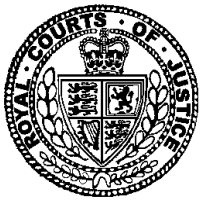

Neutral Citation Number: [2023] EWHC 2831 (Comm)

Case Nos: CL- 2015-000687
CL-2019-000009

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Rolls Building, Fetter Lane,
London, EC4A 1NL

Date: 10/11/2023

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

SHEIKH MOHAMED BIN ISSA AL JABER	**Claimant**
- and -	
(1) SHEIKH WALID BIN IBRAHIM AL IBRAHIM	**Defendants**
(2) SHEIKH MAJID BIN IBRAHIM AL IBRAHIM	

- -
- -

Stephen Nathan KC and Daniel Cashman (instructed by **Axiom DWFM**) for the **Claimant**
Andrew George KC and Nico Leslie (instructed by **Gresham Legal**) for the **First Defendant**
Shail Patel (instructed by **Gresham Legal**) for the **Second Defendant**

Hearing dates: 3, 4, 9, 10, 11, 15, 16, 17, 18 and 23 May 2023
Draft judgment circulated: 3 November 2023

Approved Judgment

This judgment was handed down remotely at 10.15am on 10 November 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Henshaw:

(A) INTRODUCTION

1. The issue in this case is whether a payment ("***the Payment***") of US$ 30 million, paid on 3 January 2002 by a company controlled by the Claimant ("***Sheikh Mohamed***") to an account controlled by the Second Defendant ("***Sheikh Majid***") and/or the First Defendant ("***Sheikh Walid***") was:

    i) (as Sheikh Mohamed contends) a loan made by Sheikh Mohamed to Sheikh Walid and Sheikh Majid to help them establish a new television channel, Al Arabiya, or

    ii) (as Sheikh Majid contends) a fee which Sheikh Mohamed had agreed to pay to Sheikh Majid in return for services provided in connection with the letting of certain compounds by one of Sheikh Mohamed's businesses and a refinancing of its debt.

2. The task of ascertaining the true nature of the Payment was made more difficult by the passage of time since it was made, and the somewhat limited nature of the contemporary documentation. However, over the course of a 10-day trial, I had the benefit of being shown such documents as were available, and of the written evidence of the parties and other witnesses.

3. On the basis of the evidence as a whole, I have concluded that Sheikh Mohamed has not made out his claim, which must therefore be dismissed.

(B) ISSUES

4. I have stated the fundamental factual issue above. In addition, certain legal issues contingently arose about the law governing the alleged agreement; and the applicable provisions, under that law, regarding (i) the need for a loan agreement to be in writing, (ii) agency and (iii) limitation.

(C) THE PARTIES

5. Sheikh Mohamed is an international businessman. He is a Fellow of the School of Oriental and African Studies (SOAS), a Fellow of Corpus Christi College, Oxford, a Fellow of University College London, and a Senator of MODUL University, Vienna. He endowed the Chair of Middle East Studies at SOAS and has been awarded Honorary Doctorates from City University and the University of Westminster. His fortune was self-made. He founded his first company in Saudi Arabia, Jadawel International Construction & Development ("***Jadawel***"), which specialised in the design and construction of self-contained residential communities or "*compounds*" to meet the demand of the growing Western expatriate population in Saudi Arabia. His business activities then expanded from real estate development to other sectors, and he moved the centre of his operations to the UK and Europe. He founded JJW Hotels & Resorts ("***JJW***") in 1988, which owns or operates luxury hotels. Its head office continues to be located in Wigmore Street, London. He founded the Ajwa Group in 1992, which specialises in the production of food. The companies which Sheikh Mohamed controlled also included MBI International Inc. (a BVI company incorporated in 1990), renamed MBI International & Partners Inc. in January 2004; MBI International Holdings Group (a BVI company incorporated in December 2011); MBI International Holdings Inc. (also a BVI company incorporated in December 2011), and MBI & Partners UK Limited (a UK company).

6. Sheikh Walid and Sheikh Majid are international businessmen and brothers. One of their sisters, Al Jawhara bint Ibrahim Al Ibrahim, was married to the late King Fahd. One of King Fahd's sons is HRH Prince Abdulaziz Bin Fahd Bin Abdulaziz Al Saud ("***Prince Abdulaziz***"). Sheikh Walid and Sheikh Majid are Saudi nationals. Sheikh Walid founded the MBC Group ("***MBC***") in London in 1991, the first independently owned 24-hour, pan-Arab satellite broadcaster. In December 1994, Sheikh Walid and Sheikh Majid established ARA Group International ("***AGI***"), which became the ultimate parent company of MBC.

