Wolff, Counsel, of Greenberg Traurig Limited ("**Greenberg Traurig**"), their legal representatives, assisted by Mr Hussain

Almatrood, a partner in of Al Tamimi & Co., who made submissions about UAE law, and by Mr Watson Pringle of Counsel, for the purpose of conducting cross-examination. Mr Trinkler was represented by Dr Beat Ammann of About Law GmbH. FFM and Mr Khiara were represented by Ms Ivana Daskalova of Counsel. Mr Klar, was represented by Dr Clemens Daburon of Daburon & Partners Legal Consultants LLP. Mr Khouri was represented by Mr Jeremy Richmond KC and Mr Benjamin Joseph of Counsel.

***The Documentary Evidence***

28. The Claimants adduced no oral evidence of any real importance.

29. Moreover, they disclosed no hard copy documents. Obviously, at one time they had important hard copy documents, but they are apparently no longer in the Claimants' control. They were the victims of a complicated and sophisticated fraud, which, as is clear and understandable, they have struggled to investigate fully. They plead that their investigations "*have been and continue to be seriously hampered by the absence of company records or company documentation from the time of these events whilst the Claimants were under the control of Khalifa Alhamadi and his associates*".

30. That said, it is, to my mind, remarkable that the Claimants have disclosed no hard copy documents at all, and the Claimants presented no evidence that explained it. Whatever the reason, the Claimants' case depends, for practical purposes, entirely on electronic documentation. One implication of this is that it is often impossible to know whether documents were signed with a 'wet' signature or were signed electronically (annexed by the purported signatory or by another, whether with or without the purported signatory's authority). This presented the Claimants with major evidential difficulties in proving their case in circumstances where the Defendants dispute the genuineness of documents, and where, as I have concluded, some important documents were undoubtedly fabricated.

31. The electronic documents which the Claimants present fall into three categories:

    a. Documents disclosed by the Claimants which come, the Claimants say, from their own records. These were referred to during the trial as "**Category A Documents**".

    b. Documents that come from a laptop computer that was used by Mr Khiara and was provided to him by BSCI, which I shall refer to as the "**BSCI Laptop**". These were referred to during the trial as "**Category B Documents**".

    c. Documents that have been provided, pursuant to Court orders or otherwise, by financial institutions that were involved in the dealings related to the claims. These were referred to during the trial as "**Category C Documents**".

32. It is not to be assumed or inferred that all the Category B Documents on the BSCI Laptop were authored or received by Mr Khiara, or that he was aware of them all. I accept Mr Khiara's evidence that the volume of documents that he was expected to enter into the

records and save in the course of his administrative duties was such that it was not practicable for him "*to review all of them in detail or gain an understanding of their content*". He explained that other people had access to the BSCI Laptop and used it without his consent or knowledge. Certainly, Category B Documents include emails from Mr Khiara's email address at FFM from Ms Alma Castro, who worked in FFM's Finance Department. They also include Ms Castro's replies to emails from TAP addressed to Mr Khiara as "*Dear Mr Khiara*".

33. Moreover, there are emails that purport to be from Mr Khiara, but which are couched in language that is not that of a fluent English speaker, as Mr Khiara is. Ms Daskalova illustrated this by reference to a Category B Document, which purports to be an email dated 1 October 2018 to Mr Al Mulla. It is not addressed in the conventional English way, but as follows: "*Respected Mr. Hassan Ashour Mullah ... After Greetings ...*". I accept Ms Daskalova's observation that it is improbable that this document was drafted by Mr Khiara, and that it is likely a translation of a document originally drafted in Arabic.

34. As I have explained, in view of my order at the PTR, the documents on which the Claimants seek to rely are not in evidence admitted simply because they were included in the trial bundles. They have to be proved.

35. The Defendants did not challenge the authenticity of the Category C Documents, and I deal with them first. They comprise:

    a. Julius Baer documents: following requests by the Claimants, Julius Baer produced documents from their records to the Claimants on or about 6 May 2025 and under cover of a letter dated 16 September 2025 that was signed by two directors of Julius Baer.

    b. SICO documents: SICO produced documents to the Claimants under cover of an email from Ms Noora Janahi, SICO's Group Chief Legal Officer, dated 29 July 2025 pursuant to a non-party disclosure order of 16 July 2025.

    c. SICO Invest LLC documents: SICO Invest LLC produced documents to the Claimants under cover of a letter dated 13 June 2025, signed by its CEO, Mr Bassam Khouri. On 8 October 2025, it produced further documents under cover of an email from Mr Hatem Refaat, its Head of Compliance, Risk and AML.

    d. Abu Dhabi Islamic Bank PJSC documents: Abu Dhabi Islamic Bank PJSC produced documents to the Claimants on 25 November 2025, pursuant to a non-party disclosure order of 16 September 2025, which was ratified by the Dubai Courts on 20 November 2025.

    e. Arqaam documents: The Claimants first requested Arqaam to provide it with relevant documents on 14 May 2025, and then on 9 June 2025 they applied for an order against Arqaam for non-party disclosure. I refused that application on the basis that the

proper procedure was to seek a letter of request: see my judgment of 19 July 2025 ([2025] ADGMCFI 0015). On 1 October 2025, the Claimants applied to the Court for a letter of request to the DIFC Courts for the disclosure by Arqaam of its relevant documents. A letter of request was issued, and His Excellency Justice Nassir Al Nasser made an order in the DIFC Court against Arqaam. On 26 November 2025, shortly before the trial started, Arqaam produced 122 documents.

36. Initially Mr Khouri objected to some of the documents produced by Arqaam being admitted in evidence, and in the course of the trial, on 3 December 2025, I upheld his objection. However, in his closing submissions (in which Mr Khouri himself relied on the documents to which he had objected), that objection was withdrawn. In the end, all the Category C Documents were received in evidence without objection.

37. The position with regard to the Category A and Category B Documents was more complicated. The Defendants served notices under r.110 of the *ADGM Court Procedure Rules 2016* ("**CPR**") that they did not admit the "*authenticity*" of the documents and required that they be proved at the trial. The nature of the challenge to the Category A and Category B Documents is sufficiently illustrated by citing the following from the notice served on behalf of Mr Trinkler dated 12 September 2025. Having referred to seven documents or categories of documents, the notice continued: "*The fabrication of the above documents indicate* [sic] *that an undefined number of documents in these proceedings are not authentic, or that they have never been addressed to and/or received by the Claimants.* … [Mr Trinkler] *disputes all documents unless explicitly admitted, and the Claimants are put to strict proof of authenticity at trial. The Claimants are obliged to disclose the documents and base their case on the documents they have actually received. They may not rely on documents that were clearly never addressed to them and were never sent by them ("Phantom Documents")* …".

38. The procedural and evidential position where a notice to prove is served is explained by Norris J in *Redstone Mortgages Limited v B Legal Limited [2014] EWHC 3398 (Ch)* at paras. 57 and 58. It does not mean that the document has to be proved by production of the original document, and the existence of a document can still be proved by production of a copy. The so-called 'best evidence' rule no longer exists, at least in civil proceedings: see *PRA Group (UK) Ltd v Goodinson [2021] EWCA Civ 957* at para. 33. However, a notice to prove requires the party who wishes to rely on a document to show that it is what it purports to be, including as to its author, the date of the document and any apparent signatories. As Norris J explained:

> *"Requiring a party to 'prove' a document means that the party relying upon the document must lead apparently credible evidence of sufficient weight that the document is what it purports to be. The question then is whether (in light of that evidence and in the absence of any evidence to the contrary effect being adduced by the party challenging the document) the party bearing the burden of proof in the action has established its case on the*

> *balance of probabilities. … The question is therefore whether any evidence as to the provenance of the document has been produced, and if it has then whether (although not countered by any evidence to the contrary) such evidence is on its face so unsatisfactory as to be incapable of belief*".

39. He continued as follows:

> "*It is vital that the process of challenge is fair. Criticism of the evidence about the authenticity of the document cannot amount to a covert and unpleaded case of forgery. If a case of forgery is to be put then the challenge should be set out fairly and squarely on the pleadings (and appropriate directions can be given). If the charge is that a witness has forged a document (or has been party to the forgery of a document) and the grounds of challenge have not been set out in advance, then if the questions are not objected to the response of the witness to the charge must be assessed taking into account the element of ambush and surprise*".

40. In response to the notices served under CPR r.110, the Claimants initially sought to have the documents admitted in evidence at the trial by serving a certificate under section 67 the *ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015*. It is dated 21 November 2025 and was made by Mr Khaled Chaaban, Union Properties' Chief Legal Officer. In it, Mr Chaaban explained that in 2021 electronic data was collected by Union Properties' IT Department and provided to Ardent on a hard drive; and that in June 2025, when disclosure was being made in the proceedings, the hard drive was provided by Ardent to Lineal, who was described as "*an independent e-discovery service provider*". The Category A Documents are documents from the hard drive. The certificate also states that Union Properties has had in its possession a laptop device, and the Category B Documents are taken from that laptop.

41. The Defendants (or some of them) objected to the certificate on various grounds, contending *inter alia* that this was not a proper procedure for proving the evidence because it did not identify specific documents or even specific categories of documents; and Mr Khouri submitted that the Category A and B Documents were not proved and not admissible in evidence. I need not engage with those objections because, at the start of the trial, the Claimants produced a witness statement dated 28 November 2025 by Mr Chaaban, in which he verified the contents of the certificate. It was supported by witness statements filed on 28 November 2025 and 1 December 2025 by: Mr Joseph ElBaz, the Digital and Technology Director at Union Properties; Mr Sashikanth Ramakrishnan of Ardent; and Mr Martin Pollard of Lineal. Mr Pollard exhibited to his statement a schedule listing the documents, which included columns that, *inter alia*, purported to describe the metadata of the documents and to state the "*Author*" and the "*Custodian*" of each document. Mr de Wolff told me that this information had been available to the Defendants by interrogating the metadata that could be read on the electronic documents that the Claimants disclosed, but that was controversial.

42. During the trial, on 3 December 2025, I admitted into evidence the various witness statements proving the Category A and Category B Documents. I received in evidence the description of the metadata in Mr Pollard's schedule, but not his evidence about the "*Author*" and the "*Custodian*" of the documents. I refused to admit that evidence because it was too unclear for it fairly to be admitted without prior notice in the course of the trial. It did not explain what was meant in this context by the term "*Custodian*", or how Mr Pollard could know the author of an electronic document (in contradistinction to the computer or computer address that produced it). Both these columns were designed to set out Mr Pollard's interpretation of controversial metadata of documents. In effect, the Claimants were seeking to introduce expert evidence about the interpretation of the metadata without applying for or obtaining permission.

43. In the course of the trial, the Claimants relied upon the metadata of electronic documents. In particular, when Mr Khiara was cross-examined it was put to him that the metadata for the Category B Documents demonstrated (or suggested) that he had dealt with the documents or was aware of their contents, his evidence that others had access to the BSCI Laptop notwithstanding. Generally, I am not willing to make inferences of this kind adverse to Mr Khiara for three main reasons.

    a. First, it was controversial whether the metadata showed whether some of the Category B Documents on the BSCI Laptop, such as the SLA (see para. 136 below) and the securities receipts (see para. 210 below), were stored in a local or personal folder or on a network or shared drive. There was no evidence about the relevant IT systems or how the metadata should be interpreted. The inferences that the Claimants invited me to make from the metadata would have required me to assume judicial notice of an unconventional kind, which would go beyond what is permissible.

    b. Secondly, as I have said, Mr Khiara's evidence was that other people likely had access to the BSCI Laptop and used it without his consent or knowledge. That evidence was not challenged convincingly, and I accept it. Accordingly, even if a document was stored in a personal or local file, it did not mean that Mr Khiara received it, read it or filed it.

    c. Thirdly, there is no evidence about what happened to the BSCI Laptop after November 2021. There was no evidence, and I am not in a position to know, whether persons who might have wished to implicate Mr Khiara in the wrongdoing, whether to divert attention from their role in it or for some other reason, could have tampered with the BSCI Laptop. I cannot assume that the metadata would have been immune from such interference.

***The Witnesses***

44. The Claimants served witness statements by (i) Mr Faisal Al Sahlawi, the General Manager of Dubai Autodrome LLC, a wholly owned subsidiary of Union Properties, and (ii) Mr

Mohamed Al Ali, the General Manager of Assets at Union Properties. Their evidence was not directly relevant to any issue in the litigation. They both made statements about Mr Alhammadi, Mr Al Almheiri and Mr Khouri, and Mr Al Ali included comments about Mr Khiara, but they were very general: for example, Mr Al Sahlawi said that Mr Alhammadi "*was not someone who liked to document things in writing*"; and Mr Al Ali described Mr Khouri as "*not one to question things and would often give the ok based on what he was told by others, especially his superiors – at the time, Mr Almheiri and Mr Alhammadi*", and he described Mr Khiara as doing "*what he was told by Mr Alhammadi without question*".

45. None of the Defendants wished to cross-examine either of the Claimants' witnesses. Neither Mr de Wolff nor any representative of the Defendants placed any significant reliance on their evidence.

46. Mr Al Sahlawi's witness statement does not include a signed statement of truth, as required by CPR r.97(1) and Practice Direction 8.3(g), and Ms Daskalova invited me to "*draw adverse inferences as to the credibility of Mr Al Sahlawi*". However, she did not indicate which parts of his evidence should be rejected, and in any case, since Mr Al Sahlawi was not cross-examined, I decline to draw adverse inferences against his credibility.

47. Mr Klar did not give evidence and called no witnesses.

48. Mr Trinkler did not give evidence. The other parties consented to a witness statement of 20 February 2024 made by Dr Ammann being admitted in evidence, and did not request that that Dr Ammann be cross-examined.

49. Mr de Wolff invited me to draw adverse inferences against Mr Trinkler and Mr Klar because they did not give evidence in response to the allegations against them. In my judgment, this is not a case in which an adverse inference can properly be drawn. In *Wiszniewski v Central Manchester Health Authority [1998] PIQR 324*, Brooke LJ set out guidance about when such an inference can properly be drawn in these circumstances, and said that "*there must be a case to answer on* [the] *issue*" on which there might have been evidence, and in *Efobi v Royal Mail Group Ltd [2021] UKSC 33* Lord Leggatt described the guidance as "*sensible*", while observing that the question whether an adverse inference is to be drawn "*really is or ought to be just a matter of ordinary rationality*" (at para. 41). As I shall explain, in my judgment the case against both Mr Trinkler and Mr Klar was insufficient to require them to answer it with evidence.

50. Mr Khiara and Mr Khouri both gave evidence and were cross-examined.

51. Mr Khouri gave his evidence with the assistance of an interpreter. He was an unsatisfactory witness. In cross-examination, he would not accept propositions that were obviously correct, and he repeatedly claimed to have no memory of matters. For example, he said that he did not "*remember anything about the procedures on the Investment Committee*",

and refused to accept that the Investment Committee of UPP Capital took decisions on investments, notwithstanding that Ms Malik, in her evidence in support of his application to strike out the proceedings against him, had stated that: "*It is not contested by Mr Khouri that this Investment Committee made decisions about what to invest in and how …*". He was unwilling to accept that a P-Note with an underlying investment in Union Properties shares would not be a diversified note, even though he said in his witness statement that he understood that "*it is common to use P-Notes as financial instruments to purchase shares in specific companies and/or in order to purchase funds holding diversified investments*".

52. Similarly, he told me in cross-examination that he could not remember signing instructions to have P-Notes transferred to TAP. However, in her first witness statement in support of Mr Khouri's strike out application, Ms Malik said "*Mr Khouri signed instructions for the transfers of the P Notes to TAP dated 29 August 2018 …, 12 September 2018 …, 24 September 2018 … . He considered such transfers legitimate and in line with the investment committee meeting and resolution*". In her second witness statement, she explained that her first witness statement *"reflect*[ed her] *understanding of the facts and matters contained within as provided by Mr Khouri in conference, with the assistance of the documentation exhibited to the witness statement*".

53. Further, Mr Khouri gave oral evidence that he could not remember other matters which were stated clearly in his witness statement, although in his evidence in chief he had confirmed its accuracy. For example, he initially said that he could not remember whether UPP Capital decided to move investments to TAP, and only accepted it when it was pointed out that in his witness statement he had said that he recalled the decision, stating that it was made "*due to the poor performance of the portfolio at Julius Baer*". He said in his witness statement that Mr Almheiri and Mr Alhammadi assured him about the "*strategy*" of moving the investments to TAP. When cross-examined, he said that he did not remember what was said to reassure him.

54. I shall refer later in my judgment (at para. 291) to four letters which were on their face written by Mr Almheiri to Mr Khouri. As I shall explain, Mr Khouri's account about these letters confirms, in my judgment, that I cannot rely upon his evidence in so far as it was challenged.

55. I do not say that Mr Khouri was a dishonest witness, nor that the quality of his evidence provides positive support for the allegations of wrongdoing against him. It might well be attributable to nervousness, aggravated by the difficulties of giving evidence largely through an interpreter. However, I am driven to conclude that I cannot rely upon his evidence about the dealings in the P-Notes where it was challenged, unless it is corroborated by documentary evidence. I do find generally credible, and I accept, his more general evidence about his role with the Claimants and with FFM.

56. I take a different view about Mr Khiara's oral evidence. He was a calm witness, and he appeared to me willing to engage with points put to him carefully and to the best of his ability.

57. It was a troubling aspect of his cross-examination that it was put to him that he had "*participated in what* [Mr Alhammadi] *was doing, most obviously by directing the creation of the websites*". Ms Daskalova did not object to these questions in the course of the cross-examination, which was understandable in view of how Mr Khiara responded to the questioning; and in these circumstances I did not intervene. However, I accept Ms Daskalova's criticism of this questioning in her final submissions. The allegation that Mr Khiara had directed the creation of the allegedly fake websites was not pleaded. On the contrary, the Claimants' pleaded case was that they were created on the instructions of Mr Alhammadi: see para. 219 below. I consider that the allegation was improperly put to Mr Khiara without him having any notice. I refer to the judgment of Carr J in *Elena Baturina v Alexander Chistyakov [2017] EWHC 1049 (Comm)* at para. 126: having accepted that "*there is an extent to which it is permissible to pursue unpleaded general challenges to credibility*", Carr J observed that "*where it is intended to advance specific matters of dishonesty based on a particular set of facts, such matters should, as a matter of fairness, be pleaded*". I add that Carr J made that criticism notwithstanding in her case the unpleaded allegation was not pursued in closing submissions. In this case, the Claimants did pursue it.

**The Pleadings and the Amendment Application**

***Introduction***

58. The trial was the more difficult because the pleadings were unhelpful. Although they have produced many versions in the course of the proceedings, the Claimants' Re-Amended Particulars of Claim remained unparticularised, and the allegations against individual Defendants were vague. Some claims were not pursued at the trial and, as will become apparent from this judgment, the Claimants sought to introduce at trial, both in cross-examination and in their submissions, many allegations that were not pleaded. I have sympathy with Mr Richmond's complaint that the Claimants treated the trial as "*some sort of ambulatory investigation*".

59. The pleadings of the Defendants other than Mr Khouri were uninformative, stating little more than that most paragraphs in the Claimants' pleading were "*noted*". Mr Khouri's Defence was more forthcoming, but his evidence did not support much of it.

60. Unsurprisingly, in these circumstances, the parties were unable to draw up a list of the pleaded issues that was usefully focused and structured, and attempts to do so proved abortive.

***Pleading Allegation of Fraud***

61. Accordingly, I emphasised to Mr de Wolff that I would decide the case on the basis of the pleaded allegations. Of course, in some cases the Court will be reluctant to hold a party tightly to his pleaded case if the substance of the matter has been properly and fairly explored in the course of the proceedings, and then an objection on the basis of a narrow reading of the pleadings can be without merit. I do not consider that this is such a case in which this relaxed approach would be proper.

62. First, throughout these protracted proceedings, the progress to trial has been hampered by the apparent inability of the Claimants to plead their claims clearly and with proper particularity: see, for example, para. 22 above.

63. Secondly, the core of the Claimants' complaint is that they were the victims of a fraud to which the Defendants were parties, and it has long been established that (in the words of Thesiger LJ in *Davy v Garrett (1878) 7 Ch D 473*) fraud and comparable allegations "*must be distinctly alleged and as distinctly proved*". I have referred to the relevant principles in other judgments in this case: see, for example, para. 31 of my judgment of 15 November 2024 ([2024] ADGMCFI 0014). I need only repeat this summary of the proper approach from the judgment of Cockerill J in *King v Stiefel [2021] EWHC 1045 (Comm)* at para. 25:

> "*i) The Court should bear in mind that cogent evidence is required to justify a finding of fraud or other discreditable conduct, reflecting the court's conventional perception that it is generally not likely that people will engage in such conduct.*
>
> *ii) Pleadings of fraud should be subjected to close scrutiny and it is not possible to infer dishonesty from facts that are equally consistent with honesty.*
>
> *iii) However, in view of the common feature of fraud claims that the Defendant will, if the underlying allegation is true, have tried to shroud his conduct in secrecy, the Court should adopt a 'generous' approach to pleadings*".

64. Thirdly, the Defendants made clear at and before the trial that they would conduct their defences on the basis of the pleadings against them. They were entitled to do so. In particular, as I have said, Mr Trinkler and Mr Klar did not give evidence themselves. As Dr Daburon said, this was because the view was taken that the Claimants' pleaded case was too weak to require evidence in response.

65. The case that the Claimants are entitled to advance is therefore limited by their pleading in important respects, to which I shall refer in more detail later in my judgment. I have already said that the allegation against Mr Khiara that he instigated, or was party to, the creation of the websites is not open to the Claimants. As I shall explain, the Claimants' pleading also precludes other arguments that the Claimants sought to advance at the trial including (i)

about what representations the Defendants were said to have made with deceit or negligently; (ii) about the case against Mr Khouri for breach of duty; (iii) about the loss for which the Claimants are entitled to claim; and (iv) about the Claimants' argument that the Defendants are liable under the provisions of *UAE Federal Law No. 5 of 1985 Concerning the Issuance of the Civil Transactions Law* (the "**UAE Civil Code**").

***The Claimants' Amendment Application***

66. It is convenient next to refer to an application by the Claimants to re-amend their Amended Particulars of Claim. By notice dated 13 November 2025, following the PTR, the Claimants applied for permission to make certain amendments to their pleading. It was too late to expect the Defendants to respond to the application before the trial, and I decided to hear it at the trial. After the opening submissions, but before any evidence had been called, the Claimants made a further application, putting forward further proposed amendments in light of observations made in the Defendants' skeleton arguments and in their oral openings. The more significant amendments were opposed by the Defendants (or by one or more of them). I heard submissions on the application to amend on 3 December 2025, and I ruled on it. I said that I would provide reasons for my decision in my judgment after the trial.

67. Before coming to the principles governing late applications specifically, I refer to the judgment of Asplin LJ in *Elite Property Holdings Ltd & Another v Barclays Bank Plc [2019] EWCA Civ 204*, which I have cited previously in these proceedings: see para. 28 of my judgment of 23 May 2024 ([2024] ADGMCFI 0006). She said: "*For the amendments to be allowed the* [Applicants] *need to show that they have a real as opposed to fanciful prospect of success which is one that is more than merely arguable and carries some degree of conviction*" (at para. 41).

68. The main thrust of Mr de Wolff's submission in support of the application is that the amendments were essentially designed to bring "*the pleadings into line with the Claimants' case as it had been, and was known to have been"* for long before the trial. He cited *Ahmed & Anor v Ahmed [2016] EWCA Civ 686*, in which Moore-Bick LJ indicated (at para. 16) that the amendments of this kind might more readily be permitted, even if the application to amend is made at the trial. He also cited the judgment of Briggs LJ in *Hague Plant Ltd v Hague and ors [2014] EWCA Civ 1609,* where it is said (at para. 33): "*Lateness is not an absolute but a relative concept. … It all depends upon a careful review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of its consequences in terms of work wasted and consequential work to be done*". This observation was made in a case where the Judge whose refusal to permit amendments was being challenged had drawn a distinction between (i) "*very late"* applications to amend, where "*the risk to a trial date may mean that the lateness of the application to amend will of itself cause the balance to be heavily loaded against the grant of permission*", and (ii) "*late*" applications, where "*the consequence of the large scale*

*reformulation of the Particulars of Claim … will risk undermining work already done in response to the original Particulars of Claim, and causing a duplication of cost and effort*".

69. I do not find these authorities particularly useful in this case. Of course, lateness is a matter of degree. The simple fact is that here the amendments were first proposed shortly before or at the trial. On the other hand, although Mr Richmond said that, if the Claimants were permitted to amend in one respect, Mr Khouri would have to consider whether he should apply to adjourn the trial, there was never a serious prospect of an adjournment.