(D) THE WITNESSES

7. Sheikh Mohamed's witnesses were himself and Mr Richard Brook.

8. Sheikh Mohamed was animated, and at times vehement or argumentative, in cross-examination. He would on occasion suggest, without foundation, that a document was at best unreliable when faced with its adverse contents, most notably in relation to the Saba valuation reports. Sometimes he would seek to blame legal advisers for errors in circumstances where it appeared in fact that he had made inconsistent statements (as in relation to the share transfer considered in the MBI proceedings). The substance of his evidence contained important inconsistencies, as I discuss later. Overall, I found him a less than satisfactory witnesses on whose evidence I did not feel I could safely rely without independent corroboration.

9. Mr Brook's manner of giving oral evidence appeared careful and measured. However, in his last witness statement shortly before trial he had had to accept that his recollection on the key point about the creation of the File Copy Transfer Instruction (referred to later) had been mistaken. As I describe later, in all the circumstances I have concluded that I cannot rely on his recollections of the key events of January 2002.

10. The Defendants called Sheikh Walid, Sheikh Majid, Mr Russell Lawrence, Mr Muhammed Rasheed and Mr Sam Barnett. They did not call Osman Ali, an employee of ARA based in Riyadh, Saudi Arabia from 1998 to 2005, whose primary role was to manage investment and commercial matters for Sheikh Majid, on the basis that it had not been possible to contact him for many years. He might have been able to give relevant evidence, and I have taken his absence into account in assessing the evidence as a whole.

11. Sheikh Walid gave his evidence in a measured way, and struck me as a candid witness. He was willing to concede matters (for example when asked whether money from the Portugal Property fund was paid into his personal account, and in accepting that Financial Transaction House ("***FTH***") would have run past him the list of potential investors to approach about Al Arabiya); and he accepted that there were things he did not remember very well (including, in re-examination, whether he had any independent recollection as to whether or not he was in London in February 2002). I felt able to rely on his evidence.

12. Sheikh Majid too was in my view a credible witness. His recollection had been faulty on certain matters, in particularly the identity of the accounting firms who valued Jadawel at different times; and he could perhaps be criticised for having apparently taken a decision not to mention the involvement of Prince Abdulaziz when making his witness statement at the jurisdiction stage of the case. However, he dealt with these and other matters in a straightforward way. Given that he was seeking to recollect matters in 1997 to 2002, which he had first been asked to recall in 2015, it is not surprising that his memory was unclear in some areas. However, on the fundamental matters his recollection was consistent with the available documentation, even on points where he had not seen the documents when first stating his recollection.

13. Russell Lawrence was employed in Sheikh Mohamed's MBI group from 2013 to 2016. According to his own account, he was involved in preparing (on Sheikh Mohamed's instructions) in 2015 a purported bank transfer instruction appearing to date from 2002. As I explain later, Mr Russell's evidence included some unsatisfactory or concerning features that would have led me to conclude that I should not rely on it in the absence of corroboration. However, on the key point about whether the File Copy Transfer Instruction was created and deployed in 2002, his evidence was consistent with other evidence and the inherent probabilities.

14. Mr Rasheed is a Director of Executive Office at MBC, who gave evidence about approaches to potential third-party investors in Al Arabiya and a meeting with Sheikh Mohamed in January 2003. He was a good witness.

15. Mr Barnett is the current Chief Executive Officer of the MBC Group, having joined MBC in October 2002. His recollection was limited, but he struck me as a fair and reliable witness.

(E) GENERAL APPROACH TO THE EVIDENCE

16. I did not understand it to be disputed that the following broad principles should be applied:

    i) Given the historic nature of the events in question, the court is likely to place a particular focus on the contemporaneous documents, to the extent they exist (*Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) §§ 15-16.)

    ii) In a case such as this without abundant documentation, it is important to evaluate all the available evidence with a view to determining the weight to be attached to it and the inherent probabilities. The absence of evidence, including any appropriate inferences that may be drawn from the absence of evidence, may also be material (*Mitchell v Al Jaber* [2023] EWHC 364 (Ch) §§ 176-177).

    iii) In a case involving allegations of dishonesty, "*where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth*" (*Armagas Ltd v Mundogas SA (The "Ocean Frost")* [1985] 1 Lloyd's Rep 1, 57 per Robert Goff LJ).

    iv) As well as testing witness evidence by reference to the evidence that is available, it is open to the court to test it by reference to the absence of relevant documentation (*Mumtaz Properties Ltd (in liquidation) v Ahmed* [2011] EWCA Civ 610 §§ 15-17 per Arden LJ).

    v) A litigant who has destroyed or suppressed relevant documents may have his case struck out if it means a fair trial cannot take place. If a trial can occur, then the strongest possible presumption arises that the documents would have told against the destroyer of them, and the court should refuse to give the destroyer the benefit of any doubt or draw any inference in its favour (*ED&F Man Capital Markets v Come Harvest Holdings* [2022] EWHC 229 (Comm), citing *The Ophelia* [1916] 2 AC 206 , 229-230 (PC) and *Hollander on Documentary Evidence* (13th ed.), 11-23 to 11-27).

    vi) (Relevantly to the File Copy Transfer Instruction and the 15 July 2001 transfer instruction considered later) the effect of serving a Notice to Prove is 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*." (*Redstone Mortgages Limited v B Legal* [2014] EWHC 3398 (Ch) §§ 57 and 58).

(F) EVENTS RELATING JADAWEL, AJWA AND PRINCE ABDULAZIZ: 1997 TO 2001

17. The series of events I consider in this section is primarily relevant to Sheikh Majid's explanation for the Payment. I begin with this part of the story because it commences earlier in time than the events relating to the Al Arabiya television channel – the latter being relevant to Sheikh Mohamed's explanation for the Payment – although, as will be seen, the two periods overlap.

18. I summarise first the basic documentary evidence available with a bearing on this portion of the case, before going on to consider the parties' recollections and competing accounts of the relevant events.

(1) Documentary and deposition evidence

(a) The Partnership Contract

19. On 10 November 1997, Sheikh Mohamed entered into a Partnership Contract with Prince Abdulaziz, as part of which Sheikh Mohamed sold to Prince Abdulaziz 50% interests in "*Gadawel Al-Khaleej International Company*" (i.e. Jadawel) and "*Ajwa RMTI Limited*" ("***Ajwa***"). The Partnership Contract included the following provisions, with the "*First Party*" defined as Prince Abdulaziz and the "*Second Party*" as Sheikh Mohamed:

> "Article (2):
>
> [i] At the request of the First Party, the Second Party appointed Arthur Anderson and Winnie Miri Baashan as chartered accountants to jointly determine the actual value of Gadawel Al-Khaleej International Company [i.e. Jadawel] and its assets. The report of the aforementioned accountants was issued on 28/09/1997 AD, including the company's evaluation and its statement of financial flow, attached to this contract (Attachment No. (1), which is complementary to it. The report showed that the actual value of this company and its assets is between 1,400,000,000 (one thousand four hundred million Saudi riyals) to 1,550,000,000 (one thousand five hundred and fifty million Saudi riyals). The First Party has been informed of that assessment.
>
> The two parties agreed that the First Party will pay the Second Party a total amount of 600,000,000 (six hundred million) Saudi riyals in exchange for the First Party's ownership of 50% (fifty percent) of the shares of Gadawel Al-Khaleej International Company.
>
> [ii] The Second Party has prepared a report showing the financial flow of Ajwa RMTI Limited prepared in September 1997 attached to this contract (Attachment No. 2), which is considered complementary to it.

The two parties agreed that the First Party will pay the Second Party a total amount of 400,000,000 (four hundred million)Saudi riyals in exchange for the First Party's ownership of 50% (fifty percent) of the shares of Ajwa RMTI Limited.

Article (3):

Based on the above, the two parties agreed that the First Party will buy 50% (fifty percent) of the ownership of the Second Party in both companies - with their rights and obligations in accordance with the above-mentioned reports so that the First Party is not responsible for any of the obligations that are not mentioned in these reports - for a total amount of 1,000,000,000 (one thousand million) Saudi riyals distributed as follows:

[i] An amount of 600,000,000 (six hundred million) Saudi riyals in return for the First Party's ownership of 50% (fifty percent) of the shares of Jadawel Al-Khaleej International Company, of which 550,000,000 (five hundred and fifty million) Saudi riyals shall be paid in accordance with paragraphs (c) and(d) of Article (4) below, and an amount of 50,000,000 (fifty million) Saudi riyals shall be paid to the Second Party as part of the amount mentioned in paragraph (a) of Article (4) below.