70. I consider more useful in this case the judgment of Coulson J in *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd [2015] EWHC 1345 (TCC)*, where he summarised the relevant principles as follows:

> "*(a) The lateness by which an amendment is produced is a relative concept. … An amendment is late if it could have been advanced earlier, or involves the duplication of cost and effort, or if it requires the resisting party to revisit any of the significant steps in the litigation (such as disclosure or the provision of witness statements and expert's reports) which have been completed by the time of the amendment.*
>
> *(b) An amendment can be regarded as 'very late' if permission to amend threatens the trial date … , even if the application is made some months before the trial is due to start. Parties have a legitimate expectation that trial dates will be met and not adjourned without good reason … .*
>
> *(c) The history of the amendment, together with an explanation for its lateness, is a matter for the amending party and is an important factor in the necessary balancing exercise … . In essence, there must be a good reason for the delay ….*
>
> *(d) The particularity and/or clarity of the proposed amendment then has to be considered, because different considerations may well apply to amendments which are not tightly-drawn or focused … .*
>
> *(e) The prejudice to the resisting parties if the amendments are allowed will incorporate, at one end of the spectrum, the simple fact of being 'mucked around' … , to the disruption of and additional pressure on their lawyers in the run-up to trial … , and the duplication of cost and effort … at the other. If allowing the amendments would necessitate the adjournment of the trial, that may be an overwhelming reason to refuse the amendments … .*
>
> *(f) Prejudice to the amending party if the amendments are not allowed will, obviously, include its inability to advance its amended case, but that is just one factor to be considered … . Moreover, if that prejudice has come about by the amending party's own conduct, then it is a much less important element of the balancing exercise …*".

71. Not only was the Claimants' application made late: they made it against the background of a long procedural history of attempts by the Claimants to formulate and reformulate their pleaded case. In particular, the background to the application is explained in:

    a. my judgment of 23 May 2024 ([2024] ADGMCFI 0006), in which I struck out the proceedings against Mr Almheiri, refusing the first application by the Claimants to amend their pleadings; and

    b. my judgment of 15 November 2024 ([2024] ADGMCFI 0014) on an application to amend made by the Claimants on 14 June 2024, which I granted in part. The Claimants then sought permission to make further revisions to their pleadings, which I permitted by order of 9 December 2024.

72. Coming to the applications of 13 November 2025 and 28 November 2025, there was no good reason that the Claimants did not apply for permission to amend much earlier than they did. The proposed amendments are not based on information that they have only recently learned. Neither in their evidence nor in their submissions did the Claimants have any explanation for the delay that goes any way to excusing it.

73. The first group of amendments concerned the nature of the P-Notes. It was said in the pleading at para. 3 that the scheme that the Claimants allege involved the unauthorised use of funds to purchase "*391,789,341 units of participatory notes (P-Notes) whose underlying investments were made up almost exclusively of shares in Union Properties*". It has always been clear that the complaint is that P-Notes were bought, and not that funds were used to buy shares in Union Properties. However, paragraphs 26, 43 and 71 of the Re-Amended Particulars of Claim (read in isolation) might have been understood to plead that the investments were not in P-Notes (or not wholly in P-Notes) but in shares. Although the Claimants sought permission to clarify these paragraphs late, the amendments do not change the nature of the case that they always advanced, and I permitted the amendments.

74. Secondly, the Claimants sought permission to introduce a claim for damages by way of "*the loss of a real and substantive chance of recovering the* [sum of AED 320,717,867.84]". As I said in my judgment of 22 July 2025 ([2025] ADGMCFI 0016), in which I struck out the proceedings against Mr Almansoori, no claim for loss of a chance was pleaded. I said this (at para. 28):

> "*It is not said that the Claimants' funds or assets were misappropriated as a result of any breach of duty of Mr Almansoori: Mr de Wolff submitted that, as a result of his breach, they suffered damage by way of loss of the chance of 'detecting, investigating and unwinding the misappropriation'. As I understand it, therefore, the Claimants say that they suffered loss because they learned that they had been defrauded only in about October 2021 and not at some time in or after June 2020 (if Mr Almansoori owed a duty of care because he was a director of UP) or at some earlier time. However, the claim is not pleaded on the*

> *basis of loss of a chance. The December 2024 pleading simply says that the Claimants suffered loss because they 'refrain[ed] from investigating or unwinding the misappropriation of the Transferred Funds and/or the Transferred Assets' (para. 64). The term 'Transferred Asset' refers to the 391,789,341 units of P-Notes, and at the hearing, Mr de Wolff acknowledged that the Claimants could not have 'unwound' matters so as to recover them. The term "Transferred Funds" refers to 'the sum of AED 320,717,867.84 … paid by [UPPC] towards the purchase of the 391,789,341 units of P-Notes [less the value of certain of the P-Notes]' (para. 9(b)). No explanation has been offered about how matters might have been 'unwound' so that the sum of AED 320,717,867.84 might have been recovered*".

75. Although this judgment was delivered in July 2025, the Claimants did not indicate an intention to plead a claim for loss of a chance until after the trial had started. Indeed, in their written submissions, they contended that: "*The loss claimed in these proceedings crystallised by no later than October 2018, when the Assets/their proceeds were transferred to third party accounts"*. Then they sought to plead that they suffered this loss as a result of entering into the Mandate Agreement dated 1 June 2018 with TAP and the IMA and paying fees due under those agreements, and (although the draft pleading was not entirely clear) they appeared to pursue a remedy on this basis in respect of claims in fraudulent or negligent misrepresentation and liability under the *ADGM Financial Services and Markets Regulations 2015* ("**FSMR**").

76. The language of "*real and substantial chance*" derives from the judgments in *Allied Maples Group Limited v Simmons & Simmons [1995] 4 All ER 907*. There is no need for me to explore in what circumstances damages can be recovered on this basis. It suffices to say that a mere speculative chance of loss is not sufficient. The Claimants proposed to call no evidence to support a contention that the change of recovery was real or substantial. That in itself would have been fatal to any claim of this kind and was a sufficient reason to refuse these amendments.

77. But even if the Claimants had some evidence to support a claim for loss of a chance, I would still have refused the amendments. It would have opened up a substantial new area of inquiry for which the Defendants had not prepared. It would have been unfair to require them to meet it. It would be particularly unfair in view of what I said in my judgment in July 2025. The proposed amendment still did not state how the loss might have been recovered. The Claimants have no excuse for the delay in proposing to plead this case if they wished to do so. Since no evidence supported the proposed new claim, the Claimants will suffer no prejudice as a result of these amendments being disallowed, but if they were prejudiced, it would result from their own unexplained conduct.

78. Next, the Claimants sought permission to amend their claim against Mr Khouri for breach of duty. Without the proposed amendment, they alleged that: "*In breach of his duties as a director of UPP Capital, Ahmed Khouri procured UPP Capital to enter into the Mandate Agreement and IMA with TAP in circumstances where he knew that no bona fide investment*

*fund or asset management service was to be provided*"; and that in breach of his duty, he "*instructed Julius Baer to purchase a total of 391,789,341 units of P-Notes in circumstances where he knew that those investments were not to the benefit of Union Properties or UPP Capital but rather were ultimately covers for the dissipation of funds or assets for the benefit of various third parties*". They sought to amend this pleading:

a. to allege that Mr Khouri was in breach of his duty in that he procured UPP Capital to enter into the Addendum to the IMA dated 24 September 2018 (the "**Addendum**"), and that he was in breach of his duty because he knew that no *bona fide* service was being provided;

b. to allege, in the alternative to the allegation of actual knowledge, that Mr Khouri "*ought to have known*" the relevant matters; and

c. to delete the words "*but rather were ultimately covers for the dissipation of funds or assets for the benefit of various third parties*".

79. I permitted the deletion: the Claimants' essential allegation was that Mr Khouri gave instructions when he knew that the purchase would not be to the benefit of the Claimants (or either of them), and it was unnecessary for them to go on to plead that he knew what the purpose was. This change did not prejudice Mr Khouri, nor did it present him with any allegation that he should not have been in a position to meet.

80. I refused the other two proposed amendments to the case against Mr Khouri in breach of duty. As for the proposal to introduce an allegation that Mr Khouri procured that UPP Capital entered into the Addendum, in the pleading without the amendment the Claimants only alleged that "*An addendum to the IMA was entered into on 24 September 2018*": there was no allegation that Mr Khouri was involved with the Addendum, and nothing was pleaded about its terms or purpose. In fact, the Addendum provided that TAP should hold assets provided for investment for a period of three years from the date of their receipt by TAP, and that, if UPP Capital wished to withdraw assets during the "*lock in period*" of three years, it should give six months' notice. Mr Khouri had not prepared to answer this new contention, and it would have been unfair to him to allow it to be introduced so shortly before he was to give evidence. In any case, this amendment would be pointless: it makes no sense in the context of the Claimants' pleaded case. They did not explain how the entry into the Addendum might have caused the Claimants any loss. The remedy sought in their pleading is in respect of the loss of the USD 320,717,867.84. Those funds were transferred before the Addendum is said to have been made.

81. Mr de Wolff contended that the plea that Mr Khouri was in breach of duty on the basis of "*constructive knowledge*", that is to say on the basis of what he ought to have known, had always been inherent in the case against him and was so understood by Mr Khouri. I cannot accept that: indeed, I said this in my judgment of 15 November 2024 ([2024] ADGMCFI 0014), in which I refused Mr Khouri's application to have the proceedings against him

struck out or stayed: "*With regard to the claim for breach of directors' duties, Mr Richmond submitted that the Second Draft* [of the Claimants' proposed amended pleading] *sets out numerous statutory duties, but it is vague about how each is said to have been breached: I come to this point later. However, his essential submission in that this claim simply re-shapes the conspiracy claim and requires a finding of dishonesty or collusion. I agree, but for reasons that I have explained, I do not accept that therefore the claim should be struck out*" (at para. 66). Despite this judgment, the Claimants did not seek to plead a claim for breach of duty on the basis of what Mr Khouri ought to have known, and they amended their pleading in accordance with my order of 9 December 2024 without introducing such a claim.

82. Nevertheless, in support of their application, the Claimants contended that Mr Khouri must have known that they intended to allege not only breach of duty on the basis that he was dishonest but also on the basis of constructive knowledge because in his defence he denies that he "*knew or ought to have known*" matters of which the Claimants allege that he knew. I cannot draw this inference from this somewhat conventional formula in Mr Khouri's pleading. As Mr Richmond demonstrated, in exchanges between the parties after the CMC in which they sought (without success) to draw up a list of pleaded issues, the Claimants did not suggest that they advanced a claim of breach of duty against Mr Khouri on the basis of constructive knowledge.

83. However this might be, I also consider that this amendment should not be permitted because it is not properly particularised. The plea that, "[f]*or the avoidance of doubt, that knowledge is to be inferred from the prior establishment of FFM and the entire circumstances as pleaded herein supporting the conclusion that TAP was to be used as a front to conceal the misappropriation of the Trust Assets including by the production of false securities confirmations and continued false investment reports in the name of TAP*" is hopelessly vague. The Claimants do not even attempt to state what Mr Khouri should have done, but failed to do, had he known these matters, nor do they plead a coherent case on causation of loss.

84. It would have been unfair to Mr Khouri to allow a case on the basis of constructive knowledge to be advanced at the trial. He had not prepared factual evidence to meet such a case. Further, the Claimants and Mr Khouri served submissions on UAE Law in accordance with directions given at the CMC, and their submissions do not cover questions about what knowledge a director should have in order to fulfil his statutory duties, and Mr Khouri had no opportunity to apply for permission to adduce expert evidence about this. Against this, the Claimants did not show, or even assert, that they would suffer prejudice as a result of being precluded from advancing a case based on constructive knowledge. If they have, they have brought it about themselves.

85. The application to amend raised other points, including changes to abandon some heads of damage that had been pleaded and that were unsupported by evidence. They were either unopposed or trivial (or both) and I do not need to deal with them in this judgment.

**The Claimant Companies and their Officers and Executives**

86. Union Properties has a major business in residential and commercial property development in the UAE. It was established in 1987 as Union Property Private Limited and listed on the Dubai Financial Market ("**DFM**") in 1993. UPP Capital was established in 2002 to undertake and hold investments in equities on behalf of Union Properties and is the investment arm of Union Properties.

87. Mr Khouri, Mr Alhammadi and Mr Almheiri all joined the Union Properties Group at about the same time in 2017. They had previously worked together. For example, they all had previously been with Bin Butti international Holding, of which Mr Almheiri was Chairman and Mr Khouri was Vice Chairman; and Mr Khouri had worked with Gulfa Mineral Water and Manufacturing Industries Company PJSC, of which Mr Alhammadi was Chairman, and he (Mr Khouri) was Vice Chairman. Nevertheless, Mr Khouri's evidence was that his relationships with Mr Alhammadi and with Mr Almheiri were purely professional and not personal and not particularly close. That evidence was not convincingly challenged, and I accept it.

88. Mr Almheiri became a director of Union Properties in April 2017, and he remained on the Board until September 2019. In June 2017, he was appointed Chairman of UPP Capital and he was its Chairman until November 2021.

89. Mr Alhammadi was appointed as a director of UPP Capital in June 2017 and as a director of Union Properties in August 2018. He was on both Boards until November 2021. He was Union Properties' CEO between December 2019 until March 2020, and then its Vice Chairman between March 2020 and June 2020.

90. Mr Khouri joined Union Properties in July 2017 as its CEO. He had previously been a director of various private companies and worked in managerial and other capacities for family companies. His position with Union Properties was his first role in a publicly listed company. As I have said, he became its Managing Director in July 2018.

91. At about the same time as he joined Union Properties in July 2017, in accordance with a Board resolution of 20 June 2017, Mr Khouri was appointed as a director of UPP Capital, together with Mr Almheiri, who was appointed as Chairman. Mr Khouri also became UPP Capital's authorised signatory.

92. By a letter dated 7 January 2018 and countersigned by Mr Klar on 28 January 2018, Mr Klar was appointed to the position of Vice President, Finance with UPP Capital. He became a director of Union Properties between June 2020 and November 2021.

93. By a resolution of 1 January 2018, the Board of UPP Capital established an Investment Committee, and appointed its three members: Mr Alhammadi, its Chairman; Mr Jonathan Nicoll, who previously worked with Mr Alhmmadi at Julius Baer; and Mr Khouri, to represent Union Properties. It was charged with deciding what investments should be made and how

they should be made, and given wide powers, including the *"right to enter into investment through purchase or contribution …"*. Mr Khouri gave evidence, and I accept, that Mr Almheiri, the Chairman of UPP Capital, supervised the Investment Committee and guided its work; and that the management and operational activities of UPP Capital were the responsibility of Mr Alhammadi.

94. Meetings of the Committee were attended by employees of UPP Capital from its investment and finance departments, including Mr Bashar Al Zoubi, its Vice President – Investment.

95. There was a good deal of preparation before meetings of the Committee by way of drafting and reviewing documents, and discussion to consider strategy and documentation. Accordingly, the meetings had before them considerable documentation in hard copy to assist discussion. As Mr Khouri told me, and I accept, minutes of the meetings were taken by a Secretary to the Committee, and were considered by the relevant departments within UPP Capital, before being signed by the three committee members. They were very brief records of meetings that lasted for some hours. As I explain later (at para. 130), I conclude that some of purported minutes that were put before me were fabricated.

**FFM**

96. As I have said, FFM was incorporated on 14 March 2018 by Mr Almheiri and Mr Alhammadi. It was originally called Bluestone Fund Managers Limited, and its name was changed to First Fund Management Limited on 10 June 2018. It was owned by BRI, which was established on 15 May 2017. BRI was in turn owned as to 50% by Mr Alhammadi and as to 50% by HMZ Holding, which was a sole proprietorship limited liability company owned or ostensibly owned by Sheikh Hamdan Bin Mohammed Bin Zayed Sultan al Nehayan.

97. Under its memorandum and articles of association, FFM's objectives were to conduct business by way of investing in, establishing and managing commercial projects, providing management services for private companies and institutions, and investment in private funds.

98. FFM was licensed by the FSRA to manage a collective investment fund, to manage assets and to advice on investment or credit.

99. By a contract that was dated 14 March 2018 (but was entered into by the company in the prospective name of FFM), Mr Trinkler was appointed as a non-executive director. The contract provided that he should serve on the Board and "*carry out duties on behalf of the Shareholders*"; that his appointment was not full time; and that his normal place of work was in Abu Dhabi or such other place as the Shareholders might reasonably require. He was to be paid US$ 20,000 p.a. and US$ 2,000 for each Board meeting. (In September 2019 the pay for Board members was changed to US$ 10,000 p.a. and US$ 1,000 for each Board meeting. It is not clear whether this change applied to Mr Trinkler.)

100. By a Board resolution of 6 August 2018, Mr Khiara was appointed as FFM's authorised signatory and he was given a power of attorney to set up counterparty accounts and perform related administrative tasks for FFM. He was then employed by BSCI as its CFO. He did not become an employee of FFM, and he had no other role in FFM. According to his evidence, which was not convincingly challenged and which I accept, it was explained to him that Mr Almheiri and Mr Alhammadi were unavailable or unwilling to deal with routine documentation, and that Mr Alhammadi decided that Mr Khiara should "*take on that role*".

101. Ms Alma Castro, who was a qualified accountant employed by BSCI, moved to be employed by FFM in order, according to Mr Khiara's evidence, which I accept, "*to manage its finances*". It was suggested to Mr Khiara in cross-examination that she worked in a relatively junior capacity on the basis of some evidence suggesting that in January 2019 she was earning a salary of some AED 4,000 per month. However, I have no information about the usual pay of accountants in the UAE at that time and in any case the evidence about her pay was insufficient to draw any inference about the seniority of Ms Castro's role or the nature and extent of her responsibilities. All that can be said is that Mr Khiara was earning very much more in his CFO position at BSCI.

102. By an email dated 8 December 2018 addressed to Mr Klar and copied to, among others, Mr Trinkler, Mr Khiara said that FFM planned to appoint a full time CEO in January 2019, and it had been suggested that, in the interim, he be appointed CEO "*in order to meet the applicable regulatory requirements*". By Board resolution on 15 January 2019 (according to the documentary evidence) or 23 January 2019 (according to Mr Khiara's evidence), he was so appointed with remuneration of AED 92,000 per month. The appointment was made pending the permanent appointment of Mr Matthias Muller, who was then expected to take up his appointment as SEO on 30 April 2019. The Board received a report about this and other matters at a meeting on 25 to 27 February 2019. In the event, Mr Muller, a Swiss national, took up his appointment on 12 May 2019.

103. There was a meeting of the Board of FFM on 25 to 27 February 2019, which Mr Trinkler attended remotely. The directors were informed of projects including receiving a presentation about the establishment of three funds: the Diversified Real Estate Growth Fund OEIC [Open Ended Investment Company] Limited, the Global Equity Fund OEIC Limited and the UPP Capital Fund OEIC Limited. It was said that Standard Chartered Bank had been appointed to be custodian and administrator of the funds.

104. At a Board meeting on 9 August 2019, Mr Trinkler, while acknowledging that "*the major shareholder needs 'privacy'*", asked for more transparency about cash flow management. Mr Klar also explained why non-executive directors questioned the staff about, *inter alia*, cashflows.

105. By a letter of 17 September 2019, the directors of FFM were advised that the "*management*" had decided to appoint Mr Alhammadi, Ms Alhammadi and Mr Khiara to the Board.

106. On 9 December 2019, FFM held an Annual General Meeting (the "**AGM**") in respect of the financial year for 2018. Mr Alhammadi and a representative of HMZ Holding attended it, as did Mr Trinkler and Mr Klar. The meeting was provided with annual financial statements. The minutes also record that "*It was agreed, accepted and understood by the Shareholder(s) that the Company was not operational in FY'19 due to the market conditions being highly risky especially in the* [Gulf Cooperation Council] *region for investments, therefore the Company is seeking to start its operations in 2020"*. By a Discharge Letter dated 6 May 2019, Mr Klar, Mr Trinkler and Mr Dubach had been discharged from any liabilities in respect of the period to 2018.

107. On 27 February 2020, Mr Khiara was appointed to the Board of FFM. According to Mr Khiara's unchallenged evidence, which I accept, Mr Alhammadi had him so appointed "*as a placeholder … until he could appoint a new board*".

108. By a Board resolution of 5 July 2020, Ms Alhammadi was appointed to take any steps necessary "*in relation to the strike/off/closure*" of FFM. On 14 July 2020, the directors were formally informed that FFM was taking steps to have its licence from the FSMR cancelled and for the company to be struck off. Its licence was cancelled on 20 October 2020 and it was struck off in September 2021.

109. Mr Khiara explained that his personal credit cards were used to pay expenses incurred by FFM, such as incorporation and regulatory costs, employees' visas, directors' travel expenses and IT related costs: indeed, he described this as the "*main task* [he] *performed in relation to FFM*". He explained that FFM did not have a corporate credit card arrangement, and therefore, on Mr Alhammadi's insistence, he so used his own cards, and he allow others to do so. He said that his practice was to use a supplementary card in the name of his then wife, Ms Heena Makwana, for IT related expenses because it had a lower credit limit, which mitigated the potential consequences of misuse. He did not scrutinise the details of the expenses so charged, but he simply claimed them for reimbursement by FFM as expenses.

110. The Claimants plead that "*FFM was established as a sham company to conceal a fraud and this was known to FFM, Jorg Klar and Mr Khiara*". (They do not plead that it was known to Mr Trinkler or Mr Khouri.) Much has been said in English judgments about what constitutes a "*sham*", but the classic statement is still that of Diplock LJ in *Snook v London and West Riding Investments Ltd [1967] 2 QB 786, 802: "*[I]*t means acts done or documents executed by the parties to the 'sham' which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create*". As Neuberger J said in *National Westminster Bank Plc v Jones [2000] 6 WLUK 556* at para. 46, there is a strong presumption against allegations of a sham, at least in circumstances such as these, in as much as they connote a degree of dishonesty.

111. The Claimants produced no evidence that FFM was created with the purpose of advancing or concealing a planned misappropriation of the Claimants' assets, still less have they produced evidence that is sufficient to support an allegation of implicit dishonesty. There is no evidence that the fraud was planned in March 2018, when FFM was incorporated: Mr de Wolff did not develop an argument that the wrongdoing started, or was planned, before June 2018. Even if it was, there is no evidence that this is why FFM was incorporated, and it was not intended that it should not conduct genuine business.

112. The Claimants have not proved that FFM was established as a sham, and I reject the allegation.

113. The Claimants' allegation is equally unsatisfactory with regard to the allegation of knowledge. Even if FFM were a '*sham*' company and established to conceal a fraud, the Claimants do not plead why it is alleged that this was known to Mr Klar and Mr Khiara. The allegation was not put to Mr Khiara when he was cross-examined. Nor did the Claimants explain which individuals associated with FFM were alleged to have known that it was a '*sham*'.

**The Contractual Arrangements with TAP**

***The IMA***

114. At a meeting on 19 June 2018, the Investment Committee approved a proposal made by TAP to provide UPP Capital with investment services, and it decided to enter into an agreement on the basis of the proposal. UPP Capital entered into the IMA with TAP dated 1 July 2018. It is clear from an email from Dr Ammann to Ardent dated 11 December 2021 that Mr Trinkler acted for TAP in negotiating the arrangement. The IMA was signed by Mr Alhammadi and Mr Khouri on behalf of UPP Capital and by Mr Trinkler on behalf of TAP. (In his evidence, Mr Khouri said that he could not recall signing the IMA, but, as I explain at para. 305 below, I conclude that it is likely that he did so.)

115. The IMA (at clause 2.1) provided for the appointment of a custodian in these terms: "*Upon instruction and/or in agreement with TAP,* [UPP Capital] *and/or TAP will open necessary accounts with a custodian, any other suitable custodian and/or engage other suitable third party service providers (the 'Custodian').* [UPP Capital] *shall authorise TAP to act on its behalf and its account on the Account indicated by* [UPP Capital] *held with a Custodian*". By clause 1.1 of the IMA, it was agreed that TAP was to be "*authorised to direct the investment and reinvestment of those assets in* [UPP Capital's] *account with the Custodian … (the 'Account') in securities and cash or cash equivalent*". It was said, at clause 1.2, that "*Important details on the Account and the initial assets are listed in Schedule A*", but Schedule A was left blank.

116. Subject only to "*any special instructions or limits that* [UPP Capital] *wishes TAP to follow in managing the Account, as fully described in Schedule B*", by clause 2.1 TAP was given "*sole and absolute discretion, and without first consulting* [UPP Capital]*, over the*

*investment and reinvestment of the assets in the Account*". Schedule B provided for an "*Investment Objective*" of achieving "*positive risk adjusted returns by investing primarily in income yielding securities in the MENA (Middle East and North Africa) public securities market. Target income yield of the portfolio is 5% …*", but it did not include any specific instructions, stating only that they might be agreed by UPP Capital and TAP from time to time.

117. Clause 2.2 of the IMA provided that the custody of UPP Capital's assets would be maintained by the Custodian and clause 2.4 of the IMA provided that TAP should have no responsibility or liability in respect of the custody arrangements or the Custodian's acts, omissions or other conduct. Clause 2.6 provided for UPP Capital to give TAP a power of attorney to enable it to give instructions to the Custodian.

118. Clause 4 provided that TAP had no obligation to provide verbal advice or investment reports to UPP Capital. It was to provide written statements or investment reports "*delivered in such medium as agreed with*" UPP Capital. There is no evidence that TAP and UPP Capital made any agreement about that. However, there is evidence that in the event TAP sent UPP Capital hard copy reports by courier.

119. The IMA provided for TAP to be paid management fees of 3.2% of the net asset value and performance fees of 10% of any returns on the net asset value over the 5% annual target.

***The Contention that Mr Klar Recommended TAP***

120. It is the Claimants' case that, in advance of the meeting on 19 June 2018, Mr Klar had written to the members of the Investment Committee in his capacity as UPP Capital's Vice President - Finance, and had recommended that TAP be appointed as UPP Capital's investment manager; and that the Investment Committee discussed his proposals at length, and decided to enter into an agreement with TAP on the basis of its review of them.

121. This case is based on what purports to be a letter from Mr Klar dated 18 June 2018 addressed to "*The Investment Committee Members*", in which he apparently wrote that he had been charged with the task of identifying, obtaining and reviewing investment management proposals from "*professional Investment Management Entities"* and to make a recommendation to the Investment Committee as to who should be appointed. He said that proposals received from Albion Finance SA ("**Albion**") and from TAP, both of Switzerland, were attached to his letter.

122. On any view it is a curious document. As Dr Daburon pointed out, it concludes with Mr Klar, apparently, saying that he looked forward to "*continue working with your esteemed Company*", which would be a strange expression for a Vice President referring to his company. Further, in the letter Mr Klar, apparently, wrote that he had conducted an "*extensive review of all the above Proposals*". The attachments to the letter were too brief and general to allow any extended review: there was a letter from Albion dated 18 June 2018 and addressed to Mr Alhammadi, which did not explain the services that it would provide

but only stated what fees it would charge for management services and referred Mr Alhammadi to its website for information about the company. The proposal from TAP appears to be an entirely standard brochure, with nothing addressed specifically to UPP Capital or its requirements.

123. The letter and the attachments were disclosed together with a copy of what purport to be minutes of the Investment Committee meeting of 19 June 2018. There are in evidence two electronic versions of the minutes of the meeting of 19 June 2018 and some other meetings: the meetings on 1 March 2018, 10 April 2018 and 21 August 2018. One version (the "**May 2019 Version**") was attached to an email dated 26 May 2019, which was sent by Mr Mohammad Akbar to Mr Khouri and copied to Mr Alhammadi. The other version (the "**September 2019 Version**") was apparently sent by Mr Fadi Samara, the Secretary of the Board of Union Properties, to the UAE Federal Securities and Commodities Authority (the "**SCA**") under cover of an email of 30 September 2019, in response to a request by the SCA to Mr Alhammadi of 29 September 2019 to provide, *inter alia*, minutes of meetings and resolutions of the Investment Committee. Both versions appear to be signed by Mr Khouri, Mr Alhammadi and Mr Nicoll.

124. The Investment Committee's minutes were originally made in hard copy and its members signed them with a 'wet' signature: Mr Khouri's evidence about this is confirmed because the email of 26 May 2019 described the May 2019 Version as a "*scanned copy*" of the minutes. As I have said, the Claimants have not produced the original minutes.

125. The most significant differences between the two versions of the minutes are found in those for 19 June 2018 and 21 August 2018. Paragraph 2 of the minutes of the meeting of 19 June 2018 is about UPP Capital's Investment Management. In the May 2019 Version, the paragraph reads as follows: "*Investment Management Proposal of Trinklers & Partner Ltd: IC members discussed at length the Investment Management Proposal of Trinklers & Partners Ltd (the 'IMA Proposal'). The objective of the proposed mandate is to manage the investments and assets of UPP Capital and obtain competitive financing for investments. IC members approved the IMA Proposal and agreed to execute necessary Investment Management agreement between both parties*".

126. The two important differences in this paragraph of the September 2019 Version are these:

    a. the words in bold by way of introduction are changed to "*Review of Investment Management Proposals*", so as to connote that the Investment Committee considered more than one proposal and not only one by TAP; and

    b. the first sentence in the September 2019 Version reads "*IC members discussed at length the Investment Management Proposals as presented by Mr Jorg Klar (VP Finance)*".

127. The first sentence of paragraph 2 of the May 2019 Version of the minutes for the 21 August 2018 meeting reads "*Transfer of assets and investments in Trinklers & Partners Ltd: In line*

*with the Investment Management Agreement executed with* [TAP] *... , IC members agreed for transfer of assets and investments from Julius Baer account to* [TAP] *in order to manage the investments and assets of UPP Capital and obtain competitive financing for investments*". As with the minutes for the 19 June 2018 meeting, the September 2019 Version of this paragraph introduces a reference to Mr Klar proposing TAP's appointment, stating that the IMA was "*based on proposals submitted by Jorg Klar (VP Finance)*". It also made amendments in both the first and the second paragraphs to change references to investments being transferred from "*Julius Baer account*" to them being transferred from "*Julius Baer custody*".

128. Thus, it appears that the May 2019 Version of the minutes of both meetings, unlike the September 2019 Version, make no reference to Mr Klar presenting a proposal that TAP be appointed to manage UPP Capital's assets, and suggest that only a proposal from TAP (and not from Albion) was presented for consideration. Further, the September 2019 Version, unlike the May 2019 Version, records a decision of the Investment Committee not only that Julius Baer should relinquish management of UPP Capital's investments but that they should relinquish custody of the investments, effectively the P-Notes.

129. When Mr Khouri was cross-examined, Mr Pringle put to him the May 2019 Version of the minutes, including those of the 19 June 2018 and the 21 August 2018 meetings. It was not suggested to him that he signed two versions of the minutes or that he was involved with producing or signing the September 2019 Version of them, or even that he knew of them. The Claimants offered no explanation as to why there are two versions of the minutes, or why the SCA was provided with minutes which, apparently, they accept were not signed by at least one of the purported signatories.

130. In these circumstances, I am unable to accept that either the September 2019 Version of any of the minutes or any of the other documents sent to the SCA under cover of the email of 30 September 2019 are reliable evidence of what they purport to show, and in particular of how the Investment Committee came to its decision to appoint TAP to manage investments. The Claimants have not shown that the letter of 18 June 2018 purporting to be from Mr Klar is genuine nor that the Investment Committee acted on the basis of his recommendation. Therefore, I conclude that the September 2019 Version of the minutes and Mr Klar's letter are fabrications, and I reject the contention that he recommended TAP to the Investment Committee.

131. This conclusion is corroborated by a letter to Mr Khouri from Mr Almheiri dated 28 June 2018 (although, as I shall explain the authenticity of the date is very questionable: see para. 299 below). Mr Almheiri wrote that TAP had "*been selected by the two members of the Investment Committee and have been confirmed as* [sic] *an agency of high repute by them*". He did not mention Mr Klar and any recommendation by him.

132. As I shall explain, the September 2019 Version of the minutes of the Investment Committee raises questions about the authenticity of not only the letter of 28 June 2018 but other

documents sent to the SCA under cover of the 30 September 2019 email: see para. 178 below.

***The Addendum***

133. According to the Claimants, UPP Capital and TAP entered into an Addendum to the IMA, which was dated 24 September 2018. It provided for a "*lock in period*" of three years "*from the date of receipt of assets by TAP for Investment Management Services*", during which period UPP Capital was to give six months' notice to TAP if it wished to redeem assets. It was apparently signed by Mr Alhammadi and Mr Khouri on behalf of UPP Capital and by Mr Trinkler for TAP.

134. Mr Trinkler disputes his signature was genuine, unless an electronic signature was used without his permission. To my mind, it is of no consequence whether or not he did so, but it is for the Claimants to establish that Mr Trinkler's signature is genuine, and they have failed to do so. They adduced no relevant oral evidence and identified no documentary evidence, for example by way of pre-contractual exchanges, to show that the Addendum is a genuine agreement between UPP Capital and TAP. Of course, Mr Trinkler has not given evidence to deny his signature, but the onus is on the Claimants to prove their case.

135. I add that Dr Ammann submitted that it is possible to see from the signature itself that it has been copied from elsewhere. This is not apparent to my untrained eye, at least from the virtual copies that I was invited to inspect. I do not take that point into account in reaching my decision.

***The Service Level Agreement***

136. By an agreement dated 4 September 2018, TAP entered into the SLA with FFM. It was signed, under the words "*After reading the present agreement and in acknowledgment of the legal scope of each and every one of its clauses and terms, the parties execute two counterparts of the agreement* …", by Mr Held for TAP and apparently by Mr Khiara for FMM.

137. Mr de Wolff submitted that Mr Held signed it on Mr Trinkler's instructions. There is no direct evidence that Mr Trinkler gave Mr Held instructions to sign the SLA, but I accept that he must have known that TAP was entering into it. Dr Ammann's evidence, which I accept, is that the primary purpose of the SLA was "*to address TAP's concern about not being properly authorised to solicit fund services, particularly in managing and administering investment funds within the territory of and on behalf of residents of the UAE*".

138. Mr Khiara denied that he signed the SLA. Mr de Wolff accepted that the signature might be electronic. Mr Khiara gave evidence that, although others were not permitted to use his electronic signature, it was stored on the BSCI Laptop, and others had access to it. He contends that his signature was probably affixed to the SLA without his knowledge or consent, although he accepted in cross-examination that he had not come across anyone doing so on other documents.

139. There is no obvious reason, as it seems to me, that anyone should have forged Mr Khiara's signature on the SLA. It made perfect sense for TAP to enter into the agreement with FFM, as I shall explain when I come to the Mandate Agreement: see para. 152 below. Certainly, clause 15 of the SLA provides for notifications under it to be sent for Mr Khiara's attention at his email address at FFM.

140. It was suggested by the Claimants that their case that Mr Khiara signed the SLA is corroborated because, in an email of 26 November 2019, Mr Trinkler asked Mr Khiara whether he might arrange for Mr Klar to collect a hard copy of the SLA for TAP. The suggestion was that Mr Trinkler addressed the request to Mr Khiara because he had signed the SLA. I see nothing in that submission: Mr Trinkler's request does not even indicate, to my mind, that Mr Trinkler believed the signature was genuine, still less that it is genuine.

141. Against that, Ms Daskalova reminded me that Mr Khiara was authorised to execute documents for FFM in order for him to deal with routine matters, but his authority was not subject to any limitation of that kind. More tellingly, to my mind, she also pointed out that, whereas Mr Held initialed every page of the SLA, Mr Khiara's initials do not so appear.

142. I do not consider that it matters whether or not Mr Khiara signed the SLA. However, given the number of fabricated documents that were in the Claimants' records (as I explain further below), I am driven to conclude that the Claimants have failed to prove that he did sign it or authorised the use of his electronic signature.

143. The SLA's recitals referred to FFM being authorised to offer services as a manager of collective investment funds, asset management and investment advices; to TAP being authorised under Swiss law to perform asset and investment management services as well as advisory services to its customers; and to TAP having mandates from "*different customers*", including UPP Capital, to provide investment management services under an agreed investment strategy. FFM agreed, in consideration of a set-up fee, to identify and select an umbrella fund suitable for TAP and its customers and to set up under it an investment fund. It also agreed, in consideration of management fees, to offer services as an investment manager, to execute transactions and to manage assets on behalf of the fund as advised or instructed by TAP. A further monthly fee was agreed in respect of compliance, regulatory and other services.

144. Mr Trinkler's position, as explained by Dr Ammann in his evidence, is that, although Mr Held signed the SLA on behalf of TAP and sent it to FFM by email, TAP never received back an execution copy with an original signature on behalf of FFM. This is corroborated by an email dated 22 November 2019 from Mr Held to Mr Khiara in which he complained of not having "*received any documents, neither hard or softcopy*", and the email dated 26 November 2019 from Mr Trinkler to Mr Khiara in which he said that Mr Klar would be in Dubai that month and suggested that Mr Klar might be given "*all the signed original contracts from FFM and UPP*".

145. Ms Daskalova submitted on behalf of FFM and Mr Khiara that, in these circumstances, the SLA was never concluded even if it was signed by Mr Khiara, because acceptance of the agreement was never communicated to TAP. The SLA is expressly governed by ADGM law, and the *general* rule, as Ms Daskalova contended and I accept, is that acceptance of an offer is not effective unless and until it is communicated to the offeror.

146. However, I reject Mr Daskalova's submission. To my mind, it is clear from the emails of November 2019 that TAP was aware that the SLA had been signed by FFM. Their complaint was that they had not been provided with a copy of the concluded agreement.

147. I therefore accept that the SLA was of contractual effect between TAP and FFM. The Claimants plead that it was "*entered into and acted upon for the sole purpose in fact of managing the Claimants' assets*". This contention was not developed at trial and I am not persuaded by it. There is no sufficient reason to think that TAP did not have it in mind that it might use its relationship with FFM for other business in the UAE.

***The Failure to Implement the IMA***

148. Dr Ammann explained in his evidence that, in the event, UPP Capital did not appoint a custodian as contemplated by the IMA, nor did it open an account in the name of a custodian, nor did it give TAP a power of attorney to give instructions to any custodian. In short, Mr Trinkler's case is that UPP Capital did nothing to perform the IMA, and therefore nothing was, or could, be done pursuant to it. Mr de Wolff did not dispute this contention. I accept it.

***The Mandate Agreement and the Performance of the SLA***

149. At the AGM on 9 December 2019, it was reported that FFM had established three funds to which I have referred at para. 103 above: the Diversified Real Estate Growth Fund OEIC Limited, the Global Equity Fund OEIC Limited and the UPP Capital Fund OEIC Limited. The background to these funds is explained by Dr Ammann in his witness statement of 20 February 2024.

150. By a Mandate Agreement dated 1 June 2018, UPP Capital entered into an agreement with TAP, the relevant terms of which, as the Claimants plead, were the following:

    a. Recital B, which stated that UPP Capital was the "*finance affiliate of a construction Company … that wishes to set up and incorporate a Special Investment Fund (the 'Fund') for dedicated investments in real estate, private equity and other financial activities*"; and

    b. Article 1.1, which stated that TAP agreed to provide the services required for the incorporation and setting up on a "*Fund*" and in particular to set up "*the Fund and the Fund Vehicle*".

       Further, as the Claimants plead, the agreement is expressly governed by ADGM law and includes an arbitration agreement.

151. In his witness statement, Dr Ammann explained that, pursuant to the Mandate Agreement, TAP and UPP Capital entered into a Consulting Agreement on 29 October 2018 and executed it on 1 November 2018. It provided for a Cayman Islands investment entity to be established, and the parties later agreed that a Luxembourg investment entity should also be established. After a meeting on 12 December 2018, and in accordance with the Mandate Agreement and the Consulting Agreement, on 22 July 2019 a structure comprising two Luxembourg companies and an underlying Liechtenstein holding company was established. Dr Ammann describes the establishment of this structure as partly fulfilling TAP's obligation under the Mandate Agreement and Consulting Agreement. However, UPP Capital then told TAP that it had changed its plans and would establish a "*UAE solution*"*;* and it instructed TAP to wind up the Luxembourg and Liechtenstein entities.

152. As is stated in the recitals to the SLA, TAP did not have the requisite licence to manage a fund and to solicit investment funds from clients in the UAE. Therefore, by the SLA, TAP engaged FFM to assist it as fund manager and administrator for a special investment fund called the "*UPP Capital Fund*", and FFM received further instructions to set up other UAE funds. Accordingly, FFM set up the three funds, the establishment of which it reported at the 9 December 2019 AGM.

***Management Fees***

153. The Claimants point out that bank statements of TAP that are in evidence show that on 26 December 2018, TAP received from UPP Capital two payments that were described as being "*as per* [the IMA]", totaling AED 6,397,000.00. On 31 December 2018, TAP made six payments totaling AED 5,995,477.00 to FFM, one of which, for AED 854,000, was said to be for "*incorporation and set up expenses for UPP Capital Fund*", and others of which appear to be related to the establishment of the Cayman Islands and Luxembourg investment entities.

154. The Claimants put to Mr Khiara in cross-examination that he dealt with the fees paid to FFM under the SLA. They pointed out that the metadata of an email of 2 May 2020 from Ms Castro to Mr Held about management fees appeared to show that there was a file on the BSCI Laptop relating to TAP statements. They also relied on an email of 4 May 2020 from Mr Trinkler and addressed to Mr Khiara's email address at FFM in which he authorised FFM to redeem funds from UPP Capital's account to pay management fees of TAP and FFM. (There was a similar instruction from Mr Trinkler addressed to Mr Khiara of 3 May 2021.) The thrust of Mr Khiara's response, as I understood his answers, was that, while the communications might have been addressed to him, others had access to his email address and data stored there was used by others; and management fees, like other matters concerning investments, were dealt with by others at FFM. In my judgment, the Claimants' arguments do not refute this explanation.

**The P-Notes**

155. I next consider the nature of the P-Notes. Here I was much assisted by Dr Ammann's submissions. Neither Mr de Wolff nor any of the other Defendants' representatives disputed the substance of his contentions.

156. The P-Notes were issued by ARQ P Notes BV ("**ARQ**"), a company incorporated in the Netherlands. Arqaam was the "*arranger*". As required by European law, ARQ issued a Base Programme, entitled *"US$ 10,000,000,000 Equity Participation Notes and Warrants Programme"*. It stated that, *"The Securities* [sc. the Notes and the Warrants] *will provide investors with a return that is linked to the return on specific underlying shares … that the Securities reference …"*. Thus, as Dr Ammann put it, P-Notes are structured products that consist of a fixed income security in combination with a financial derivative which potentially enhances the investor's gain but also risks loss. ARQ structured the Base Programme so that, by way of a Total Return Swap ("**TRS**") arrangement, it did not itself take any risk in respect of fluctuations in the value of the underlying securities, but was able to transfer it to the holders of the securities. The TRS arrangement involved two special purpose vehicles: ARQ concluded a TRS with a Cayman Island company, ARQ P Notes Cayman I Limited, which entered into a back-to-back TRS with ARQ P Notes Bahrain WLL, a Bahraini entity ("**ARQ Bahrain**"). In the Base Programme, ARQ Bahrain was referred to as the "*Shareholding SPV*": it invested in the underlying shares.

157. ARQ also issued Final Terms for the issues of P-Notes relating to particular securities, including those which referenced shares in Union Properties. Dr Ammann examined the Final Terms by reference to an issue of P-Notes with an expiry date of 24 January 2028, but no party disputed that the terms for any other relevant issue of P-Notes are materially similar. Each issue of P-Notes was assigned an International Standard Identification Number ("**ISIN**"), the number for the issue with an expiry date of 24 January 2028 being NL0012757348: I shall refer to these issues as the "**348 Warrants**" or the "**348 Issue**".

158. The securities that UPP Capital acquired were warrants, described in the Final Terms as "*Bearer Warrants. Temporary Global Warrants exchangeable for a Permanent Warrant, Global Warrant which is exchangeable for Definitive Warrants only upon an Exchange Event*". The investor was given an American style option (an option exercisable either at the maturity date or at any time before it). The Base Programme stated that "*The Final Terms in respect of a Series of Warrants shall specify whether the Warrantholders of the outstanding Warrants of such Series will be able to make an election whether (a) to receive the Cash Settlement Amount ('Cash Settlement') or (b) to receive* the *Entitlement ('Physical Settlement')*", the Entitlement being the number of shares specified in the Final Terms.

159. In this case, the Final Terms provided that warrant-holders had the option of Physical Settlement by way of one share in Union Properties per warrant, but that, unless there was a valid election, there should be Cash Settlement: "*This Series of Securities* [Warrants] *may be cash or physically settled at the option of the Securityholder. The Securities* [Warrants] *shall be cash settled by default, unless the Securityholder meets* [the] *prerequisites for holding the Shares and a physical settlement notice is provided by the Securityholder to Euroclear or Clearstream, Luxembourg without a copy of the Principal Paying Agent, the Trustee and the Issuer by the cut-off date in accordance with the Conditions*". If there was a Cash Settlement, the amount payable for the warrants reflected the value of Union Properties shares. As it was put in the Final Terms: "*The redemption, settlement or cancellation amount payable in respect of any Security is linked to a fixed amount of the Shares. In general, as the value of the Shares increases or decreases, so will the redemption, settlement or cancellation amount payable in respect of such Securities*".

**The History of the Fraud**

***Early Dealings through Julius Baer***

160. In July 2017, UPP Capital opened an account with Julius Baer. Its purpose, as the Claimants plead, was to establish a fund to invest in the PHD Fund, and to obtain facilities to settle financing from Arab African International Bank. Mr Khouri was given a power of attorney to act as UPP Capital's authorised signatory on the account.

161. In 2018, it was decided that Union Properties should invest through UPP Capital, and funds were transferred from Union Properties to UPP Capital accordingly. By a resolution of 1 January 2018, the directors of UPP Capital decided to create an Investment Committee. The first meeting of the Investment Committee was held on 25 January 2018, and it was attended by its three members. According to the minutes, there was discussion of an investment opportunity, presented by Julius Baer, the purpose being to invest in the PHD through Julius Baer. They also record that, in order to establish a business relationship with Julius Baer, "*it was decided to initially invest USD 10 million in* [a] *Julius Baer existing investment* [fund]".

162. Accordingly, on 29 January 2018, Mr Khouri instructed Union Properties' Finance Department to transfer US$ 10 million from Union Properties to UPP Capital and from UPP Capital to Julius Baer. Mr Khouri said in cross-examination that he could not remember signing the instructions, but I conclude that he did do so. Accordingly, UPP Capital invested AED 36,654,800.00 through Julius Baer in what was called the "*Invest AD UAE Focus Fund*". Mr Khouri also signed a Subscription Agreement with Julius Baer dated 20 February 2018 whereby UPP Capital confirmed that it had received and read a copy of a Private Placement Memorandum "*in relation to the establishment, amendment and management of Invest AD UAE Focus Fund*", and had authorised Julius Baer to execute orders relating to buying, selling and dealing with the Fund. Again, Mr Khouri said that he could not recall signing the Agreement and was unable to explain the reasons for the decision. I find that he did sign it.

(There are further copies of the Subscription Agreement apparently signed by Mr Khouri dated 5 March 2018 and 8 March 2018, but Mr Khouri was not asked about them, and their purpose is obscure.)

163. At a meeting of the Investment Committee on 1 March 2018, it was reported that the fund structure for the PHD project was taking longer to set up than had been expected. The minutes record that it was "*decided to invest an additional amount of AED 250 Million with the objective of obtaining financing on PHD shares*". On 1 March 2018, Mr Khouri instructed the transfer of AED 250 million from Union Properties to UPP Capital and from UPP Capital to Julius Baer.

164. At another meeting of the Investment Committee on 10 April 2018, it was decided to remit a further AED 50 million under the Julius Baer account as a commitment to Julius Baer to grow the overall business relationship. On 17 April 2018, Mr Khouri gave instructions for the transfer of AED 50 million from Union Properties to UPP Capital and from UPP Capital to Julius Baer.

165. Thus, between January and April 2018, Mr Khouri gave instructions that sums amounting to AED 336,422,981.02 be transferred from Union Properties to UPP Capital and then from UPP Capital to Julius Baer. The Claimants plead that "*the establishment of the PHD Fund was delayed and UPP Capital decided to invest AED 286,592, 960.89 in a local Julius Baer fund in the interim (the "**UAE Focus Fund**"). UPP Capital envisaged that once the PHD Fund was structured, UPP Capital would exit the UAE Focus Fund with the proceeds and invest in the PHD Fund. The balance of the remaining funds in the Julius Baer Account, being AED 49,830,020.13 was retained by Julius Baer in cash*". When opening the Claimants' case, Mr de Wolff said that the investment in the UAE Focus Fund lost some AED 17 million, leaving investments valued at some AED 320 million. I accept that.

166. The Claimants did not advance a case that there was anything improper about these dealings, and they make no allegations against the Defendants with regard to them. However, as Dr Ammann submitted, documents disclosed by Arqaam shortly before the trial show that the Claimants' case does not recognise the full history of the Claimants' dealings with the P-Notes, and refute the Claimants' description of the fund in which they invested as a "*Julius Baer fund*". It was, as is reflected in the Subscription Agreements, a fund of an entity called "*Invest AD*", which dealt in P-Notes with Arqaam. This is evidenced by an internal email of Arqaam dated 4 November 2018: "*Mohamed Hashemi formerly from Invest AD has joined FFM and wants to continue the P-note business that he was giving us at Invest AD*".

167. More importantly, the documents disclosed by Arqaam revealed that ARQ structured two issues of P-Notes in early 2018: on 26 January 2018, it issued 150,000,000 Equity Participation Warrants in the 348 Warrants Issue, and on 8 March 2018 it issued 240,049,341 Equity Participation Notes for warrants for Union Properties shares expiring on 8 March 2019. This issue had ISIN AEU000101011, and I shall refer to it as the "**011**

**Issue**". An internal email of Arqaam, which was dated 6 June 2018 and headed "*Invest AD and ARQ BV- P note confirmations*", records the following holdings deposited at Standard Chartered Bank for the portfolio of Invest AD GCC Focus Fund: a lot of 150,000,000 warrants of the 348 Issue; a lot of 116,049,341 of the 011 Issue; and a lot of 124,000,000 warrants of the 011 Issue. (Thus, the total deposit at Standard Chartered Bank of the 011 Issue was the 240,049,341 warrants.) The email also states the "*Trade Date*", when the warrants were so acquired, to be 23 January 2018, 8 March 2018 and 7 March 2018 respectively. Clearly, these refer to UPP Capital's investments.

168. Accordingly, Dr Ammann was able to submit that, before FFM was incorporated on 14 March 2018, UPP Capital had already invested through Invest AD's Fund in P-Notes by way of warrants linked to Union Properties shares, and was exposed to fluctuations in their value. I accept his submission.

***The Decisions Taken at the Investment Committee Meeting on 19 June 2018***

169. I have already referred to the important meeting of the Investment Committee on 19 June 2018 at which UPP Capital decided to accept TAP's proposal for the IMA. According to the minutes, it lasted for four hours. The minutes record that the investment with Julius Baer was reviewed. There was discussion of withdrawing from the investment; "*utils*[ing] *the entire redemption proceeds towards investments in alternative investment notes till such time the market conditions improve for investment in PHD shares*"; and investing a further cash balance of AED 50 million held by Julius Baer in "*alternative investment notes*". There was also a discussion "*at length"* of TAP's proposal for investment management services. The minutes record the decision of the Investment Committee as follows:

> "*Based on the detailed review of existing investment status and current performance of PHD shares,* [the Investment Committee] *members decided to exit UPP Capital's investment under the Investment Fund with Julius Baer at the best possible redemption price and to utilise the entire redemption proceeds as well as the available case balance of AED 50 mn towards investments in alternative investment notes.* [The Investment Committee] *members also approved the IMA Proposal to* [TAP] *and agreed to proceed with execution of the necessary Investment Management agreement between both parties*".

170. Mr Khouri gave evidence that he did not recall any of this discussion or the decision to end the investment relationship with Julius Baer. He denied seeing anything strange about reversing relatively recent investment decisions and switching to alternative investment. He did not remember what alternative investments were to be made. He recalled only that there was "*a lot of discussions*" and said that decisions were taken "*according to the procedures then*".

171. The Claimants plead that after the meeting, by a letter dated 23 June 2018, Mr Alhammadi and Mr Khouri instructed Julius Baer to redeem the UAE Focus Fund, and that they were redeemed on 5 and 9 July 2018 for AED 271,000,067.79. Mr Khouri does not admit this in

his defence. The Claimants have produced a letter dated 23 June 2018, apparently signed by Mr Alhammadi and Mr Khouri, instructing Julius Baer to redeem 4,149,108 units in the Invest AD UAE Focus Fund.

172. However, there are other letters giving similar instructions to Julius Baer:

a. There is letter dated 26 June 2018, which is in the same words as the 23 June 2018 letter and which similarly purports to be signed by Mr Alhammadi and Mr Khouri. However, in this version Mr Khouri's signature appears above Mr Almheiri's typed name, which has been deleted and replaced in manuscript by Mr Khouri's name.

b. There is also a letter dated 5 July 2018, signed by Mr Alhammadi and Mr Almheiri, in which UPP Capital instructed Julius Baer to sell three lots of shares by way of ARQ, comprising lots of 2,000,000 shares, 1,400,000 shares and 449,643 shares.

173. No explanation has been offered as to why there should be these different versions of instructions to redeem the investment in the UAE Focus Fund, and Mr Khouri was not asked about this in cross-examination. In these circumstances, I decline to draw any inference that is adverse to Mr Khouri (or any other Defendant) from this oddity. Nor does it matter. It is clear that Julius Baer was instructed to redeem the investment, and this was consistent with the decisions of the Investment Committee on 19 June 2018.

174. Julius Baer was also instructed to purchase P-Notes and other investments. There are two versions of these instructions (or purported instructions). First, there are three letters dated 24 June 2018, 26 June 2018 and 25 July 2018. The Claimants' pleaded case is that these letters set out the instructions that were in fact delivered to Julius Baer, and I refer to them as the "**Pleaded Version**". The other version of the letters of instruction was disclosed by Julius Baer, and I refer to them as the "**Julius Baer Version**".

175. The Pleaded Version of the letters was disclosed from the Claimants' records. The letter of 24 June 2018 contained instructions to buy: 1,400,000 units of P-Notes expiring on 10 June 2019; 20,000,000 units of P-Notes expiring on 10 June 2019; and 21,300,000 units of P-Notes expiring 10 June 2019. The letter of 26 June 2018 contained instructions to buy 104,500,000 P-Notes expiring on 3 January 2028 and 240,049,341 P-Notes expiring on 15 February 2019. The letter of 25 July 2018 contained instructions to buy 4,540,000 P-Notes expiring on 1 July 2019. These letters are, or purport to be, signed by Mr Alhammadi and Mr Khouri.

176. The Julius Baer Version comprises letters dated 26 June 2018, 28 June 2018 and 29 June 2018. The letter of 26 June 2018 is not directly relevant: by it, Julius Baer was instructed to buy "*as P-Notes with Arqaam Capital*" shares in Takaful Emarat Insurance Co., Union Properties and Union Insurance Company PJSC. The letter of 28 June 2018 gave instructions to buy *"as P-Notes with Arqaam Capital", inter alia*, 21,300,000 shares in Al Salam Bank, Bahrain. The letter of 29 June 2018 instructed Julius Baer to buy 104,500,000

of the P-Notes for the 348 Warrants and 240,049,341 P-Notes for warrants expiring on 8 March 2019 with an ISIN NL0012818280 (the "**280 Warrants"** or the "**280 Issue**"). The instructions of 26 June 2018 and 29 June 2018 were signed by Mr Alhammadi and Mr Almheiri. The letter of 28 June 2018 appears to be signed by Mr Khouri and Mr Alhamadi, Mr Khouri's signature appearing above the typed name of Mr Almheiri, which has been deleted.

177. I cannot accept that the Pleaded Version of the letters, disclosed from the Claimants' records, were in fact delivered to Julius Baer or that there was any intention to deliver them. First, the Claimants have disclosed no emails or other documents that show how those instructions were sent to Julius Baer. Secondly, if they had been sent to Julius Baer, then it would have disclosed them. Julius Baer's letter of 24 June 2025 stated that it was providing by way of documents relating to UPP Capital's account the following: "*Account opening documents*"; "*Monthly portfolio valuations*"; "*All correspondence archived in our systems*"; and "*All client contact notes captured in our systems*". Thirdly, the Pleaded Version of the letters was disclosed with the September 2019 Version of the minutes, which I have concluded was not a genuine version of the minutes: see para. 130 above. Further, the most important letter of instruction was of 29 June 2018 for the purchase of the 104,500,000 P-Notes for the 348 Warrants and of the 240,049,341 P-Notes of the 280 Warrants: the Julius Baer Version of these instructions give full and precise instructions by reference to the ISIN of the P-Notes. In the Pleaded Version, the letters do not give ISIN numbers.

178. It was suggested to Mr Khouri in cross-examination that, while he might not know whether the Pleaded Version of the letters was in fact sent to Julius Baer, his signature on them is genuine. Mr Khouri responded that he could not recall whether or not he signed these letters, although he accepted, at least in respect of some of them, that the signature looks like his. It was not put to him that he signed them, knowing that there was to be another version of instructions to Julius Baer to buy P-Notes. In my judgment, as with other documents apparently sent to the SCA, the Claimants have not shown that Mr Khouri's signatures on the letters are genuine, in the sense that either he provided a 'wet' signature or he authorised the use of an electronic signature. They have not provided any explanation for the two versions of instructions. The likely explanation is that they were designed in some way to advance or hide the fraud or to confuse its investigation. In these circumstances, I am unable to conclude that the evidence of his disputed signatures is sufficient to support the Claimants' case against Mr Khouri.

179. However that might be, Julius Baer sent UPP Capital confirmations of the investments that it had purchased, including:

    a. by confirmation dated 3 July 2018, it confirmed the purchase on 2 July 2018 for AED 82,282,620.75 of 104,500,000 P-Notes for the 348 Warrants;

b. by confirmation dated 4 July 2018, it confirmed the purchase on 3 July 2018 for AED 109,607,014.55 of 139,202,336 P-Notes for the 280 Warrants;

c. by confirmation of 4 July 2018, it confirmed the purchase on 2 July 2018 for AED 79,406,276.24 of 100,847,005 P-Notes for the 280 Warrants;

d. by confirmation of 6 July 2018, it confirmed the purchase on 28 June 2018 for AED 15,220,700.00 of 20,000,000 P-Notes for warrants for Union Properties shares expiring on 10 June 2019;

e. by confirmation of 6 July 2018, it confirmed the purchase on 28 June 2018 for AED 26,300,000 of 21,300,000 P-Notes for warrants for Al Salam Bank shares expiring on 10 June 2019; and

f. by confirmation of 27 July 2018, it confirmed the purchase on 28 June 2018 for AED 5,043,940,00 of 4,540,000 P-Notes for warrants for Al Salam Bank shares expiring on 10 June 2019.

180. There are two versions of all these confirmations, one of which describes the notes as "*ARQ P Notes BV*" and gives ISINs for them, and one describing the investments simply as P-Notes and omitting the ISINs. This oddity was not explored at trial and no reason for it was suggested. I therefore leave it aside.

181. Further, by a confirmation of 6 July 2018, Julius Baer confirmed the purchase for AED 2,554,340.50 of 1,400,000 P-Notes for warrants in Union Insurance Company PJSC shares.

182. The prices that I have set out include commission. The confirmations show that UPP Capital paid a total of AED 320,717,867.84, including commission, for these investments.

183. Thus, at almost the same time as it redeemed its investment in the Invest AD UAE Focus Fund by way of P-Notes for warrants for Union Properties shares, UPP Capital gave Julius Baer instructions to replace them with largely similar P-Notes. No cogent explanation for this has been suggested.

***Instructions to Julius Baer to Transfer the P-Notes to TAP***

184. At a meeting of the Investment Committee on 21 August 2018, as it is recorded in the minutes, the Investment Committee agreed that assets and investments with Julius Baer be transferred from the account with Julius Baer to TAP, and also that "*a certain portion of the investments would be subsequently transferred to Emirates Investment Bank as equity contribution in order to obtain leverage for right issue entitlement on shares of* [PHD] ...".

185. There are in evidence what purport to be letters addressed to Julius Baer dated 29 August 2018, 12 September 2018 and 24 September 2018 instructing Julius Baer to transfer to TAP on a "*free-of-payment basis with no exchange of cash*" respectively 25,840,000 P-Notes,

180,000,000 P-Notes and a total of 184,549,341 P-Notes. The letters are apparently signed by Mr Alhammadi and Mr Khouri, but Mr Khouri could not recall whether he signed them. I find that he did so.

186. No such letters were disclosed by Julius Baer, when it disclosed documents to the Claimants, and it is not disputed that in fact no P-Notes were transferred to TAP. I conclude that these instructions were not given to Julius Baer and it never received instructions to transfer any P-Notes to TAP. This does not mean, and the Claimants have not satisfied me, that, when he signed the letters, Mr Khouri did not believe that their genuine purpose was to transfer the investment to TAP. Nor have the Claimants shown that, at any relevant time, Mr Khouri became aware that the letters were not sent to Julius Baer.

***The UPP Capital Account with Arqaam***

187. It is convenient next to consider the evidence about UPP Capital opening an account with Arqaam, which the Claimants relied upon in support of their claims that Mr Khouri was party to the wrongdoing. In my judgment, the opening of the account is a distraction: there is no reason to think that it was relevant to any fraud concerning the P-Notes.

188. On 23 September 2018, Mr Alhammadi emailed Mr Walid Armaly at Arqaam from his personal email address, attaching account opening documents which were signed, or purported to be signed, by Mr Khouri. In an internal email of 23 September 2018, Mr Armaly wrote that UPP Capital were opening a new account, and that is was "*urgent as there is a trade pending on the back of it*". He attached to it a document that said, "*They are looking to carry out a short trade in Egypt using their inventory in a stock called Palm Hills Development Co …*". On 26 September 2018, Mr Alhammadi sent Mr Armaly by email an account opening form, apparently signed by Mr Khouri, which designated Mr Alhammadi as the "*Authorised Trader*" and the *"Authorised Signatory"* on the account.

189. Mr Armaly advised Mr Alhammadi that Arqaam required "*additional form*[s] *for* [their] *Egypt office*". In early October 2018, Mr Alhammadi sent various forms, apparently signed by Mr Khouri, that were required by Arqaam's Egyptian office. It is clear from Arqaam's internal documentation that there were various delays in completing the requisite documentation. On 1 November 2018, Arqaam sent an email to Mr Alhammadi apologising for the delay, and explaining that "*the account is with compliance to review*". In an email to Arqaam of 6 November 2018, Mr Alhammadi confirmed that Mr Khouri "*in his capacity as a POA holder*" had appointed him as the "*Authorised Signatory*" and "*Authorised Trader*" for the account.

190. In an internal email of 12 November 2018, Mr Armaly wrote, "*we are finalising the opening up of a new account called UPP Capital. They will be doing an Egypt trade structure which will involve Arqaam Custody and Arqaam Securities Egypt and is a short trade based on inventory that they will be providing to us*". The account was finally opened on 13 November 2018.

191. Thus, the evidence shows that (i) the account was to do with dealing in Egypt with stock in the PHD; and (ii) the account was not opened until sometime after the alleged misappropriation of the P-Notes or the shares underlying them. Nothing suggests that this account has anything to do with the complaints that the Claimants make in these proceedings.

***Instructions to Julius Baer to Sell P-Notes***

192. It is more difficult to understand from the evidence the true history of the P-Notes. The Claimants' pleaded case is this:

    a. By a letter dated 29 August 2018 signed by Mr Alhammadi and Mr Khouri, Julius Baer was instructed to sell 25,840,000 P-Notes "*on a free-of-payment basis with no exchange of cash*"; and on 10 September 2018, 25,840,000 units of P-Notes were delivered to Arqaam. At about the same time, they were converted into 25,840,000 shares in Al Salam Bank Bahrain and transferred to an account held by UPP Capital with SICO.

    b. On 10 September 2018, Mr Alhammadi and Mr Almheiri "*authorised the transfer of some 164 million units of P-Notes to Arqaam*", and they were in fact delivered to Arqaam on 5 October 2018.

    c. On 20 September 2018, 180,000,000 P-Notes were delivered to Arqaam.

    d. The remaining 1,397,790 units of P-Notes were sold for AED 1,846,317.14 and on 8 October 2018, Julius Baer made a payment of AED 1,803,542.11 to Arqaam.

    e. Thus, in all 390,389,341 units of P-Notes were delivered to Arqaam.

193. I mention for completeness that on 24 September 2018, 2,210 P-Notes were redeemed by Julius Baer in two separate transactions of AED 3,655.49. There is in evidence a letter of instruction to Julius Baer of 20 September 2018 to sell 2,210 P-Notes "*at best execution price*". It appears to be signed by Mr Alhammadi and Mr Khouri, but Mr Khouri could not remember signing it. It does not matter whether he did or did not: there is no complaint about this sale.

194. The Claimants' pleaded case continues that the underlying investments for the 25,840,000 P-Notes were shares in Al Salam Bank, Bahrain, but otherwise the underlying investments were shares in Union Properties. A letter from Arqaam to Mashreq Bank dated 16 September 2018 "*indicated that it had received instructions to transfer 200 million shares in Union Properties*" to an account in the name of Mr Al Mulla at Mashreq Bank. Mr Al Mulla reported to the DFM that he held 429,183,516 shares in Union Properties in different accounts, including the Mashreq Bank account. The Claimants plead that it is their "*belief that the shares in Union Properties were transferred to, and held by, Hassan Al Mulla under the instructions of Khalifa Alhammadi and Ahmed Khouri or Naser Almheiri*". The basis for

this belief is that instructions to Julius Baer had to be signed jointly by any two of Mr Alhammadi, Mr Almheiri and Mr Khouri.

195. The evidence from Julius Baer's documents confirms that it received the following instructions to transfer P-Notes to Arqaam with regard to the warrants for shares in Al Salam Bank Bahrain. A letter dated 30 August 2018 gave instructions to "*place the following P-Notes sell trades on a free-of-payment basis with no exchange of cash*", namely the two lots respectively of 21,300,000 warrants and 4,540,000 warrants for Al Salam Bank shares. By a securities delivery record dated 10 September 2018, Julius Baer recorded the delivery to Arqaam of the lots of 21,300,000 warrants and 4,540,000 warrants "[a]*ccording to your instruction dated 10.9.2018*". By a CRM (presumably, Customer Relationship Management) Contact Note dated 19 September 2018, Julius Baer recorded: "*The client provides the Bank with an initial instruction via phone & subsequently a signed instruction to Sell the following P-Notes which the client holds in the account",* and it identified the two lots of Al Salam Bank warrants. It continued: "*The client's instruction clearly states to trade with the issuer/broker (Arqaam Capital) on a free-of-payment basis with no exchange of cash*". Although the reference in the instructions dated 10 September 2018 is unexplained, there is no reason to doubt that these documents evidence the transfer to Arqaam of the Al Salam P-Notes on the instructions of UPP Capital. The letter of 30 August 2018 purports to be signed by Mr Alhammadi and Mr Almheiri, and I conclude that it was signed by them. There is no evidence that Mr Khouri had any involvement with the transfer.

196. Julius Baer also produced a further letter of instructions dated 10 September 2018 to sell "*at best execution market price*" 1,400,000 warrants for Union Insurance Company PJSC shares expiring on 10 June 2019. By five sales confirmations dated between 24 September 2018 and 4 October 2018, Julius Baer recorded the sale between 23 September 2018 and 3 October 2018 of these warrants for a total of AED 1,849,972.63 (net of commission and brokerage). The letter of 10 September 2018 purports to be signed, and, as I conclude, was signed, by Mr Almheiri and Mr Alhammadi.

197. Of most direct importance, Julius Baer has produced these letters of instruction to sell the P-Notes for warrants in Union Properties shares, each instructing Julius Baer to "*place the following P-Notes sell trade on a free-of-payment basis with no exchange of cash*":

    a. A letter of 10 September 2018 to sell 200,000,000 warrants of the 280 Issue; and

    b. A letter of 10 September 2018 to sell 40,049,341 warrants of the 280 Issue, 104,500,000 warrants of the 348 Issue, and 20,000,000 warrants expiring on 10 June 2019.

    Both letters purport to be signed, and I conclude, were signed, by Mr Almheiri and Mr Alhammadi.

198. I mention in passing that it appears from email exchanges between Julius Baer and Arqaam that the sale of the 200,000,000 warrants was in fact executed by Arqaam on 7 September 2018. Mr de Wolff suggested, to my mind plausibly, that the letter was preceded by oral instructions to Julius Baer. Whatever the explanation, this oddity does not seem important to me.

199. As for the instructions to sell the 200,000,000 warrants, by a CRM Contact Note dated 19 September 2018, Julius Baer recorded (as it had done in the Contact Note about the Al Salam Bank warrants) that: "*The client provides the Bank with an initial instruction via phone & subsequently a signed instruction to* [s]*ell the following P-Notes which the client holds on the account*" and it identified 200,000,000 P-Notes for warrants for Union Properties shares expiring on 8 March 2019. It appears clear from an email chain between Arqaam and Julius Baer that the instruction was changed to sell 180,000,000 warrants, although there is no exact record of the changed instruction. By a securities delivery record dated 20 September 2018, Julius Baer recorded the delivery to Arqaam of 180,000,000 warrants expiring on 15 February 2019 "[a]*ccording to your instruction dated 19/09/2018*".

200. By a securities delivery record dated 5 October 2018, Julius Baer recorded the delivery to Arqaam of 104,500,000 P-Notes for warrants for Union Properties shares expiring on 3 January 2028, 60,049,341 P-Notes for warrants for Union Properties shares expiring on 15 February 2019 and 20,000,000 warrants for Union Properties shares expiring on 10 June 2019 "[a]*ccording to your instruction dated 03.10.2018*". It continued: *"The client's instruction clearly states to trade with the issuer/broker (Arqaam Capital) on a free-of-payment basis with no exchange of cash*".

201. I conclude that, apart from the P-Notes for the 1,397,790 warrants, all the P-Notes in UPP Capital's account with Julius Baer for warrants for shares in Union Properties and Al Salam Bank were transferred to Arqaam in September 2018 and early October 2018. Julius Baer transferred them on instructions signed by Mr Alhammadi and Mr Almheiri, apparently confirming instructions given by telephone. There is no evidence that Mr Khouri, or any of the other Defendants against whom the claims came to trial, had any involvement in giving Julius Baer its instructions.

***Arqaam's Dealings with the P-Notes***

202. As I have said, the Claimants' case is that, after they were transferred to Arqaam, the P-Notes for Warrants for Union Properties shares were converted into shares in and transferred to accounts in the name of Mr Al Mulla. There is no satisfactory evidence about how this was done. The position is the more obscure because, on the one hand, Arqaam's position, as it stated in an email to the Court of 20 June 2025, is that "[t]*he instructions we acted upon in relation to the relevant trades involving the Claimants' shares were received solely from our client, Bank Julius Baer & Co. Ltd*", whereas in a letter to UPP Capital dated 16 September 2025 Julius Baer wrote that, after it transferred the P-Notes to Arqaam, it was not "*privy to the subsequent arrangements made between UPP Capital … and Araqam*

*regarding settlement of the P-Notes. We note that the trade confirmations refer to the 'physical settlement at option of noteholder/election of warrantholder' which suggests that UPP opted for physical settlement. We further note from your letter* [which was under reply] *that the underlying assets were eventually transferred by Arqaam and hence a counter-value has been obtained*".

203. Although there is no satisfactory evidence as to who was giving instructions to Arqaam, as Julius Baer points out, it appears that the warrants were converted into shares by way of "*physical settlement*". While there is no documentation referring to the exchange of Temporary Global Warrants for Permanent Warrants or Permanent Warrants for Definitive Warrants, Julius Baer produced five Warrant Trade Confirmations:

    a. A confirmation in respect of the 25,840,000 units of P-Notes for warrants for Al Salam Bank shares, with a trade date of 4 September 2018, which refers to "[p]*hysical settlement at* [o]*ption of Noteholder*";

    b. A confirmation in respect of 180,000,000 units of P-Notes for warrants for Union Properties shares expiring on 15 February 2019 with a trade date of 18 September 2018, which refers to "[p]*hysical* [s]*ettlement, on election by Warrantholder"*;

    c. A confirmation in respect of 104,500,000 units of P-Notes for warrants for Union Properties shares expiring on 24 January 2028 with a trade date of 30 September 2018, which refers to "[p]*hysical settlement, on election by Warrantholder"*;

    d. A confirmation in respect of 20,000,000 units of P-Notes for warrants for Union Properties shares expiring on 1 July 2019 with a trade date of 30 September 2018, which refers to "[p]*hysical* [s]*ettlement, on election by Warrantholder"*. (I note in passing that the expiry date was stated to be 1 July 2019, whereas the confirmation when they were purchased stated an expiry date of 10 June 2019. The confirmations for purchasing and redeeming the P-Notes give the same ISIN number (NL0013026891): they are the same warrants); and

    e. A confirmation in respect of 60,049,341 units of P-Notes for warrants for Union Properties shares expiring on 15 February 2019 with a trade date of 30 September 2018, which refers to "[p]*hysical* [s]*ettlement, on election by Warrantholder"***.**

204. Further, Arqaam issued invoices for their fees in respect of these dealings:

    a. It issued an invoice dated 4 September 2018 "*in connection with trade executed for 25,840,000 shares of* [Al] *Salam Bank Bahrain*" on 4 September 2018 for a total of AED 117,830.40, comprising: (i) "*Commission for sell of* [Al] *Salam Bank Bahrain @ AED 0.96 …*", and (ii) "*Market fees for transfer of underlying shares…*".

    b. It issued an invoice dated 18 September 2018 "*in connection with trade executed for 180,000,000 shares of Union Properties PJSC*" on 18 September 2018 for a total of

AED 589,950.00 comprising: (i) "*Commission for sell of Union Properties PJSC @ AED 0.69 …*", and (ii) "*Market fees for transfer of underlying shares…*".

c. It issued an invoice dated 30 September 2018 "*in connection with trade executed for 184,549,341 shares of Union Properties PJSC*" on 30 September 2018 for a total of AED 1,095,761.71, comprising: (i) "*Commission for sell of 184,549,341 of Union Properties PJSC @ AED 1.25 …*", and (ii) "*Market fees for transfer of underlying shares…*".

205. By letters dated 25 September 2018, UPP Capital instructed Julius Baer to pay these amounts to Arqaam. All the letters were signed on behalf of UPP Capital by Mr Alhammadi and Mr Almheiri. There is no evidence that Mr Khouri was involved in arranging them.

***The Shares***

206. As I have said, the Claimants' case is that, when the P-Notes were redeemed, the shares in Al Salam Bank were transferred to an account held by UPP Capital at SICO, but the shares in Union Properties were put into accounts in the name of Mr Al Mulla. In support of this case about the Union Properties shares, they rely upon:

a. A letter dated 17 September 2018 from Arqaam to Mashreq Bank headed "*Confirmation for transfer of shares*", in which Arqaam referred to "*the proposed transfer of 180,000,000 shares of Union Properties … by ARQ P Notes Bahrain WLL*" and confirmed their "*understanding that the … transfer is for the ultimate beneficial interest ownership*" of Mr Al Mulla. This is corroborated by a table, summarising fees charged in relation to the P-Notes, which include a "*DFM*" fee charged by Mashreq Bank; and

b. A document of SICO by way of a statement of transactions for its "*client*", Mr Al Mulla, recording (i) the transfer to SICO on 1 October 2018 of 184,549,341 Union Properties shares with a stated value of AED 230,686,676.25, and (ii) their sale in tranches between 3 October 2018 and 25 October 2018 for a total of AED 121,706,131.15.

207. Although the evidence is pretty fragmentary, I accept that these shares were transferred to Mr Al Mulla. Dr Ammann observed when opening Mr Trinkler's case that Union Properties Corporate Governance Report for the year ended 31 December 2018, which identified persons with more than 5% of its shareholding at the year end, did not list Mr Al Mulla, nor Arqaam. This shows, to my mind, that by 31 December 2018 Mr Mulla had disposed of the shares transferred to him.

***Description of P-Notes as "Diversified"***

208. In October 2018, Ernst & Young, Union Properties' auditors, were apparently conducting a review in relation to the third quarter of 2018, and raised questions about reviewing Union

Capital's finances in relation to a statement from Julius Baer of UPP Capital's holding as at 30 September 2018. Mr Abrar Atif, the Finance Director of Union Properties, sent Mr Alhammadi an email dated 30 October 2018 seeking the information that was required, including information about the P-Notes. In an email of 31 October 2018, which was copied to Mr Khouri, Mr Alhammadi replied: "*The investment under UAE Focus Fund was reviewed and monitored by the Investment Committee in UPP Capital. Based on a detailed review of the local and regional market conditions, and after taking into consideration the continuous decrease in NAV / performance of the UAE Focus Fund, the Investment Committee decided to redeem the entire investment from UAE Focus Fund and to utilise the redemption proceeds towards investment under Diversified Notes*". Mr Alhammadi repeated the description of the P-Notes as relating to diversified notes in a further email to Mr Atif. Mr Khouri did not correct this mis-description.

***FFM's Confirmations of Receipt of P-Notes***

209. I must next consider what purport to be reports from FFM and TAP about the assets that they were holding for UPP Capital. The Claimants' case is that they were a charade, designed to disguise the misappropriations, and the Defendants do not dispute that this was their purpose. The dispute is about who was party to creating them and who was aware of them.

210. The Claimants refer to six documents that purport to be letters from FFM addressed to Mr Trinkler at TAP. They are headed "*Confirmation Advice – Receipt of Securities*" and begin by stating: "*We hereby confirm receipt of the following security under account for the beneficial ownership of your client*". They are dated between 5 September 2018 and 2 October 2018, and they refer respectively to two lots of 25,840,000 P-Notes, the lot of 180,000 P-Notes, the lot of 60,049,341 P-Notes, the lot of 104,500,000 P-Notes and the lot of 20,000,000 P-Notes. They are not signed, each Confirmation Advice noting: "*This confirmation requires no signature*". Of these documents, the Claimants specifically relied on the one dated 20 September 2018, which purported to confirm receipt of the lot of 180,000,000 units, and the three letters of 2 October 2018, which purported to confirm the receipt of lots of 60,049,341 units, 104,500,000 units and 20,000,000 units.

211. Furthermore, there are in evidence what purport to be reports from FFM to Mr Trinkler at TAP described as "*Securities Holding Reports*". They purport to set out "*holdings and security balances … for the beneficial ownership of your client*". For example, one such letter dated 27 September 2018 refers to the 180,000,000 P-Notes, and attributes a market value to them of AED 141,660,000; and one dated 25 December 2018 lists and attributes market values to holdings of 180,000,000 P-Notes, 104,500,000 P-Notes, 60,049,341 P-Notes and 20,000,000 P-Notes (the market value of the holding of 180,000,000 P-Notes still said, improbably, to be unchanged from the value of AED 141,660,000 ascribed to them in September 2018). As with the Confirmation Advices, the Reports were unsigned and bear the same confirmation that no signature was required.

212. I observe that the earliest Security Holding Reports were dated 2 August 2018 and 3 September 2018, before the date of the SLA (4 September 2018). These Reports and the Reports dated 13 September 2018 and 19 September 2018 (apparently after the Al Salam Bank P-Notes were redeemed and before any Union Properties P-Notes were acquired) record that there were "*No Holdings*".

213. In what purports to be a letter from FFM addressed to Mr Trinkler at TAP and dated 3 January 2019, it was said that FFM confirmed that it held three lots of P-Notes, comprising respectively 104,500,000 units, 240,049,341 units and 20,000,000 units. The same was said in a similar letter purportedly from FFM to Mr Trinkler at TAP, dated 24 January 2019. These letters identify the "*Counterparty*", meaning, as Mr de Wolff suggested without demur from any of the Defendants, the person with custody of the warrants. The Counterparty for the 104,500,000 units was "*Global Gate Financial Services*" ("**Global Gate**"), and for the 240,049,341 units and the 20,000,000 units it was "*Premier Financial* Brokerage" ("**Premier**").

214. Each letter bears what purports to be Mr Khiara's signature. Mr Khiara denies that he signed them, and contends that his purported signatures were electronic; and he denies that he had anything to do with sending the letters. He contends that someone else must have used the BSCI Laptop. The Claimants did not dispute that the signatures were electronic, and they have not shown that they were signed (electronically or otherwise) with Mr Khiara's authority or knowledge. I accept Mr Khiara's evidence and contention about the letters.

***TAP's Reports***

215. The Claimants also rely on what purport to be reports by TAP addressed to UPP Capital. Like FFM's supposed reports, they are not signed and bear the same note "*This confirmation requires no signature*".

216. A TAP report that is dated 30 September 2018 stated that TAP "*confirm*[ed] *the following holdings and security balances held under our management by our custodian as at the end of 30-Sep-2018 for the beneficial ownership of UPP Capital*", and it set out the lot of 180,000,000 P-Notes, assigning a value of AED 141,660,000. Reports dated 11 January 2019 purported to confirm that, as at 31 October 2018, 30 November 2018 and 31 December 2018, TAP was so holding five lots of P-Notes: the lot of 180,000,000 units, the lot of 104,500,000 units, the lot of 60,049,341 units, the lot of 20,000,000 units and the lot of 240,049,341 units. A report dated 18 March 2019, gave a similar confirmation of the position as at 31 January 2019. These reports invited UPP Capital to seek clarification by telephone or by emailing Mr Trinkler's email address at TAP.

217. Mr Richmond submitted that there is evidence that Mr Alhammadi was involved in the production of these false reports in that on 7 November 2018 he sent a report of security balances as at 30 September 2018 from his personal email address to his email address at

UPP Capital and within two minutes an email was apparently sent from TAP to UPP Capital with the same report. I am not impressed by that submission: in any case, the question that I have to consider is whether the Defendants against whom claims are pursued were involved in these false reports, and not whether there is evidence that Mr Alhammadi or any other person was involved.

218. By a letter dated 3 April 2019, TAP sent UPP Capital a statement that purported to show that on 15 February 2019 all the P-Notes had been sold for a total of AED 286,230,331.37, and that the proceeds were being used to trade in stocks. Thereafter, until at least July 2021 there were further reports from TAP that purported to show active trading in UAE, Saudi Arabian and Egyptian stocks. As with earlier reports, they invite clarification by telephone or by email to Mr Trinkler's email address.

219. There was no such trading. It is the Claimants' pleaded case that the reports were either (i) generated by FFM using Excel, or (ii) compiled by TAP from reports retrieved from two websites that had been designed to appear to be websites of Global Gate and Premier, but were fake, having been created by employees of Union Properties on instructions from Mr Alhammadi. It appears from email exchanges between "*FFM Finance*" and Mr Held at TAP that draft reports were sent by FFM to Mr Held at TAP for "*finalization*". For example, with regard to a statement for March 2020, Mr Held responded to the "*monthly excel data*" sent by FFM with an email to Mr Khiara, but the exchanges were then continued with Mr Held by Ms Castro.

220. The minutes of a meeting of the Investment Committee on 7 March 2019 record that Mr Klar briefed the Investment Committee "*regarding the overall performance of the investment*. [The Investment Committee] *reviewed in detail the monthly custody position with TAP for the month of January and February 2019 and approved the trades executed during the period*". The minutes of a meeting on 9 May 2019 record a similar briefing by Mr Klar and similar discussion and approval by the Investment Committee in respect of March and April 2019.

221. Dr Ammann observed that there is evidence that TAP sent reports in hard copy, citing an email in which Mr Held sent Mr Khiara a DHL tracking number; and he submitted that the Claimants should provide hard copies of the TAP reports. This, he argued would assist in identifying the provenance of the documents and, in particular, whether there is any basis to associate them with Mr Trinkler. I am not impressed by that submission: the Claimants have explained that hard copies of documents relating to the fraud are not, for whatever reason, available to them. The Defendants did not apply before the trial for further disclosure by way of a challenge to what the Claimants did disclose. I must determine the case on the basis of the evidence that has been presented.

222. It was put to Mr Khiara in his cross-examination that he was "*involved in the creation and sending out or allowing to be sent out of monthly statements to TAP*" by FFM. Here again, the Claimants were putting to him a case that had not been distinctly pleaded. In support

of it, the Claimants asked Mr Khiara about exchanges between FFM and TAP, which purport to show that Mr Khiara was involved in composing the false reports issued by TAP. I do not seek to review all the documents in which Mr Khiara is mentioned. It suffices to comment on the following, which include the documents upon which Mr de Wolff specifically relied in his closing submissions in support of the Claimants' contention that Mr Khiara knew that TAP's reports were misleading:

a. On 15 January 2020, Mr Held sent an email to "*FFM Finance*" and addressed it to "*Dear Paresh*". He wrote that he was reviewing "*your remarks re various statements*" and considered FFM's statements, and so also its fee calculations, were inconsistent with information from Global Gate and Premier. The emails ended "*Please let me know your thoughts*". I observe that the words "*your remarks*" and "*your thoughts*" might equally and easily refer to remarks and thoughts of Mr Khiara himself or remarks and thoughts of FFM. Mr Khiara said that he did not know to what remarks Mr Held was referring, but he denied that he was involved with the matters that Mr Held mentioned. He also said that, while he had access to the email address of FFM's Finance Department, he would not look at it unless specifically asked to do so.

b. By an email of 13 March 2020 sent to the same email address of FFM's Finance Department and again addressed to "*Dear Paresh*", Mr Held asked that an invoicing instruction be signed and returned, and for a "*statement re accountability as discussed some days ago*". He added a note of best wishes to Mr Khiara's wife. Mr Khiara responded that Mr Alhammadi would have referred TAP to Mr Khiara, rather than introduce the whole FFM Finance Department, and had provided them with Mr Khiara's mobile number; and he explained that he answered a call from TAP on his mobile telephone when he was with his wife at hospital.

c. By another email dated 21 April 2020 addressed to "*Dear Mr Khiara*" and sent to the FFM Finance Department, Mr Held sent the March 2020 statements for review, saying that, once FFM had reviewed them, they would be sent to "*our client*". The attached statements, addressed to UPP Capital, showed trading in Middle East stocks and shares. The exchange continues with a reply from Ms Castro approving the statements, and Mr Held telling her that the finalised statements would be sent out by courier. On 4 May 2020, Mr Trinkler sent by email to Mr Khiara the tracking number for sending the document to UPP Capital.

223. In my judgment, such emails as these are consistent with Mr Khiara's evidence about his position and role at FFM. Mr Alhammadi referred TAP to him as a point of contact; and secondly, as an administrator, he entered and organised correspondence and data. He thus had access to FFM's information, but he did not review everything that came to him. In particular, he did not review trading data or have any involvement with trading. In particular, it was Ms Castro who replied to TAP's enquiries, including those addressed to Mr Khiara.

224. I add that, on 14 December 2020, Mr Held sent an email to Mr Khiara's private email address about a difficulty in accessing Premier's website. It appears that Mr Held regarded the matter as urgent. Mr Khiara no longer worked for BSCI or FFM when the email was sent. There is no reply to the email in evidence. Mr Khiara's evidence was that he did not know how Mr Held had obtained his email address. I cannot attach any importance to this isolated email.

***Investigations and Discovery of the Fraud***

225. By the end of 2018, Union Properties was facing financial difficulties, and a new CFO, Mr Krishnan Subramanian, and a new legal counsel, Mr Iain McGillivray, were appointed. In 2019, Mr Subramanian undertook a review of Union Properties' finances. He recommended "[i]*n or around the second quarter of 2019*" (as Mr Khouri put it) that the investments that were "*locked-in*" with TAP be realised in order to provide Union Properties with liquidity. According to Mr Khouri, whose evidence about this and subsequent events was not challenged and I accept, he urged Mr Almheiri that this be done; Mr Almheiri agreed "*in principle*", but nothing ensued; and Mr Alhammadi resisted efforts to have TAP redeem investments.

226. Union Properties' financial problems aggravated in the period from July to September 2019, Mr Alhammadi frustrated Mr Khouri's efforts to have a Board meeting to discuss a proposal that UPP Capital be investigated: he cancelled or postponed meetings that were scheduled. Mr Khouri also had difficulty and faced apparent obstruction in contacting TAP and in convening a meeting of the Investment Committee.

227. In late 2019, relations between Mr Khouri and Mr Alhammadi deteriorated further, not least because in October 2019 Mr Khouri instructed Mr Subramanian to withhold Mr Alhammadi's salary, and Mr Khouri and Mr McGillivray instructed a firm of Swiss lawyers to gather information about UPP Capital's investments with TAP. Mr Khouri was concerned about an instruction to SICO to transfer AED 168,000 to UPP Capital's account, which appeared to bear a forgery of his signature.

228. On 9 November 2021, according to the Claimants, Mr Alhammadi, Mr Klar, Mr Khiara and others were dismissed from their positions with the Claimants. Mr Khiara's evidence was that he was not dismissed but was (and remains) suspended, albeit he had not been paid: it was not challenged and I accept it.

229. At a Board meeting of Union Properties on 15 December 2019, it was resolved that Mr Khouri's appointment as Managing Director be terminated, and all his executive powers be cancelled, although he was to keep his position as a member of the Board; and Mr Alhammadi was appointed as the CEO and given all the executive powers that Mr Khouri had had. I understand that Mr Khouri disputes the validity of the Board meeting and the resolution. However, he resigned from his positions on 15 December 2019, and therefore it is not disputed that he ceased to be an officer or executive of the Union Properties Group.

230. After his employment ended, there was litigation between Union Properties and Mr Khouri, the details of which are not relevant for present purposes. Further, in January 2020, Mr Khouri made a report to the police, *inter alia*, about his attempts to investigate TAP being obstructed and about the instruction to SICO.

231. In their written opening submissions, the Claimants stated that the Claimants "*relied on* [the] *false reports regularly provided to them by TAP about their putative investments and, in so doing, decided to hold off on any investigations/actions until the matter eventually came to light in October 2021* …". They do not state which individuals relied on the reports and would otherwise have conducted an investigation, and there is no evidence that supports that assertion. Nor, indeed, is there evidence that "*the matter*" came to light in October 2021.

**The Pleaded Claims**

***Introduction***

232. The Claimants plead against Mr Trinkler, FFM and Mr Khiara: (i) claims in deceit; (ii) alternatively to the claims in deceit, claims in negligent misstatement; (iii) claims of dishonestly assisting in breaches of directors' duties; (iv) claims under the FSMR; and (v) claims in conspiracy or the "*materially similar tort in UAE law of intentionally causing harm by unlawful means*".

233. The Claimants plead similar claims against Mr Klar and also a claim for breach of his duties as a director of Union Properties, but, when opening the Claimants' case, Mr de Wolff abandoned the claims against him in deceit, in negligent misstatement and for breach of duties. They pursue only claims for dishonestly assisting Mr Khouri's breach of his director's duties and in conspiracy (or the "*materially similar*" tort under UAE law).

234. The claims pleaded against Mr Khouri are: (i) claims for breach of his duties as a director of Union Properties; (ii) claims for breach of his duties as a director of UPP Capital; and (iii) claims in respect of an unlawful means conspiracy (or the "*materially similar*" tort under UAE law).

***The Governing Laws***

235. It is common ground that the claims for breach of duties as a director are governed by UAE law, and that the claims under the FSMR are governed by ADGM law. The Claimants plead that their claims for deceit, in negligent misrepresentation and in dishonest assistance are governed by ADGM law or in the alternative by UAE law, but here I need not engage with questions about the governing law because the Claimants plead that the relevant UAE law is "*materially similar*" to ADGM law, and no party submitted otherwise.

236. The Claimants likewise plead that ADGM law and UAE law are materially similar with regard to the unlawful conspiracy claim, but the position here is controversial. Having pleaded the

conspiracy claim under ADGM law, the Claimants go on to plead this alternative case: "*In the alternative, by reason of the matters aforesaid Thomas Trinkler, FFM, Paresh Khiara, Jorg Klar and Ahmed Khouri are liable in damages for the loss caused to the Claimants by the materially similar tort in UAE law of intentionally causing harm by unlawful means under Article 282 read together with Article 283 and 291 of the UAE Civil Code*". They also plead: "*If and to the extent that it may be pleaded by way of defence that any issue in these proceedings is subject to an alternative governing law, including in particular UAE law or Swiss law, the Claimants rely on the presumption that foreign law is materially similar to ADGM law and the Claimants reserve their entitlement to plead in relation to any suggested alternative governing law by way of reply*".

237. Early in these proceedings, on Mr Khouri's application challenging the Court's jurisdiction, the Claimants argued that the conspiracy claim is governed by ADGM law, and Mr Khouri argued that it is governed by UAE law: see my judgment of 1 May 2023 ([2023] ADGMCFI 0009) at para. 35. It appeared from Mr de Wolff's opening submissions at the trial that the Claimants still maintained as their primary case that it is governed by ADGM law, or, at least, there is no material difference between the two laws: having explained the case in conspiracy on the basis of English law (and so ADGM law) principles, Mr de Wolff added: "*If and insofar as UAE law applies,* [each Defendant] *would be liable to the same extent*" (emphasis added).

238. However, by the end of the trial, Mr de Wolff presented the case in UAE law as the Claimants' primary case, and he said that the case of a conspiracy under ADGM law was their secondary or alternative case. He submitted that there is a significant difference between the laws. His main point was that, whereas under English law, and so under ADGM law, a defendant's liability in conspiracy extends only to any loss suffered by the victim as a result of what was done after he had become a party to it (see *Street on Torts* (16th Ed, 2021), p. 394 and *Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch)*, para. 949), this is not the position under UAE law. He submitted that under UAE law a defendant who participates in a joint tort or conspiracy is jointly liable with others for any loss resulting from the joint wrongdoing even if he started to participate only after the loss had been incurred. Another potentially significant difference between the two laws might be that, whereas an essential ingredient of the English (and ADGM) tort of unlawful means conspiracy is an intention to injure, it appears that this is not a requirement of the provisions of UAE law on which the Claimants seek to rely, namely Article 282 of the UAE Civil Code, together with Articles 283 and 291.

239. These provisions of the UAE Civil Code read as follows:

> **Article 282**: "*Any harm done to another shall render the actor, even though not a person of discretion, liable to make good the harm*".
>
> **Article 283**:
>
> "*(1) Harm may be direct or consequential.*

*(2) If harm is direct, it must unconditionally be made good, and if it is consequential, there must be a wrongful or deliberate element and the act must have led to the damage*".

**Article 291**: "*If a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability*".

240. The Defendants (or at least FFM, Mr Khiara and Mr Khouri) objected to the Claimants pursuing a case under UAE law that differs from their ADGM law conspiracy claim: (i) on procedural grounds, (ii) on the basis that, under the applicable principles of ADGM private international law, the unlawful conspiracy claim is governed by ADGM law, and (iii) on the basis that UAE law is not materially different from ADGM law, at least with regard to the liability of a conspirator for damage that occurred before he participated in the conspiracy.

241. In my judgment, the Claimants' pleading precludes them from pursuing their UAE law argument. First, their Re-Amended Particulars of Claim present their claim under ADGM law as their primary case: if this was otherwise in doubt, this is clear from paragraph 109. Further, it is not open to the Claimants to contend that a claim under UAE law might succeed where one under ADGM law would not, or to argue that UAE law differs from ADGM law with regard to causation or as to whether an intention to injure is required. This would contradict their pleaded case that the two laws are materially similar. Indeed, even without that averment, the Claimants would have been required to plead the relevant principles of UAE law: it is not sufficient to identify articles of the UAE Civil Code without more. As I have said, the case that the Claimants opened was consistent with their pleading, and inconsistent with the case that they sought to advance in their closing submissions.

242. If there was a live issue about the law governing the conspiracy claims, I would accept that they are governed by UAE law. By the *ADGM Application of English Law Regulations 2015*, the ADGM adopted the provisions in the *Private International Law (Miscellaneous Provisions) Act 1995 (UK)* which apply in England, subject to immaterial modifications. The general rule under section 11(1) about the law governing a tort, which applies here, is that *"the applicable law is the law of the country in which the events constituting the tort or delict in question occur*"; and, under section 11(2)(c), where elements of those events occur in different countries, in a case such as this "*the law of the country in which the most significant element or elements of those events occurred*". (The general rule may be displaced under section 12, but it suffices to say that it would not be displaced in this case.) In my judgment, here the relevant events clearly occurred for the most part in Dubai.

243. I reject the proposition that, under UAE law, those who participate in a joint tort or conspiracy are jointly liable with others from any loss resulting from the joint wrongdoing, even if they started to participate only after the loss had been incurred; and I cannot accept, as Mr de Wolff appeared to suggest, that this is the effect of article 291 of the UAE Civil Code. This proposition was not advanced in the Claimants' written UAE law submissions, and I did not understand Mr Almatrood to advance it when he presented their

UAE law submissions orally. He cited two judgments of the Dubai Court of Cassation to illustrate how article 291 is applied in the Courts of the UAE. Neither supports the Claimants' proposition, and one of them is inconsistent with it.

244. In *Appeal No. 309 of 2016 (Civil Appeal)*, the Dubai Court of Cassation, having cited article 291, continued, "*Joint liability for compensation in law means that each of those held liable is obliged, vis-à-vis the claimant, to pay the full amount of the compensation claimed. For such joint liability to exist, three conditions must be satisfied. First, that each of the persons adjudged liable has committed a fault. Second, that each of those faults has contributed to the occurrence of the damage – it being unnecessary that the fault be an established (actual) one, as it is sufficient that it be a presumed fault, whether it concurs with another presumed fault or an actual one. Third, unity of the harm, in that the damage claimed for compensation must be the same damage to which the fault of each has contributed in causing it*". (Mr Almatrood explained, with regard to the second condition, that the concepts of established or actual fault and of presumed fault connote, in broad terms, fault proved by direct evidence and fault proved by circumstantial evidence.) The third condition identified by the Dubai Court of Cassation appears to me inconsistent with the Claimants' proposition: a person who joins in wrongdoing after the damage occurs does not contribute to causing that same damage.

245. I therefore conclude that it is not open to the Claimants to advance their conspiracy claim on the basis that it is governed by principles of UAE law that differ from those of the ADGM, and even if they could, it would not assist them on causation.

***Deceit***

246. As I said in *Maple Leaf Macro Volatility Master Fund v Rouvroy [2009] EWHC 257 (Comm)*: *"A defendant is liable in deceit if he makes a false representation knowing it to be untrue or being reckless as to whether it is true, and intends that the claimant should act in reliance on it, and if the claimant does so and suffers loss: see, for example, Clerk & Lindsell on Torts (2006) 19th Ed para. 18-01* [See now, (2023) 24th Ed at para. 17-01]. *However, it does not suffice to establish a case of fraud that, on an objective interpretation ... , the defendants made a representation and did not have an honest belief in the truth of that representation. The test for fraud is subjective and the question in the case of each defendant is whether he honestly believed to be true any representations that he intended to make: see Cartwright, Misrepresentation, Mistake and Non-Disclosure (2007) para. 5.18 and Akerhielm v De Mare, [1959] AC 789 at p.805. There must be "moral obliquity": per Lindley LJ in Angus v Clifford, [1891] 2 Ch 449, 468*".

247. Thus, in order to establish a claim in deceit, the Claimants must establish: (i) that the relevant Defendant made a false representation; (ii) that he knew that it was false, or that he was reckless as to whether it was true or false; (iii) that the relevant Defendant intended the relevant Claimant to rely on the representation; (iv) that the relevant Claimant did rely on it and, as a direct result suffered loss: see *Smith New Court Securities Ltd v Scrimgeour*

*Vickers (Asset Management) Ltd [1997] AC 254*; and (v) that the relevant Defendant was subjectively dishonest or guilty of some other moral impropriety.

248. The representation must be one of fact, and not a statement about the future. An action does not lie in deceit where a promise is made and not fulfilled, even where it is deliberately broken, but it may be based on a representation as to present intention about future conduct. In those circumstances, it is necessary to show reliance on the representation as to present intention, and not just upon the promise of future fulfilment: see *Mumford & Grant, Civil Fraud: Law, Practice & Procedure* (2018), para. 1-46 fn 81.

***Negligent Misrepresentation***

249. In order to establish a claim in negligent misrepresentation (or negligent misstatement), a claimant must show: (i) that the defendant owed the claimant a duty of care; (ii) that the defendant made a representation of fact; (iii) that the defendant was negligent; (iv) that the claimant reasonably relied on the representation; and (v) that the claimant suffered loss as a result of doing so.

250. I add only three observations to this summary:

a. As with deceit, the representation must be one of present fact, including a representation as to present intention.

b. A defendant will have owed a duty of care to a claimant in respect of a statement if he assumed responsibility for it. Where a person to whom the defendant made a statement passes it on to another, the defendant will not be held to have owed a duty of care to that other person, unless he knew both that the statement was likely to be communicated to the other person and he knew that that was the purpose of the statement: *Banca Nazionale del Lavoro SpA v Playboy Club London Ltd [2018] UKSC 43* at para. 11.

c. Thirdly, and importantly, where a person makes a representation on behalf of a company or other principal, he does not owe a duty of care to the representee simply because the principal's relationship with the representee was such as to give rise to a duty on the principal. The employee or other agent must have assumed responsibility so as to create a special relationship with the representee that gives rise to a duty of care: *Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830*, 835,836.

***Unlawful Means Conspiracy***

251. It is convenient next to consider the claim of unlawful means conspiracy. The Claimants seek damages for conspiracy by unlawful means on the basis that Mr Trinkler, FFM, Mr Klar, Mr Khiara and Mr Khouri acted together and with others and used unlawful means (by way of deceit, breach of directors' duties, dishonest assistance thereof, breach of the

requirements of the FSMR and in other ways). This is a cause of action recognised in ADGM law, as in English law.

252. The elements of the tort are summarised in the judgment of Cockerill J in *FM Capital Partners Ltd v Marino [2018] EWHC 1768 (Comm)* at para. 94:

> "*The elements of the cause of action are as follows:*
>
> *i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of… .*
>
> *ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention … . Moreover:*
>
> *a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts … .*
>
> *b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests … .*
>
> *c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention … .*
>
> *iii) In some cases, there may be no specific intent but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in OBG v Allan , referring to cases where:*
>
> *'The defendant's gain and the claimant's loss* [may be]*, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort'.*
>
> *iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding … .*
>
> *v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable … .*
>
> *vi) Loss being caused to the target of the conspiracy*".

***Breach of Directors' Duties***

253. I next take the claim against Mr Khouri for breach of his duties as a director of Union Properties and as a director of UPP Capital. If the Claimants establish that he did not

comply with his duties, Mr Khouri might be liable in damages or to give an account of profits from the breach.

254. In their Re-Amended Particulars of Claim, the Claimants rely in support of the Union Properties' claim for breach of duties as its director upon articles 11, 22 and 162 of *UAE Federal Law No. 2 of 2015 on Commercial Companies (as amended)* (the "**UAE CCL 2015**"), and allege that under article 11 he had duties under articles 42 to 44 of the *UAE Securities and Commodities Authority Governance Rules* (the "**SCA Governance Rules**"). In support of UPP Capital's claim for breach of duty as its director, they rely upon articles 22 and 162 of UAE CCL 2015: they do not rely here upon article 11 of the UAE CCL 2015 or upon the SCA Governance Rules.

255. Article 22 of the UAE CCL 2015 provided as follows: "*A person authorised to manage the Company shall preserve its rights and work for the benefit of the Company with the care of a Prudent Person. Such person shall perform all such acts as are consistent with the objective of the Company and the powers granted to such person under an authorisation issued by the Company in this respect*". Article 1 of the UAE CCL 2015 defines a "*Prudent Person*" as one who "*has adequate experience and the commitment required in his work*".

256. Article 11 requires a company to have the requisite approval and licences to conduct business in the UAE, but it does not impose civil liability on directors of a company or anyone else. At trial, the Claimants did not pursue the case under article 11 of UAE CCL 2015. When Mr de Wolff opened the Claimants' case, he advanced a different argument: that, while article 162 does not directly refer to the SCA Governance Rules, it is broad and extends to any error in management, including a breach of the SCA Governance Rules. He relied on the use of the term "*error*" in article 162(2): see para. 260 below.

257. Thus, the Claimants' case was that, as a matter of UAE law, article 162 covers a claim for breach of duty under the SCA Governance Rules. The position of Mr Khouri, as it is put in his written UAE law submissions of 27 October 2025, is that: "*The SCA Governance Rules are part of a separate code and regime. A breach of directors' duties may or may not be a breach of the SCA Governance Rules, and a breach of the SCA Governance Rules may or may not be a breach of directors' duties. The principal consequence for breach of the SCA Governance Rules is the potential imposition of fines by the SCA*".

258. The Claimants' argument faces procedural problems. First, it is not pleaded. Secondly, it faces difficulties with regard to the terms of article 162 and its English translation.

259. By an order of 1 September 2025, I made a direction under article 117 of the CPR that the parties might, if so advised, make legal submissions about specified questions of UAE law, including questions about article 162 and in particular about the question: "*Does Article 162 of the CCL cover a claim for breach of duty under the Securities and Commodities Authority Governance Rules?*". I also directed that, if any party intended to rely in support of its legal submissions upon any statutory provision which is in Arabic, it should file and

serve an English translation of it with its submissions; and that, unless another party objected to a translation so filed and served, it should be "*treated as authoritative at the trial*". The purpose was to avoid issues about translation at trial.

260. In support of their legal submissions, the Claimants filed and served the following translation of article 162 of the CCL:

> *"(1) The members of the board of directors and executive management shall be responsible towards the company, the shareholders and the third parties for all acts of fraud, misuse of power, and violation of the provisions of this Law and the articles of association of the company. Every condition to the contrary shall be invalid. The executive management shall be represented by the general director, CEO or the executive chairman of the company, their deputies, everyone in high executive positions, executive management officers and those appointed to their positions personally by the board of directors.*
>
> *(2) The responsibility as provided for in Clause (1) of this Article shall apply to all members of the board of directors if the error arises from a resolution that was passed by majority ... ."*;
>
> and there are then provisions about the position if a director objects to a resolution or is absent from the meeting at which it was passed.

261. No Defendant objected to the translation, and Mr de Wolff presented his case at trial on the basis that it is a correct translation of article 162 of the UAE CCL 2015.

262. In the course of Mr de Wolff's closing submissions in reply, I raised with him two questions about this translation of article 162. First, I observed that the Claimants pleaded against Mr Khouri and others a duty under article 162(1) not to "*mismanage the company* [sic. Union Properties or UPP Capital, as the case might be] *through gross error*". I asked Mr de Wolff why the pleading referred to "*gross*" error since this does not reflect the translation. Mr de Wolff was unable to explain this. (Mr Richmond suggested that the concept of gross error might have been mistakenly imported from article 84 of the UAE CCL 2015, under which the managers of a company may be liable for "*any gross error*". This is a conjecture, albeit on its face a reasonable conjecture.) In view of my other conclusions, nothing turns on this anomaly in the Claimants' pleading.

263. My other question about the Claimants' version of article 162 is more troubling. The Claimants' written submissions on UAE law filed on 10 October 2025 pursuant to my directions of 1 September 2025, set out a different version of article 162:

> "*1- The members of the Board shall be liable towards the company, the shareholders and the third parties for all acts of fraud, misuse of power, and violation of the provisions of this Law or the Articles of Association of the*

*company or an error in management. Every provision to the contrary shall be invalid.*

*2- Liability as provided for in Clause 1 of this Article shall apply to all the members of the Board if the error arises from a Decision passed unanimously by them …*".

264. Based on this version of article 162, and in particular the reference to "*error in management*" in article 162(1), the Claimants made this submission with regard to whether the article covers a claim for breach of duty under the SCA Governance Rules:

> "*Although Article 162 of the CCL does not specifically identify the SCA Governance Rules, the provision is broad and extends to any 'error in management'. The SCA Governance Rules are a set of legally binding regulations that govern the internal management of public joint stock companies, and so a breach of the rules would suggest an error in management which, in turn, falls within the scope of Article 162, provided there is resulting harm*".

265. Thus, the Claimants' argument that a director who does not comply with the SCA Governance Rules rests on a translation which the Claimants have not presented as required by the direction of 1 September 2025, is not therefore covered by the direction under those rules, and is not otherwise proved.

266. The procedural difficulties with this part of the Claimants' case do not end here. In their written opening submissions, the Claimants said that Mr Khouri was under duties pursuant to:

    a. Article 11(A) of the SCA Governance Rules, which required Mr Khouri to "*maintain the interests of the Company, exert* [sic] *the care of a prudent professional person, and to perform all actions that are compatible with the purposes of the Company*"; and

    b. Article 44(2)(d) of the SCA Governance Rules, which required him to supervise the "*the Company's main capital expenses and ownership and disposal of assets*".

267. In Mr Khouri's responsive submissions, Mr Richmond and Mr Joseph observed that the legal authorities served with the Claimants' UAE law submissions include a translation of the SCA Governance Rules that included neither of these articles.

268. Mr de Wolff said in his oral opening that Mr Richmond and Mr Joseph were referring to "*the wrong rules*", and he referred me to what was said to be a translation of "*the 2016 Rules*", which do include an article 11A and an article 43(2)(d), which is in terms similar to those cited by reference to article 44(2)(d) in the Claimants' written opening submissions. He said that the wrong version had been filed and served with the Claimants' UAE law submissions and apologised for the error.

269. When I raised the different versions of the translations of article 162 late in the trial, Mr Richmond observed that the Claimants are the author of this difficulty, and that, unless I were to throw them a lifeline, their case about the SCA Governance Rules and about breach of article 162 more generally fails. I agree. The same is true of the other two procedural difficulties about the SCA Governance Rules.

270. If the Claimants were faced with one of these three difficulties but otherwise had a case against Mr Khouri under the SCA Governance Rules that carried conviction, I would have been inclined to throw them a lifeline, and to allow amendments or excuse breach of the directions of 1 September 2025. As it is, I decline to do so. Taken together, I conclude that these matters should preclude the Claimants from pursuing their case for breach of duties under the SCA Governance Rules. When this Court is required to engage with Arabic provisions and has to rely on translations, it depends on the parties complying carefully with directions about providing and proving translations. The Claimants failed to do so and provided no acceptable explanation for any of their errors. The problems were aggravated by their unsatisfactory pleading.

271. I add only that, for these reasons I reject the other claims against Mr Khouri, I would in any case have rejected the Claimants' SCA Governance Rules submissions.

***Dishonest Assistance***

272. In her judgment in the *FM Capital Partners Ltd* case (cit. sup.) at paras. 82 to 85, Cockerill J explained the law about liability for assisting the breach of a fiduciary duty as follows, citing authority for her prepositions:

> "*82. The ingredients of liability in dishonest assistance are:*
>
> *i) There must be a trust or fiduciary obligation owed by the trustee/fiduciary to the claimant … .*
>
> *ii) Because dishonest assistance is a type of accessory liability, there must be a breach by the trustee/fiduciary … .*
>
> *iii) The breach by the trustee/fiduciary need not be dishonest: because liability of the third party is fault-based, what matters is the nature of their fault, not that of the trustee/fiduciary … .*
>
> *iv) The third party must have assisted in, induced or procured the breach. It is necessary to show that the relevant assistance played more than a minimal role in the breach being carried out, but there is no requirement to show that the assistance provided would inevitably have resulted in the beneficiary suffering a loss … .*
>
> *v) The third party must have acted dishonestly in providing the assistance. The test in its modern incarnation from Royal Brunei Airlines at 386-7 and is now set out in Ivey v Genting Casinos (UK) t/a Crockfords [2017] UKSC 67 at [74]:*

*'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest'.*

*vi) However, the standards in question are those of an ordinary honest person in the circumstances of the defendant. Thus, in applying the test of dishonesty, the Court must have regard to all the circumstances known to the defendant at the time, and have regard to the defendant's personal attributes, such as their experience and the reason why they acted as they did ... .*

*83. ... . Accordingly:*

*i) There is no need to prove that the defendant was aware of the details of the underlying fraud, that there existed a trust, and/or they knew the facts which give rise to the trust ... . It suffices if they simply know that they are assisting the fiduciary to do something he or she is not entitled to do ... .*

*ii) The defendant has the requisite dishonest state of mind if they deliberately close their eyes and ears, or deliberately refrain from asking questions, lest they learn something they would rather not know, and then proceed regardless ... .*

*iii) However, a defendant does not have the requisite dishonest state of mind if he merely suspects what is going on ... .*

*84. If the requirements above are satisfied, the third party is liable to: (a) compensate for the losses resulting from the trustee/fiduciary's breach of duty; and/or (b) personally account for his or her profits: ... .*

*85. The defendant's liability is not limited to the loss caused by his assistance, but extends to the loss resulting from the relevant breaches of fiduciary duty. It is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss ...".*

273. I add only these observations:

a. Although the Claimants' pleaded case against Mr Trinkler, FFM, Mr Klar and Mr Khiara is that they assisted in breach of duty on the part of Mr Alhammadi, Mr Khouri and (as against Mr Trinkler, FFM and Mr Khiara) Mr Klar in their capacities as directors of the Claimants, at trial the Claimants confined their case to alleging that they so assisted Mr Khouri.

b. It was not put to Mr Khouri when he was cross-examined that he had any dealings with Mr Trinkler, FFM, Mr Klar or Mr Khiara. As I have said, he was not cross-examined on behalf of any of his co-Defendants.

c. The remedies for dishonest assistance include damages and an account of profits.

d. A defendant is not liable for dishonest assistance (whether in damages or for an account of profits) unless his assistance has causative effect: see para. 376 below.

***FSMR Claims***

274. Between 26 April 2018 and 20 October 2020, FFM, being a company regulated by the FSRA, was as "*Authorised Person*" within the meaning of the FSMR, permitted to advise on investments and credit, to manage assets and to manage a collective investment fund. Its directors, including Mr Trinkler, Mr Klar and Mr Khiara, were "*Approved Persons*" to whom the Regulator had given an Approval under the FSMR.

275. Section 242 of the FSMR provides as follows:

> "*(1) Unless otherwise provided under Rules made by the Regulator, where a person (whether or not a Private Person)—*
>
> *a) intentionally, recklessly or negligently commits a breach of duty, requirement, prohibition, obligation or responsibility imposed by or under these Regulations; or*
>
> *(b) commits fraud or other dishonest conduct in connection with a matter arising under such Regulations;*
>
> *that person is liable to compensate any other person for any loss or damage caused to that other person as a result of such conduct, and otherwise is liable to restore such other person to the position they were in prior to such conduct.*
>
> *(2) The Court may, on application of the Regulator or a person who has suffered loss or damages caused as a result of conduct described in subsection (1), make orders for the recovery of damages or for compensation or for the recovery of property or for any other order as the Court sees fit, except where such liability is excluded under these Regulations or any Rules made by the Regulator.*
>
> *(3) Nothing in this section affects the powers that any person or the Court may have apart from this section*".

276. Section 103 of the FSMR provided at the material times as follows:

> "*(1) A person ("P") who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any Financial Instruments, ... commits a contravention of these Regulations if—*

*(a) P intends to create the impression; and*

*(b) the case falls within either subsection (2) or (3) or both.*

*(2) The case falls within this subsection if P intends, by creating the impression, to induce another person to acquire, dispose of, subscribe for or underwrite the investments or to refrain from doing so or to exercise or refrain from exercising any rights conferred by the investments.*

*(3) The case falls within this subsection if—*

*(a) P knows that the impression is false or misleading or is reckless as to whether it is; and*

*(b) P intends by creating the impression to produce any of the results in subsection (4) or is aware that creating the impression is likely to produce any of the results in that subsection.*

*(4) Those results are—*

*(a) the making of a gain for P or another; or*

*(b) the causing of loss to another person or the exposing of another person to the risk of loss.*

*...*".

277. Further, section 218(1) of the FSMR provides that:

"*A person who—*

*(a) does an act or thing that the person is prohibited from doing by or under these Regulations or any Rules made under these Regulations;*

*(b) does not do an act or thing that the person is required to do by or under these Regulations or any Rules made under these Regulations;*

*(c) fails to comply with a requirement or condition imposed by or under these Regulations or any Rules made under these Regulations; or*

*(d) otherwise contravenes a provision of these Regulations or any Rules made under these Regulations, including the General Prohibition;*

*commits a contravention of these Regulations*".

278. The Claimants' case is that FFM, Mr Trinkler, Mr Klar and Mr Khiara intentionally, recklessly or negligently committed a breach of the FSMR and acted dishonestly "*in connection with their obligations to invest and manage*" the 391,789,341 units of P-Notes pursuant to the SLA. In particular, it is said that they created a false impression of the value of the financial instruments that it was claimed that FFM held, and so they were in breach of both section 103(1)(a) of the FSMR and of various provisions of the FRSA's *General Rulebook* (the "**General Rules**") and the FSRA's *Conduct of Business Rulebook* (the "**Conduct of Business Rules**") made under the FSMR. Although they identify no fewer than eight

provisions of the General Rules and seven provisions of the Conduct of Business Rules, Mr de Wolff did not suggest any basis on which any of the Defendants might be liable under any of these provisions without also being liable under section 103. I do not see how they could be. Therefore, the cases under the General Rules and the Conduct of Business Rules do not require separate consideration.

279. In their written opening submissions, the Claimants introduced an allegation that Mr Trinkler, Mr Klar and Mr Khiara created a false impression of the value of investments held by UPP Capital. That contention is not pleaded, and it is not available to the Claimants.

280. The Claimants also rely on section 103(1)(b) of the FSRM and allege that:

a. FFM and Mr Khiara acted dishonestly with regard to the "*purported creation of an investment funds under the SLA*".

b. Mr Trinkler, Mr Klar and Mr Khiara acted dishonestly "*in connection with false securities confirmations and trading reports issued by FFM in the period between September 2018 and July 2021*".

***Standard of Proof***

281. The burden is upon the Claimants to prove their claims to the civil standard, that is to say to prove them on the balance of probabilities. However, it is well established that, "*cogent evidence is required to justify a finding of fraud or other discreditable conduct*": per Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd (In Administration) [2007] EWCA Civ 261* at para. 73. This reflects the law's conventional perception that it is generally not likely that people will engage in such conduct. As Ungoed-Thomas J put it in *In re Dellow's Will Trusts [1964] 1 WLR 451*: "*The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it*". There can be no doubt that the Claimants' allegations of dishonesty are very serious.

282. It is also in point to cite these observations of Calver J in *ED&F Man Capital Markets v Come Harvest Holdings Ltd [2022] EWHC 229 (Comm),* with which I respectfully agree:

"*Although not strictly a requirement for such a claim, motive 'is a vital ingredient of any rational assessment' of dishonesty: Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at para. 858 per Briggs J. By and large dishonest people are dishonest for a reason; while establishing a motive for conspiracy is not a legal requirement, the less likely the motive, the less likely the intention to conspire unlawfully ...*" (at para. 71(iii)).

"*Assessing a party's motive to participate in a fraud also requires taking into account the disincentives to participation in the fraud; this includes the disinclination to behave immorally or dishonestly, but also the damage to reputation (both for the individual and, where applicable, the business) and the potential risk to the 'liberty of the individuals*

*involved' in case they are found out: Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Sanayi Ve Pazarlama AS [2009] EWHC 1276 (Ch) at paras. 858, 865 per Briggs J*" (at para. 71(iv)).

283. I refer to these observations, with which I agree, because, in my judgment, the Claimants were unable convincingly to identify any motive that any of the individual Defendants for participating in a fraudulent scheme orchestrated by Mr Alhammadi that carried any conviction. They did not advance a case about what gain Mr Khouri made or hoped to make from his alleged wrongdoing, but in their written opening submissions, they suggested that:

    a. Mr Trinkler intended to make a gain for himself "*including through receipt of payments from UPP Capital*";

    b. FFM intended to make a gain "*including through receipt of payments from TAP*";

    c. Mr Klar intended to make a gain for himself "*including through receipt of payments from FFM and/or* [his] *promotion to director at Union Properties (in December 2019)*"; and

    d. Mr Khiara intended to make a gain for himself "*including through receipt of payments from UPP Capital (via TAP) and* [his] *promotion to CFO of Union Properties in June 2020 with a 'substantial increase' in salary*".

284. At best, these suggestions seem to me vague and speculative. There is no evidence that Mr Trinkler or Mr Khiara received payments from UPP Capital; that Mr Klar received additional payments from FFM apart from his payments for being a director; or that he or Mr Khiara foresaw in 2018 the prospects of their later promotions. The allegation that Mr Khiara was motivated by greed must be considered in light of his unchallenged evidence that, when appointed interim SEO of FFM in January 2019, he returned his salary of AED 92,000 per month because he "*felt that* [he] *did not perform sufficient duties to warrant payment of the sum*".

**The Claims against Mr Khouri**

***Introduction***

285. The Claimants bring claims against Mr Khouri (i) for breach of his duties as a director of Union Properties between from July 2018 until December 2019 and of his duties as a director of UPP Capital from June 2017 until November 2021; and (ii) in unlawful means conspiracy. The factual allegations about the claims for breach of duty and for conspiracy are largely the same. They include:

    a. An allegation that he "*procured UPP Capital to enter into the Mandate Agreement and the IMA with TAP in circumstances where he knew that no bona fide investment fund or asset management service was to be provided*";

b. An allegation that he instructed Julius Baer to buy 391,789,341 units of P-Notes when he knew that the investments were not to the benefit of the Claimants but were to cover up the dissipation of funds or assets to the benefit of third parties;

c. An allegation that he instructed Julius Baer to transfer the P-Notes to TAP so as to provide a cover for the real dealings with them, in particular their transfer to Arqaam; and

d. An allegation that he arranged for a substantial number of shares in Union Properties to be transferred to Mr Al Mulla, as part of a scheme to misappropriate the Claimants' funds and assets.

286. The Claimants also pleaded that Mr Khouri acted in breach of his duties in that he instructed employees of Union Properties to create fake websites in furtherance of the fraud, but no evidence supported that allegation, and it was abandoned during the trial.

287. In the Claimants' written opening submissions, it was said that Mr Khouri "*caused P-Notes, which were falsely described to Union Properties as 'Diversified Notes', to be purchased*". Mr Richmond rightly observed that this alleged breach of duty is not pleaded against Mr Khouri.

288. Further, it appeared to be suggested by the Claimants that Mr Khouri was liable under article 162(2) of the UAE CCL 2015, which, so far as is material, provides that: "*Liability as provided for in Clause 1 of this Article shall apply to all the members of the Board if the error arises from a Decision passed unanimously by them*". The Claimants appeared to suggest that Mr Khouri was in some way liable in respect of decisions taken by the Boards of Union Properties and UPP Capital because he was a director of them. No such argument is available to the Claimants on their pleadings and in any case, the Claimants did not present a case that their loss resulted from Board decisions, rather than decisions of UPP Capital's Investment Committee, and they did not ask Mr Khouri in cross-examination about any Board decision.

***Mr Khouri's Observations about His Role with the Claimants***

289. In his final submissions, Mr Richmond invited me to bear in mind these considerations when assessing the case against Mr Khouri:

a. Mr Khouri's main role in Union Properties was, as it was put, an "*operational role insofar as* [he] *was primarily engaged in operational activities for Union Properties*". His appointment to UPP Capital's Investment Committee was "*very much ancillary and minor by contrast with the bulk of* [his] *day-to-day role and responsibilities at Union Properties*".

b. Accordingly, Mr Khouri was "*necessarily dependent on processes including the review of documentation and strategy by specialised persons, as well as being reliant on the good faith of* [his] *colleagues … . There were other departments such as group*

*finance and legal, which would be required to vet and approve documentation before it could be signed by authorized signatories*".

c. In 2019, Mr Khouri sought to start an investigation into TAP. Mr de Wolff submitted that he did so only because he had received the written assurances from Mr Almheiri to which I refer below at para. 291, but that point was not put to Mr Khouri in cross-examination and is unsupported by evidence.

d. Mr Khouri reported to the police his obstructed attempts to investigate TAP as well as, *inter alia*, his suspicions of forgery in relation to the purported instruction to SICO.

e. He had no position and had no involvement with the Claimants after December 2019.

f. He left Union Properties on bad terms with the management, including Mr Alhammadi and Mr Almheiri, and litigation ensued.

g. There is no persuasive evidence of any credible motive that Mr Khouri might have had for being involved in a fraud of this kind.

290. These submissions were largely made on the basis of parts of Mr Khouri's evidence that were not challenged in cross-examination, and I accept them. I see particular force in the observations about Mr Khouri taking steps to investigate TAP and making a report to the police.

***The Letters to Mr Khouri and His Pleaded Case that He Relied on Mr Almheiri and Mr Alhammadi***

291. I have referred to four letters apparently written to Mr Khouri by Mr Almheiri: see para. 54 above.

a. The first letter was dated 13 October 2017, and it said that Union Properties had decided that it should invest in the PHD, in accordance with a strategy to diversify from Dubai realty, and that the investment was to be made through UPP Capital. Mr Almheiri said that he would "*manage the process closely with the UPP Capital team*".

b. In the second letter, which was dated 1 February 2018, Mr Almheiri said that Mr Khouri's concerns about the "*transfer of funds to a non core/development activity* [were] *noted*", but that Mr Alhammadi and he (Mr Almheiri) were "*responsible for the decision to invest in equities and also in the selection of Julius Baer*". It concluded: "*As Chairman of the company and drawing on my authority from the Powers vested in me by the Board of Directors, I hereby instruct you to proceed with the transfer of funds with immediate effect*".

c. The next letter was dated 28 June 2018. In it, Mr Almheiri wrote that he had "*approved the transfer of the portfolio from Julius Baer to* [TAP]". He said that TAP had been selected by "*two members of the Investment Committee and have been confirmed*

*as an agency of high repute by them*", and instructed Mr Khouri to approve the appointment and to sign the necessary documents in implement the appointment. He concluded: "*I understand that you are not specialised in investment matters and accordingly absolve you of any responsibility in this regard and in regard to the approval of the contractual terms which have already been revied by me*".

d. Fourthly, a letter dated 20 September 2018 stated that it had been decided to lock-in the funds invested with TAP for three years, and that this was "*as per the recommendation of* [Mr Alhammadi] *and is required to ensure our investment is protected*". The letter purported to instruct Mr Khouri to approve the Addendum.

292. In his defence, which was filed on 23 January 2025, Mr Khouri pleaded the letters of 1 February 2018, 28 June 2018 and 20 September 2018. He pleaded that in "*January/ February 2018,* [he] *raised concerns regarding the transfer of funds from Union Properties to UPP Capital, away from core business activities of Union Properties, and in order to make investments in equities*"; and that in June 2018 he "*queried the appointment of TAP as investment manager*". Mr Khouri also pleaded that, in signing documentation about the transfer of funds into equities, the appointment of TAP and with regard to the Addendum, he relied on the advice, experience and expertise of Mr Almheiri and Mr Alhammadi and, with regard to appointing TAP and the Addendum, that of Mr Nicoll.

293. Reference was first made to the letters of 1 February 2018, 28 June 2018 and 20 September 2018 in Ms Malik's witness statement of 2 August 2024 in support of Mr Khouri's application to strike out the claim against him. By this time, the claims in the proceedings against Mr Almheiri had been struck out. Ms Malik said this:

> "*25. I am aware that in January/February 2018, Mr. Khouri raised concerns regarding the transfer of funds from Union Properties to UPP Capital in order to make investments in equities. On 1 February 2018, Mr. Almheiri wrote a letter to Mr. Khouri noting these concerns, but recommending the decision on the basis of expert input, and instructing Mr. Khouri to proceed.*
>
> *26. On or about June 2018, Mr. Khouri queried the recommendation by Mr. Alhammadi that Julius Baer, the agency appointed to manage the equity investments, be replaced by* [TAP]. *On 28 June 2018, Mr. Khouri received written assurance from Mr. Almheiri … that the decision to transfer to TAP originated from him and was recommended by two members of the investment committee (i.e. Messrs Alhammadi and Nicoll). Mr Almheiri absolved Mr Khouri of any responsibility as he suggested that Mr Khouri was not specialised in investment matters. …*
>
> *27. On 20 September 2018, Mr Almheiri wrote to Mr Khouri explaining the decision to agree to a lock-in of funds with TAP as per the recommendation of Mr Alhammadi, seeking to reassure Mr Khouri regarding any liquidity concerns, and instructing him to approve the addendum …* ".

294. However, in his witness statement dated 12 September 2025, Mr Khouri said that Ms Malik's evidence about him receiving these three letters in 2018 was wrong. He said that Mr Almheiri had given him the four letters in "*May/June 2019*", when Mr Almheiri was about to go abroad for medical treatment, "*in order to further reassure* [him] *that he and Khalifa Alhammadi were taking responsibility for investment matters, and in order to formally record both the concerns which* [he] *had raised at the time of such decisions and the oral assurances* [he] *was given at the time*".

295. Mr Khouri also said in his witness statement that in 2018 he had concerns about the strategy of making investments through UPP Capital and about Union Properties transferring funds to UPP Capital: "*a non-core/development activity*". He raised his concerns with Mr Almheiri and Mr Alhammadi, but they assured him about the strategy and he relied upon their advice, experience and expertise and that of Mr Nicoll and others. Similarly, he said that he did not recall signing documentation after the meeting of 19 June 2018, but, if he did so, he would have been relying upon the expertise of Mr Alhammadi, Mr Almheiri and Mr Nicoll, as well as the procedures at Union Properties and UPP Capital for vetting and reviewing documents. He did recall raising concerns with Mr Almheiri and Mr Alhammadi about transferring significant investments to TAP, an entity which he did not know, and he had concerns later about 'locking-in' the funds with TAP. Again, he said, he relied on their reassurances.

296. In his evidence in chief at trial Mr Khouri verified his witness statement in the usual way, and in cross-examination he confirmed that he received the letters (or at least the three letters to which Ms Malik had referred) in May or June 2019. The Claimants did not challenge that evidence. Mr Khouri said that he had no idea why Mr Almheiri gave him the letters and that he had not asked for them. He denied that they were connected with any investigation into the Claimants' financial affairs.

297. No sensible reason was suggested that Mr Khouri should have been given these letters in 2019, still less that he should have been given four separate letters to exonerate him. However, whatever suspicions they arouse, Mr de Wolff specifically accepted in his closing submissions that Mr Khouri received the letters in May or June 2019. Whatever the explanation for them, the letters do not seem to me to provide support for the Claimants case against Mr Khouri, and Mr de Wolff did not suggest that they do.

298. Mr Khouri's evidence did not support his pleaded case that he relied on the advice, experience and expertise of Mr Almheiri and Mr Alhammadi with regard to the transfer of funds to UPP Capital for investment. In cross-examination, he said that he could not remember Mr Almheiri giving him assurances such as those in the letter of 1 February 2018. As for his pleaded case that he "*queried the appointment of TAP as investment manager*", Mr Khouri's evidence was that he could not remember what his concerns were, nor does he recall what he did to address the concerns. He also said that he could not remember whether he had received the letter of 20 September 2018 when the Addendum was agreed,

nor could he remember whether his concerns about 'locking-in' the funds were addressed in any way.

299. I accept that Mr Khouri did not take the lead in making any of the decisions about investing through UPP Capital in equities, in entering into the agreements with TAP or in investment decisions regarding the P-Notes. I accept that he went along with the proposals of others because he regarded them as more experienced and more expert than he was in financial and investment matters. However, I reject his case that he received assurances from Mr Alhammadi and Mr Almheiri of the kind that he pleaded. It is impossible to determine why the letters were provided, but Mr Khouri had not received the letters at the time of the decisions in 2018, and I conclude that he did not receive comparable oral assurances.

***The Alleged Breaches of Director's Duty***

300. I am not persuaded that Mr Khouri acted in breach of his duties as a director of either of the Claimants.

301. First, the allegation that Mr Khouri caused the P-Notes to be bought: the Claimants' case is that Mr Khouri instructed their purchase by the letters of 24 June 2018, 26 June 2018 and 25 July 2018 that he is said to have signed. I have concluded (at para. 177 above) that these letters were not sent to Julius Baer and were not intended for delivery to Julius Baer. The instructions to buy P-Notes were given to Julius Baer by letters signed by Mr Alhammadi and Mr Almheiri. I also conclude that the Claimants have not shown that Mr Khouri's purported signatures on the letters on which the Claimants rely were genuine: it is more likely that they do not bear his genuine signature, and that he knew nothing about them.

302. Further, even if Mr Khouri had given instructions to Julius Baer to buy the P-Notes, I am not persuaded that he would have been in breach of his duties. I am not persuaded that he would have been doing anything other than giving effect to what had been decided by the Investment Committee on 19 June 2018. The Claimants have not shown that Mr Khouri knew that the purchases were not in the best interests of UPP Capital and therefore, indirectly, of Union Properties. Nor am I persuaded that he was reckless about the purchase of the P-Notes (in the sense that he did not honestly believe that they were in the Claimants' best interest).

303. Mr Khouri's evidence was that he did not remember whether he knew what the investments underlying the P-Notes were or whether he did anything to find out. On the face of it, this might seem surprising given that he was at the Investment Committee meetings. That said, in so far as anything can be inferred from either version of the minutes, the Committee does not seem to have decided on 19 June 2018 what the new investment should be or even what possibilities should be considered. Given the nature of his role, Mr Khouri was entitled to rely on others to identify suitable instruments to give effect to the ill-defined decision of the Investment Committee.

304. Next, the allegation that Mr Khouri was party to UPP Capital entering into the Mandate Agreement and the IMA with TAP when he knew that it was not really to be entrusted with investment funds or to provide any asset management services. In their closing submissions, the Claimants did not pursue the allegation that Mr Khouri acted improperly in relation to the Mandate Agreement. I need say no more about it. Instead, the Claimants sought to pursue an allegation that Mr Khouri was in breach of his duties in relation to the IMA and the Addendum. There is no pleaded complaint about the Addendum: that part of their complaint is not available to the Claimants.

305. Nor am I persuaded that Mr Khouri acted in breach of duty with regard to the IMA. As I have said, despite his evidence that he could not recall signing it, I conclude that it is likely that he did do so. As he knew, the Investment Committee had decided that UPP Capital should engage TAP's services, and there was no reason either that he should not sign an agreement to give effect to the decision, nor that anyone should have forged his signature on it.

306. I reject the allegation that, when he signed the IMA, Mr Khouri knew that TAP was not really to manage an investment fund for UPP Capital and to provide asset management services. The Investment Committee had decided that it should replace Julius Baer, and, especially given that the investment in the UAE Focus Fund had lost some AED 17 million in a relatively short period, there is no reason to doubt Mr Khouri's explanation that this decision was taken because Julius Baer was perceived to have performed poorly. The Claimants have not explained why, when he signed the IMA at the beginning of July 2018, Mr Khouri should have known, believed or suspected that there was no real intention not to implement the decision that TAP should manage UPP Capital's investments.

307. The instructions to Julius Baer to transfer the P-Notes to TAP were also consistent with the decision of the Investment Committee to engage TAP's investment services and with UPP Capital entering into the IMA. The Claimants have not shown that, when he signed these instructions, Mr Khouri knew, believed or suspected that they would not be sent to Julius Baer, or that Julius Baer would transfer the P-Notes to TAP accordingly; nor have the Claimants shown that the letters that he signed were a "*cover for the real dealings with them*". Nor is there any proper basis to conclude that Mr Khouri learned, or had reason to suspect, that Julius Baer had not received the instructions and carried them out, at least before the time that he sought to investigate TAP in 2019.

308. The source of the instructions given to Arqaam about how they should deal with the P-Notes remains obscure. However, the Claimants do not even plead a distinct allegation that Mr Khouri either instructed their conversion into shares or that the shares be transferred to Mr Al Mulla. The plea that "[i]*t is the Claimants' belief that the shares in Union Properties were transferred to, and held by, Hassan Al Mulla under the instructions of Khalifa Alhammadi and Ahmed Khouri or Naser Almheiri*" is equivocal as to whether Mr Khouri was involved here. It is insufficient for an allegation of the serious wrongdoing that the Claimants make against Mr Khouri. In fact, there is no evidence that Mr Khouri was

involved in the P-Notes being transferred to Arqaam or how Arqaam dealt with them or that he had any knowledge or suspicions about this.

309. I therefore reject the factual basis for the allegations that Mr Khouri was in breach of his director's duties to the Claimants.

***Unlawful Means Conspiracy***

310. The case against Mr Khouri in unlawful means conspiracy was made on the same factual basis as the allegations of breach of duty. For similar reasons, therefore, I reject it.

**The Case against Mr Trinkler**

***Introduction***

311. The Claimants make claims against Mr Trinkler in deceit, in negligent misrepresentation, in dishonest assistance, in unlawful means conspiracy and under the FSMR.

***Mr Trinkler's Position***

312. Mr Trinkler denies that he had any dealing with the P-Notes, and he denies any involvement in a fraud or scheme of the kind that the Claimants allege. He was, he says, a non-executive director of FFM, who was at the relevant times working for TAP and living in Zurich. As Dr Ammann demonstrated and Mr de Wolff did not dispute, UPP Capital had already invested through the UAE Focus Fund in P-Notes for warrants for Union Properties' shares before Mr Trinkler joined FFM.

***Deceit***

313. With regard to the claim in deceit, the Claimants plead that Mr Trinkler made the following representations about TAP, or is liable for the following representations by TAP:

a. That "*TAP would set up and maintain a specialist fund 'for dedicated investments in real estate, private equity and other financial activities'*" (the "**Specialist Fund Representation**").

b. That "*TAP would 'direct the investment and reinvestment' of UPP Capital's assets in its account with 'the Custodian'*" (the "**Investment Services Representation**").

c. That TAP represented by a letter dated 30 September 2018 that it held 180,000,000 units of P-Notes and by letter dated 11 January 2019 it represented that it held 364,549,341 units of P-Notes (the "**Trinkler P-Notes Representations**").

d. That TAP had sold 391,789,341 units of P-Notes and was actively trading in UAE, Saudi and Egyptian stocks, in line with Investment Guidelines set out in the IMA (the "**Trinkler Trading Representations**").

314. It is the Claimants' case that these statements were false; that, while they were made directly to UPP Capital, they are to be regarded also as representations to Union Properties; and that the Claimants relied on the representations in that they decided to invest the sum of AED 320,717,867.84 in the P-Notes and later in that they did not investigate or "*unwind*" their misappropriation.

315. Mr de Wolff did not develop the Claimants' case about the Specialist Fund Representation or the Investment Services Representation in his final submissions, but neither did he specifically abandon them, and I should say something about them. They are not, on their face, statements of present fact. The Claimants do not plead that they were (or included) statements of any present intention as to what would happen in the future: Mr de Wolff did not suggest that they did. It was not said that the Claimants relied upon a statement as to the intentions of TAP or Mr Trinkler or anyone else. That is enough to answer based on these so-called Representations, but there is further reason to reject them.

316. The Claimants do not plead, and have not explained with any particularity, when or how Mr Trinkler is said to have made any of the Representations, but the language of the Specialist Fund Representation derives from the words of Recital B of the Mandate Agreement (at para. 150(a) above). It is not pleaded that Mr Trinkler entered into the Mandate Agreement on behalf of TAP or had anything to do with it. There is no reason to think that the Mandate Agreement had anything to do with dealings in the P-Notes, and in any case, TAP did arrange for specialist funds to be set up.

317. The Investment Services Representation is expressed in language reflecting clause 1.1 of the IMA, which authorised TAP to direct investment and reinvestment of assets in UPP Capital's account with the "*Custodian*". UPP Capital did not appoint a custodian of such an account: the Claimants can hardly complain that TAP did not deal with such assets, and neither is there any evidence that, had there been such assets in an account with a custodian, TAP would not have invested in them. Thus, the Claimants have not shown that, when it made the IMA, TAP did not expect and intend to manage UPP Capital's investments in accordance with the terms of the IMA.

318. I come to the Trinkler P-Notes Representations. The Claimants allege that, by a letter from TAP to UPP Capital dated 30 September 2018, Mr Trinkler represented that TAP was holding under its management 180,000,00 units of P-Notes, and by a letter dated 11 January 2019, he represented that TAP was holding under its management 364,549,341 units of P-Notes. As I have said, these letters were not signed, and there is no evidence that Mr Trinkler arranged for them to be sent by TAP to UPP Capital, or that he was aware that they were sent. The letters invited UPP Capital to send an email to Mr Trinkler's email address if it sought clarification of the information in them, but, even if the letters were sent, I would not regard that as a sufficient basis for concluding that Mr Trinkler was involved in giving this false information. More fundamentally, there is no sufficient evidence to conclude that they were genuinely letters from TAP, rather than concocted by the fraudsters to cover up the misappropriation.

319. The Claimants' pleaded case against Mr Trinkler about the Trinkler Trading Representations is vague. They apparently contend that TAP "*provided UPP Capital with regular security balance reports and cashflow statements, which purported to show a picture of active trading in UAE, Saudi and Egyptian stocks*", and that, thereby, Mr Trinkler represented to UPP that TAP had sold the P-Notes and was using the proceeds to deal in stocks and shares. Mr Held, rather than Mr Trinkler, was the executive of TAP who conducted the exchanges with FFM about the reports. Many of the emails between Mr Held and FFM's Finance Department or Ms Castro were copied to Mr Trinkler (including those in January 2020 and April 2020 referred to at para. 222 above); and as with the Trinkler P-Notes Representations, TAP's reports invited UPP Capital to seek clarification by email to Mr Trinkler's address: It was not suggested that the email address was in fact used for this purpose. I cannot accept that this is sufficient evidence to support an inference that Mr Trinkler made representations to UPP Capital.

320. I should add that if the Claimants intended to allege that Mr Trinkler made the Trinkler Trading Representations himself, because he sent the reports to UPP by courier, that contention should have been pleaded. I did not understand Mr de Wolff to put the case in this way, but in any case I would not have accepted this as sufficient to attribute TAP's statements to Mr Trinkler personally.

321. This is enough to answer the claims against Mr Trinkler in deceit. However, even if Mr Trinkler had made the Representations alleged, I am unable to accept that the Claimants have shown that he knew that they were untrue, or was reckless as to their truth. Nor did Mr de Wolff explain how the Claimants are said to have relied upon the reports.

***Negligent Misstatement***

322. In support of their alternative claim in negligent misstatement, the Claimants rely upon the same Representations. Having rejected their contention that Mr Trinkler made the Representations, and having concluded that the Claimants have not shown that they relied upon them, I therefore dismiss the negligent misstatement claim.

323. Further, even if I had concluded that Mr Trinkler made representations by way of entering into the IMA on TAP's behalf or involvement in the reports made by TAP. I would not have found that he assumed a personal duty of care to the Claimants. The only argument advanced by Mr de Wolff in support of this contention was that, as a director of FFM, he "*knew that the Claimants would rely on what they were being told by TAP, since they had entrusted TAP with their assets*". That is insufficient to establish a relationship giving rise to a duty of care.

***Dishonest Assistance***

324. The Claimants have failed to establish that Mr Khouri was in breach of his director's duties. It follows that the claim against Mr Trinkler for dishonest assistance is to be dismissed.

325. I would have rejected it in any event. I observe that it was not put to Mr Khouri when he gave evidence that he had any dealings with Mr Trinkler.

326. This claim was advanced on the basis that Mr Trinkler assisted in breaches of duty on the part of Mr Khouri in order to enable or to facilitate the misappropriation of the sum of AED 320,717,867.84 or the 391,789,341 units of P-Notes in that:

    a. He represented to the Claimants that TAP would set up or had set up a specialised fund to invest the 391,789,341 units of P-Notes.

    b. He misrepresented to the Claimants that FFM had received and had custody of the 391,789,341 units of P-Notes.

    c. He misrepresented to the Claimants that TAP had sold the 391,789,341 units of P-Notes, and had reinvested the proceeds and that TAP and FFM were actively trading in UAE, Saudi and Egyptian stocks.

327. As I have explained when considering the claim in deceit, I reject those allegations, and I also reject the allegation that Mr Trinkler was dishonest.

***Unlawful Means Conspiracy***

328. The only allegations pleaded distinctly against Mr Trinkler in support of the claim in conspiracy are that he made the Trinkler P-Notes Representations and the Trinkler Trading Representations. Having rejected these allegations, I reject the claim in conspiracy.

***The FSMR Claim***

329. The allegations pleaded against Mr Trinkler in support of the claim against him under the FSMR are these:

    a. That he "*create*[ed] *a false impression as to the value of the Financial Instruments purportedly held by/on behalf of FFM in the period September 2018 to July 2021*"; and

    b. That he "*acted dishonestly in connection with false securities confirmations and trading reports issued by FFM in the period September 2018 to July 2021*".

330. Thus, the FSMR claim is advanced on the basis of the complaints about the Trinkler P-Notes Representations and the Trinkler Trading Representations. I reject it for the reasons that I have explained.

**The Case against Mr Klar**

***Introduction***

331. The claims still pursued against Mr Klar are (i) a claim in dishonest assistance, (ii) a claim under the FSMR, and (iii) a claim in unlawful means conspiracy.

332. The Claimants allege that Mr Klar must have known of the fraudulent scheme because (i) he was a "*close business associate of Ahmed Khouri and Khalifa Alhammadi*", including through Gulfa General; (ii) he held a "*senior position at UPP Capital";* and (iii) he was a director of FFM from March 2018. It was not suggested to Mr Khouri that he was a close business associate of Mr Klar, and no evidence supports that allegation. Nor was it suggested to Mr Khouri when he was cross-examined that he had any direct dealings with Mr Klar, and there is no evidence that he did.

333. When he was opening the Claimants' case, Mr de Wolff described Mr Klar as a "*key member of the management team*" at UPP Capital. This was based on a job description for UPP Capital's Vice-President, Finance, but it does not refer to Mr Klar, is not dated and was not signed by Mr Klar. In his opening, Dr Daburon made it clear that Mr Klar's case is that he never saw the document, and it does not specify his duties as UPP Capital's Vice President, Finance. The Claimants produced no evidence to show that the job description applies to Mr Klar or is relevant to their case against him.

***Dishonest Assistance***

334. It is alleged against Mr Klar that he assisted Mr Khouri to act in breach of his duties as a director of the Claimants "*so as to enable the eventual misappropriation*" of the P-Notes and/or the funds used to buy them in that:

    a. He procured UPP Capital to enter into the Mandate Agreement and the IMA (the "**Mandate Agreement and IMA Allegation**");

    b. He procured FFM to enter into the SLA (the "**SLA Allegation**");

    c. He misrepresented to the Claimants that FFM had received and had custody of the 391,789,341 units of P-Notes (the "**Klar P-Notes Allegation**"); and

    d. He misrepresented to the Claimants that TAP had sold the 391,789,341 units of P-Notes and had reinvested the proceeds and that TAP or FFM was actively trading in UAE, Saudi and Egyptian stocks (the "**Klar Trading Allegation"**).

335. As with Mr Trinkler, the claim fails because the Claimants did not prove that Mr Khouri acted in breach of his duties. There are other reasons to reject the dishonest assistance claim.

336. The Claimants did not pursue their case about the Mandate Agreement. There is no evidence that Mr Klar had anything to do with it.

337. As for the IMA, in their opening argument, the Claimants contended that Mr Klar "*played a central role in setting up the mechanisms and arrangements (via the IMA and the SLA) that were to (and did, in fact) provide a cover for the actuality of the dealings relating to the Assets, including recommending TAP to UPP Capital (on the terms of the IMA), engaging*

*FFM and/or acquiescing in its engagement and actions, and providing false reports to UPP Capital about its putative investments with TAP*".

338. As far as the contractual arrangements are concerned, Mr Klar did not sign either the IMA or the SLA on behalf of any party, and there is no evidence that he was involved in negotiating or determining the terms of the agreements. Both the Mandate Agreement and IMA Allegation and the SLA Allegation can only depend, as it seems to me, on the contention that, when it decided to engage TAP's services on 19 June 2018, the Investment Committee relied on the (purported) letter of 18 June 2018 or otherwise relied on Mr Klar's recommendation or advice. I have rejected that contention.

339. There is really little more to be said about the Klar P-Notes Allegation and the Klar Trading Allegation. I have rejected the allegation that Mr Klar knew that FFM was a '*sham*' company and the reports that it apparently produced give no indication of who created or transmitted them: there is no evidence that Mr Klar was involved in doing so.

***Unlawful Means Conspiracy and the FSMR Claim***

340. The Claimants' pleaded allegations in support of their contention that Mr Klar was party to a conspiracy are these:

a. That, with Mr Alhammadi and Mr Khouri, he procured UPP Capital's entry into the Mandate Agreement and the IMA, and he procured that, through Mr Khiara, TAP enter into the SLA with FFM;

b. That Mr Klar, with TAP, Mr Trinkler, FFM represented that "*they*" *(*meaning, presumably, FFM) had received and maintained custody of the P-Notes; and

c. That he, with others, provided trading reports to the Claimants.

341. Thus, the conspiracy claim repeats the Mandate Agreement and IMA Allegation, the SLA Allegation, the Klar P-Notes Allegation and the Klar Trading Allegation, which I have rejected. So too does the FSMR claim. I therefore also reject both these claims.

**The Case against Mr Khiara**

342. The Claimants make claims against Mr Khiara in deceit, in negligent misrepresentation, in dishonest assistance, in unlawful means conspiracy, and under the FSMR. As Mr de Wolff made clear, the Claimants do not suggest that he was involved in any wrongdoing before August 2018, when he became FFM's authorised signatory.

343. Mr Khiara is a qualified chartered accountant. In 2005, he joined ABN Amro Bank as a Senior Banking Assistant. In 2007, he moved to Al Mal Capital as a Senior Associate in its Operations Department and in 2015 he became its Head of Operations. From September 2017 until June 2020, Mr Khiara was the CFO at BSCI, which he described as Mr

Alhammadi's company. He reported to Mr Alhammadi. As I have said, Mr Khiara joined Union Properties in March 2020, and he was its CFO from June 2020. He was the SEO of FFM from January 2019 to May 2019. He was a director of FFM from 27 February 2020 until June 2020.

344. Ms Daskalova submitted that, in assessing the allegations against Mr Khiara, it is important to keep in mind the extent of his involvement with FFM and the nature of his position working for Mr Alhammadi at BSCI, which he explained in his witness statement and which, at least for the most part, was not challenged. He first became involved with FFM as its authorised signatory in August 2018 because, as Mr Alhammadi explained, he was available to deal with routine matters, and it was therefore an efficient arrangement. He remained employed by BSCI as an administrator, charged with ensuring that data was entered and documents were filed. While this included managing data and documents relating to trading in his administrative capacity, he was not a trader and did not participate in trading activities of any kind. He had access to trading information at BSCI only because he had access to information on the BSCI Management Information System ("**MIS**"), which contained information about all transactions of BSCI and its affiliates. Further, although trading-related matters fell outside his typical purview, it was not unusual for him and his administrative colleagues to be asked to save such data on the MIS.

345. Mr Khiara's appointments as SEO and to the Board of FFM were made on Mr Alhammadi's initiative, and, as Mr Khiara was led to understand, they were both intended to be interim appointments pending the appointment of permanent persons to those positions. The only payments that he received from his positions with FFM, apart from the reimbursement of expenses that he incurred on his credit cards (see para. 109), were his remuneration as SEO, which he repaid (see para. 284).

346. As for working with Mr Alhammadi at BSCI, Mr Khouri described the working environment as "*not professional*". Mr Alhammadi was in charge of the operations and Mr Khiara followed his instructions and reported to him. Mr Alhammadi's method of working was not to explain his instructions nor to provide the context of the tasks that he assigned to Mr Khiara: he would simply forward emails. As I have said, Mr Khiara was required to enter too much data for him to review it all before filing it and entering it in BSCI's systems.

347. I have criticised the Claimants for putting to Mr Khiara in cross-examination that he was involved in directing the creation of fake websites. The allegation was based upon an exchange of emails in December 2018 which purported to be between Mr Khiara and Mr Hamza Bilal, who worked in BSCI's IT department. Taking the emails at face value, it would appear that Mr Khiara was making detailed observations about websites that were being created for Global Gate and Premier. The Claimants sought to support their argument about these exchanges by pointing out that they took place shortly before the letters of 3 January 2019 and 24 January 2019 that were purportedly signed by Mr Khiara and by identifying small payments made on the credit card in the name of Ms Makwana to Global Gate and Premier on 1 March 2019.

348. Mr Khiara's evidence was that he did not receive or send these December 2018 emails. He gave evidence in his witness statement that this is an example of IT devices issued to him by BSCI being used without his knowledge. He explained that he was "a *finance person"* who had no involvement with trading or the management of assets and no involvement with IT and the creation of websites. That is entirely consistent with other evidence, and his involvement in IT-related matters with which the exchange is concerned would be anomalous. I accept his evidence. I have already found that Mr Khiara did not sign, and had no knowledge of, the letters of 3 January 2019 and 24 January 2019: see paras. 213 to 214 above. I accept Mr Kriara's evidence about the use of personal credit cards for FFM expenditure: see para. 109 above.

***Deceit***

349. As for the claims in deceit, the Claimants plead that Mr Khiara made misrepresentations:

    a. That FFM would, "*by virtue of*" the SLA, set up a specialised fund and invest in it any assets received from the Claimants (the "**SLA Representation**");

    b. That FFM had received between 20 September 2018 and 2 October 2018 the 391,789,341 units of P-Notes from the Claimants and were holding them under its management on the Claimants' behalf (the "**Khiara P-Notes Representations**"); and

    c. That FFM had sold the 391,789,341 units of P-Notes in 15 February 2019 and had re-invested the sale proceedings, and were actively trading in UAE, Saudi and Egyptian stocks throughout the period between at least 17 February 2019 and 31 March 2021 (the "**Khiara Trading Representations**"). The basis of this allegation is that FFM is said to have "*provided UPP Capital with regular security balance reports and cashflow statements",* which showed this.

350. It is the Claimants' case that these Representations were false; that they were made directly to TAP and "*in turn to the Claimants*"; and that the Claimants relied upon the Representations in that they decided to invest the sum of AED 320,717,867.84 in the P-Notes and later in that they did not investigate or "*unwind*" their misappropriation.

351. When opening their case, the Claimants made allegations against Mr Khiara outside their pleaded case. For example, in their written opening submissions, they said:

    a. That Mr Khiara was liable for representations made "*through his colleagues*" at FFM; and

    b. That they relied on representations by Mr Khiara in that they paid fees to TAP.

352. Further, the pleaded basis of the Khiara P-Notes Representations is the unsigned documents dated 20 September 2018 and 2 October 2018 (see para. 210 above). In his closing submission, Mr de Wolff cited in support of the case about the Khiara P-Notes Representations not only the documents that had been pleaded but also the letters dated 3 January 2019 and 24 January 2019 (see paras. 213 to 214 above), which purport to be

signed by Mr Khiara. The documents dated 3 January 2019 and 24 January 2019 are not pleaded and were not put to Mr Khiara when he was cross-examined. It is not open to the Claimants to pursue these unpleased allegations.

353. I have concluded that the Claimants have not proved that Mr Khiara signed the SLA on FFM's behalf. However that might be, I cannot accept that, if he did sign it, he knew that FFM did not intend to set up a specialised fund and invest assets, and that he had any suspicions that they might not do so. This is sufficient reason to reject the case about the SLA Representation, but there are other reasons to do so. First, there is no evidence that the Claimants relied upon any implied statement as to FFM's intention at the time that it concluded the SLA (in contradistinction to the terms of the SLA). Secondly, there is no reason to doubt, as recorded in the minutes of the AGM on 9 December 2019, that FFM did set up specialised funds. Thirdly, the Claimants have not shown that TAP entered into the SLA specifically to enable it to provide management services to UPP Capital: the implicit assumption in the Claimants' argument that the only purpose of the SLA was to enable TAP to manage UPP Capital's investment, but there is no proper basis for that assumption.

354. I also reject the Claimants' cases about the Khiara P-Notes Representations and the Khiara Trading Representations for the reasons that I have explained. I conclude that they have not shown that Mr Khiara was involved with sending these documents or that he knew, nor, in so far as he had any part in exchanges with TAP about them, that he had reason to suppose that the information in them was false. Mr Khiara's evidence was that, while he knew that FFM had a business relationship with TAP, and that the Claimants were one of TAP's clients, he did not know that the reports on which the allegations about the Khiara Trading Representations were made related to investments for the Claimants. I accept that evidence.

***Negligent Misstatement***

355. As for their case in negligent misstatement against Mr Khiara, the Claimants plead the same case as their case in deceit about what representations he made. Accordingly, for the same reasons as with the deceit claim, I reject the negligent misstatement claim.

356. Further, in my judgment, the Claimants have not shown that Mr Khiara owed them (or either of them) a duty of care. The only argument advanced by Mr de Wolff in support of this contention was that: he knew that the P-Notes belonged to the Claimants and that the Claimants relied on the accuracy of what they were being told about what had happened and was happening to them, and he "*was personally involved in generating the false reports*". The last allegation is not pleaded and not available to the Claimants. In any case, these contentions, even if proved, would not be enough to establish a relationship giving rise to a duty of care.

***The Dishonest Assistance Claim and the Conspiracy Claim***

357. As with other claims, Ms Daskalova complained that the Claimants' argument in support of the dishonest assistance claim against Mr Khiara went beyond their pleaded case. For example, in his opening submissions , Mr de Wolff submitted that Mr Khiara represented "*through the IMA*" that it would set up and maintain a specialised fund "*for dedicated investments in real estate, private equity and other financial activities*"; and submitted that Mr Khiara's dishonesty is to be inferred from "*his relationship with* [Mr] *Alhammadi*", "*his position in BSCI*"; and other unpleaded matters.

358. Similarly, Ms Daskalova complained about unpleaded allegations being made in support of the conspiracy case: that Mr Khiara "*knew or must have known of the conspiracy* [because] *he documented the true dealings with the* [P-Notes]".

359. I accept that those allegations are not available to the Claimants.

360. However, even if they were, I would reject these claims. Essentially, they are based on the same allegations as the deceit claim, and I reject them for the same reasons. Moreover, the dishonest assistance claim fails because the allegation of breach of duty on the part of Mr Khouri was not proved.

***The FSMR Claim***

361. Mr Khiara did not became a director of FFM until 27 February 2020, and so is potentially liable as an "*Approved Person"* only in respect of the FSRM Rules until that date. Nevertheless, the Claimants allege that he is liable under them on the grounds that he created "*a false impression as to the value of the Financial Instruments purportedly held by/on behalf of FFM in the period September 2018 to July 2021*".

362. It is said that Mr Khiara:

a. "*acted dishonestly in his role in assisting in the purported creation of an investment fund under the SLA*"; and

b. "*acted dishonestly in connection with false securities confirmations and trading reports issued by FFM in the period September 2018 and July 2021*".

363. Thus, the claims against Mr Khiara under the FSMR apparently rely on the same allegations of wrongdoing as the other claims against them, and I reject them for the same reasons.

**The Case against FFM**

***Introduction***

364. The Claimants make claims against FFM in deceit, negligent misrepresentation, dishonest assistance, unlawful means conspiracy, and under the FSMR.

365. As Ms Daskalova observed, a company can only act through its agents. I have rejected the contention that Mr Khiara was guilty of wrongdoing. The Claimants did not engage with the question who else might have been acting for FFM at the relevant times. Had I otherwise been persuaded of their case against FFM, I would have required further assistance about this, but I am not otherwise persuaded.

366. As with other Defendants, the Claimants' written opening submissions made allegations against FFM that are not pleaded and are not available to the Claimants. In particular, they submitted that FFM's dishonesty is to be inferred from:

    a. The fact that the IMA and SLA were "*never acted upon*"; and

    b. "[T]*he fact that FFM received substantial payments from TAP with respect to the SLA*".

    Even if they were pleaded, I would not have found these points persuasive. As I have said, the Claimants did not use TAP's services under the IMA, but that does not mean that TAP did not enter into it in good faith, nor that the SLA was not entered into in good faith. The case about receipt of payments would depend upon who dealt with the incoming payments and what knowledge he or she had. The Claimants simply did not engage with these questions. In any case, they have not shown that FFM acted in bad faith in receiving the payments from TAP.

***The Claims in Deceit and Negligent Misrepresentation***

367. As with Mr Khiara, the Claimants plead that FFM made the SLA Representation, the Khiara P-Notes Representations and the Khiara Trading Representations; that the Representations were false; that they were made directly to TAP, and "*in turn to the Claimants*"; and that the Claimants relied upon the Representations in that they decided to invest the sum of AED 320,717,867.84 in the P-Notes and later in that they did not investigate or "*unwind*" their misappropriation.

368. The reasons for rejecting the case against Mr Khiara in relation to the SLA Representation apply equally to the corresponding case against FFM.

369. The P-Notes reports were unsigned, and although they were created in FFM's name, there is no evidence about how they came to be in the Claimants' records. In view of the evidence that other documents in their records were fabricated, I cannot assume that they came from FFM.

370. With regard to the trading reports, I note that the Claimants' pleaded case is this: "*the reports were either complied by TAP based on reports retrieved online from two websites* [for Global Gate and Premier] *and sent to FFM for review, or generated by FFM using Excel*"; and "*it is understood that the stock portfolios were in fact 'fake' and websites were created by employees of Union Properties on instructions of Khalifa and/or Ahmed Khouri*". Thus, there is an unequivocal plea that FFM was involved either with compiling the reports or with creating the "*fake*" websites on which they were based. In so far as it might be said that FFM should have realised that the reports were wrong if TAP sent them for its review, the Claimants have not shown that FFM was not duped by the fake websites that the Claimants say were created by Union Properties' employees.

***The Claims for Dishonest Assistance, in Conspiracy and under the FSMR***

371. The claims for dishonest assistance, in conspiracy and under the FSMR are based on the same allegations as the deceit and negligent misstatement claims. I reject them for the same reasons.

**The Date of the Loss**

372. I therefore am not persuaded that the Claimants have proved to the requisite standard that the Defendants are (or any of them is) guilty of the wrongdoing alleged against them. But there is another answer to many of their complaints, and indeed to all the claims made against Mr Khiara and FFM.

373. The Claimants' only pleaded claim for damages is for the sum of AED 320,717,867.84, subject to a set-off in respect of cost of the 25.84 million P-Notes. Thus, their claim is for the loss of money that was used, as the Claimants contend, to purchase the 391,789,341 P-Notes in July 2018. There is no claim for damages in respect of the value of the P-Notes.

374. The Claimants sought to suggest that the claim for the money paid was, in some way, a surrogate for the value of the P-Notes when they were misappropriated. I cannot accept that. As the Final Terms stated (see para. 159 above), the value of the P-Notes fluctuated according to the value of the underlying shares, and it is apparent from Union Properties' Corporate Governance Report for 2018 that the value of its shares fell each month throughout 2018.

375. With regard to the claim in deceit, in *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* (cit. sup.), Lord Steyn said at page 284: "*There is in truth only one legal measure of assessing damages in an action for deceit: the plaintiff is entitled to recover as damages a sum representing the financial loss flowing directly from his alteration of position under the inducement of the fraudulent representations of the defendants*". It cannot be suggested that the assessment of damages for negligent misrepresentation is more generous. Nothing done by the Claimants in reliance on any representations after they paid for the P-Notes in July 2018 can give rise to a claim for the

sum of AED 320,717,867.84 (or any part of it). The position with regard to conspiracy is materially similar.

376. The law with regard to the dishonest assistance claim is explained by Morritt LJ in *Brown & Anor v Bennett & Ors [1999] BCC 525*, having accepted that the remedy for breach of trust is flexible and designed to satisfy the demands of conscience, he said "*if there is no causative effect and therefore no assistance given by the person … on whom* [it] *is sought to establish the liability as a constructive trustee, for my part I cannot see that the requirements of conscience require any remedy at all*" (at page 533).

377. The liability under the FSMR is "*to compensate … for any loss or damage caused … as a result of* [the wrongful] *conduct*" and "*otherwise is liable to restore* [the victim] *to the position they were in prior to such conduct*": see section 242(1).

**The Settlement Agreement**

***Introduction***

378. By an agreement dated May 2023 but apparently concluded in June 2023, the Claimants entered into an agreement with the "*Settling Parties*", who included, among others, Mr Alhammadi, Ms Alhammadi and Mr Al Mulla (the "**Settlement Agreement**"). The Settlement Agreement was, as the Claimants plead, "*for the purposes of settling the claim in the present proceedings as well as certain wider claims against the Settling Parties on the terms set out therein*". The Claimants go on to plead that: "[p]*ending satisfaction of the Settling Parties' obligations*" under the Settlement Agreement, the claims against the Settling Parties were continued and judgments entered against Mr Alhammadi, Ms Alhammadi and Mr Al Mulla.

379. The agreement stated in its recitals that the parties had agreed on the full and final settlement of all actual and potential claims and causes of action by the Claimants against, among others, Mr Alhammadi, Ms Alhammadi and Mr Al Mulla. Clause 2.1(a) specifies a settlement sum of AED 620 million, which was to be paid in two tranches of AED 300 million and AED 320 million. Clause 3.6 provides that any recovery from parties not included in the Settlement Agreement would be deducted from the second tranche of the settlement sum, and that the AED 320 million would be satisfied by the sale of movable and immovable assets by the Custodian appointed under the Settlement Agreement.

380. As for the Defendants whose claims came to trial, the Claimants plead that the case is that the proceedings continued against Mr Khiara and FFM, "*who benefit from the release provisions of the* [Settlement] *Agreement",* and that they continued against Mr Trinkler, Mr Klar and Mr Khouri, "*who do not benefit from the release provisions …*". They distinguish the position of FFM and Mr Khiara, on the one hand, and Mr Trinkler, Mr Klar and Mr Khouri, on the other hand, because the Settlement Agreement is expressed to be a settlement not only of claims against the "*Settling Parties*", but also claims against the "*Third Party*

*Affiliates*", who are listed in Annex 3 to the Settlement Agreement and include FFM and Mr Khiara.

381. The Settlement Agreement does not list Mr Trinkler, Mr Klar or Mr Khouri as "*Third Party Affiliates*". Nevertheless, Mr Trinkler submitted that the Settlement Agreement does include him implicitly, because "[t]*he Settlement Agreement in Annex 3 lists the company FFM. It is understood that this includes also all directors of the company, which were active in 2018 and 2019*". I cannot accept that submission: there is no reason to interpret the Settlement Agreement in this way, and Dr Ammann did not develop this argument at the trial.

382. The Settlement Agreement gives rise to three questions: whether there are recoveries to be brought into account; whether the Claimants have mitigated their loss; and whether the Settlement Agreement operates to extinguish claims which the Claimants are pursuing.

***The Recoveries***

383. There is no evidence whether the Claimants have made relevant recoveries under the Settlement Agreement in respect of the loss for which they seek to recover damages. Mr de Wolff told me that they had recovered nothing attributable to these claims under it, and Greenberg Traurig have so asserted in correspondence: for example, in a letter of 4 September 2025, they said that AED 3 million had been recovered from the sale of some properties, but it was "*unrelated to the proceedings*". If all sums recovered under the Settlement Agreement (or if the Claimants chose to allocate their recoveries to unrelated claims and the allocation was not "*obviously unsustainable*": see *Marino v FM Capital Partners Ltd [2020] EWCA Civ 245* at para. 73), then the recoveries are irrelevant to the measure of damages on the claims with which this trial is concerned. However, assertions in Court and in solicitors' correspondences are not evidence.

384. It was argued therefore on behalf of Mr Khiara, that the Claimants have failed to prove the damages which they claim. Ms Daskalova cited the judgment of Oliver LJ, in *Townsend v Stone Toms & Partners (No. 2) (1984) 27 BLR 26*, who said that: "*in normal actions for recovery of damages it is for the plaintiff to prove both the liability of the defendant whom he sues, and the loss he has suffered. Qua the remaining defendant after the plaintiff has withdrawn, for whatever reason, his claim against a co-defendant, nothing has happened to alter this position. The plaintiff, in order to obtain a judgment for damages, must prove that there is still a quantum of damage which has not been satisfied by a previous recovery whether as a result of a payment into Court or a prior judgment, in respect of which he is entitled to recovery from the remaining defendant or defendants*".

385. The judgments in the *Townsend* case are not without their difficulties: see the *Marino* case (cit. sup.). However, I see no reason to doubt that Oliver LJ's observation remains good law, and it is supported by this dictum of Lord Bingham in *Heaton v Axa Equity & Law Life Assurance Society Plc [2002] UKHL 15,* "[w]*hile it is just that A should be precluded from*

*recovering substantial damages against C in a case where he has accepted a sum representing the full measure of his estimated loss, it is unjust that A should be so precluded where he has not"* (at para. 5).

386. The Claimants are not entitled to recover the damages that they claim without providing evidence about what (if anything) has been recovered under the Settlement Agreement and whether it is attributable to the losses that they seek against these Defendants. However, if this were the only difficulty facing the Claimants, I would not have thought it right to dismiss their claims without giving them the opportunity to contend that they should be allowed to remedy this omission.

***Mitigation***

387. Mr Trinkler, Mr Klar and Mr Khouri all challenge in their defences whether the Claimants have mitigated their loss, Mr Trinkler and Mr Khouri specifically by reference to the Settlement Agreement, and Mr Khouri by alleging that the Claimants failed to enforce their rights and seek recoveries under it. In their responsive pleadings, the Claimants deny this, without identifying any particular steps taken in mitigation.

388. In their written opening submissions, the Claimants submitted that no question of mitigation arise because "[t]*he loss claimed in these proceedings crystallised by no later than October 2018 …*". I reject this submission, which is irreconcilable with (for example) their claims based on the trading reports. The duty to mitigate is not so limited: see *Sainsbury's Supermarkets Ltd v Visa Europe Services LLC [2020] UKSC 24* at para. 214.

389. However, the question of mitigation was not fully explored by any of the parties at the trial. If the question of mitigation were not mute, I would have sought further assistance from the parties' representatives. As it is, I say no more about it.

***Were Claims Extinguished by the Settlement Agreement?***

390. Mr Khouri pleads that "*the effect of the* [Settlement] *Agreement was to settle the entire claim as against the Settling Parties whom the Claimants allege were jointly and severally liable with* [Mr Khouri]. *On the true construction of the terms of the* [Settlement] *Agreement the cause of action as against* [Mr Khouri] *had accordingly been extinguished and/or merged into the Settlement Agreement*". The other Defendants do not plead this defence.

391. In response to this contention, the Claimants argued that the Settlement Agreement is governed by UAE law under which (and in particular under articles 451 and 460 of the UAE Civil Code), where obligors have joint liability, the discharge of the liability by one discharges the liability of all, provided that the liability under any settlement agreement is fully discharged. An unsatisfied agreement to discharge is not sufficient. The Claimants asserted that in this case the partes to the Settlement Agreement had not discharged their liabilities under it.

392. This argument is not without difficulties. First, the Claimants do not plead that UAE law and ADGM law are materially different as to the effect of a settlement agreement on joint liability.

393. Secondly, FFM and Mr Khiara disputed that UAE law necessarily requires complete discharge in the sense that the full amount due has been paid and the obligation settled in full, and contended that, depending on the precise wording of any agreement, release of a party without satisfaction of the obligation is possible. They cite article 460 of the UAE Civil Code: "*A composition made by one of the joint liable obligors with the obligee shall not be effective if it creates a new liability as against them or if it increases their liability, unless they accept it and benefit from the composition if it involves a discharge from the obligation or a release from liability therefor in any other way*" (emphasis added).

394. Thirdly, the Claimants' argument involves a question of ADGM private international law, upon which I was not fully addressed. By its express terms, the Settlement Agreement is governed by the laws of the UAE, and it is to be construed in accordance with UAE law. However, it does not follow that UAE law governs the question of whether the Settlement Agreement so construed operates to extinguish claims by merger or otherwise. That will depend upon whether such questions are regarded as questions of substantive law or as matters of procedure and so governed by the *lex fori*.

395. I need not engage with these questions, and I decline to do so, because the Claimants do not need to rely on UAE law to answer the defence pleaded by Mr Khouri. I would reject it applying ADGM law. The general rule in English law, and so ADGM law, is stated by Briggs LJ in *Gladman Commercial Properties v Fisher Hargreaves Proctor & Ors [2013] EWCA Civ 1466*: "*At common law … if A claimed to be the victim of a tort committed by joint tortfeasors, and if A obtained either a judgment against one or more of them, or the benefit of a settlement by which he released one or more of them, then subject to certain exceptions, A thereby released the others*" (at para. 21). However, this general rule does not apply if the settlement agreement reserves a claimant's rights against other wrongdoers.

396. The Settlement Agreement does not expressly reserve to the Claimants' rights against persons who are not party to it, but I consider that it impliedly does so. In the recitals, it is said that that the parties had agreed settlement of claims against "*the Settling Parties and Third Party Affiliates arising out of the Third Party's relationship with*" the Claimants. Clause 3.6 provides that recoveries from these proceedings from Defendants who are not party to the Settlement Agreement should be deducted from what is payable to the Claimants, which implies that the proceedings against others might continue. Further, clause 13.5(a) requires the Claimants, upon other parties complying with certain obligations, to "*expeditiously do all such things as may be necessary to withdraw and discontinue the ADGM Proceedings as against the Settling Parties*" and certain other entities, but not as against Mr Khouri and other Defendants. Similarly, clause 13.5(b) provides that the Claimants in those circumstances "*irrevocably waive all actual and*

*potential claims and causes of action*" against the so-called Settling Parties, the Third Party Affiliates and some other entities, but not against other Defendants, such as Mr Khouri.

397. I therefore do not accept that the Settlement Agreement extinguishes the claims against Mr Khouri, or that it prevents the Claimants from pursuing remedies against him.

**Apportionment**

398. In his defence, Mr Khouri relied on article 291 of the UAE Civil Code: "*If a number of persons are responsible for a harmful act, each of them shall be liable in proportion to his share in it, and the judge may make an order against them in equal shares or by way of joint or several liability*". Mr Richmond submitted that there is "*a strong presumption* [in UAE law] *in favour of apportionment of harm*" and that the Court should make an order for joint and several liability only when apportionment under article 291 is impossible. Accordingly, Mr Khouri submitted that, even if he had any liability for breach of director's duties or in conspiracy, if both causes of action are governed by UAE law, then Mr Khouri should bear only a negligible portion of the Claimants' loss, his responsibility being minor compared with other wrongdoers.

399. It is unnecessary to engage with this submission, and I decline to do so. Had I needed to do so, I would have sought further assistance from Counsel, including: as to whether the Court's power to apportion liability between defendants in this way is a matter of substantive law and not a procedural matter governed by the *lex fori*: see Dicey, Morris and Collins, *The Conflict of Laws (14th Ed, 2022)* para. 4-074.

**Mr Khouri's Other Pleaded Defences and Counterclaim**

400. I mention for completeness that Mr Khouri pleaded other defences to the claims against him, including defences on the basis of the remoteness of the Claimants' loss, by way of contributory negligence (under ADGM law) or article 287 of the UAE Civil Code (under UAE law) and resolutions passed at Union Properties' AGMs which he contended absolved him of liability. In view of my other conclusions, I need not, and do not, engage with these arguments.

401. Mr Khouri pleaded a counterclaim in which it was said that he was not liable for any claims against him in so far as they relate to "*a failure to manage the Claimants (while a director) diligently*" and that he was entitled to be indemnified in respect of such liability. In his written opening submissions, Mr Richmond said that "*the Counterclaim should not fall for determination at Trial*"; and in his final submissions he abandoned it.

**Conclusions**

402. I therefore dismiss all the claims against Mr Trinkler, FFM, Mr Klar, Mr Khiara and Mr Khouri. Although the Claimants were the victims of a fraud that caused them loss, they have made allegations against these Defendants that they have not been able to substantiate, and they have not shown that these Defendants were party to any wrongdoing.

403. I shall deal with costs and any other consequential matters at a hearing after issuing this judgment.

Issued by:

**Linda Fitz-Alan**
**Registrar, ADGM Courts**
**6 March 2026**