[ii] An amount of 400,000,000 (four hundred million) Saudi riyals in return for the First Party's ownership of 50% (fifty percent) of the shares of Ajwa RMTI Limited, of which an amount of 150,000,000 (one hundred and fifty million) Saudi riyals shall be deposited in the current account of this company through which the company's registered capital shall be increased to 200,000,000 (two hundred million) Saudi riyals as stated in paragraph (b) of Article(4) below, and an amount of 250,000,000 (two hundred and fifty) million Saudi riyals shall be paid to the Second Party, which is part of the amount mentioned in paragraph (a) of Article(4) below.

Article (4):

Since the total value of the sale of the shares of the two companies is an amount of 1,000,000,000 (one thousand million) Saudi riyals, the First Party has committed to the Second Party to pay it as follows:

A. Advance payment of SAR 300,000,000 (Three Hundred Million) to be paid by the First Party to the Second Party upon signing this Contract by certified cheque.

B. An amount of 150,000,000 (one hundred and fifty million) Saudi riyals to be deposited by the First Party in the current account of Ajwa RMTI Limited with the Saudi British Bank no later than Saturday, 15/11/1997 AD, conditional on raising its

> capital to two hundred million Saudi riyals and notifying the bank of the completion of raising the capital by law.
>
> C. An amount of 150,000,000 (one hundred and fifty) million Saudi riyals to be deposited by the First Party in the current account of Jadawel Al-Khaleej International Company with the Saudi British Bank no later than Saturday, 22/11/1997 AD, conditional on raising its capital to two hundred million Saudi riyals and notifying the bank of the completion of raising the capital by law.
>
> D. An amount of 400,000,000 (four hundred million) Saudi riyals, the First Party shall either issue a certified check or provide bank guarantees with a net value of four hundred million riyals - at the discretion of the First Party. The said check or guarantees shall be deposited in a joint legal Murabaha account in the name of Dr. Talal Amin Ghazawi and Dr. Mohammed bin Saad Al-Rasheed as trustees of the amount, and the Murabaha shall be at their discretion, no later than Tuesday, 30/12/1997 AD. …
>
> …
>
> Article (7): The parties agreed to approve the cash flow report prepared by Arthur Anderson and Winnie Miri Baashan attached to this contract for Jadawel Al-Khaleej International Company. The Second Party undertook to bear the responsibility of managing the company and the expenses of its main offices through the company (JJ W) and within the limits of the allocation stipulated as a management fee in the said financial flow report, and to exert all the efforts to achieve the financial results shown in the said report. The First Party committed to make an effort to provide the necessary support to the company and lease its residential complexes.
>
> Article (8): The two parties agreed to approve the financial flow report of Ajwa RMTI Limited attached to this contract. The Second Party committed to manage the company and the expenses of its main offices through RMTI International within the limits of the allocation stipulated as a management fee in the said financial flow report, to make an effort to achieve the financial results shown in the said report, and to strive to achieve the financial results contained in the said report. The First Party committed to make an effort to provide the necessary support to the company."

20. Thus the total amount due from Prince Abdulaziz to Sheikh Mohamed in return for the stakes he would acquire in Jadawel and Ajwa pursuant to the Partnership Contract was SR (Saudi riyals) 1 billion: SR 600 million for the stake in Jadawel and SR 400 million for the stake in Ajwa. Of that sum, a total of SR 600 million were due within 12 days of the date of the contract, and the balance of SR 400 million was due by 31 December

1997. (The contractual allocation set out in the provision quoted above was for the initial SR 600 million to reflect the whole of the payment for the Ajwa stake and SR 200 million towards the payment for the Jadawel stake.)

21. Sheikh Mohamed did not disclose documents showing what amounts were in fact paid when, but in cross-examination (when pressed) said that Prince Abdulaziz had only ever paid *"less than 600"* million riyals under the Contract.

(b) The Arthur Andersen valuation of Jadawel

22. The report ("*the Arthur Andersen valuation*") referred to in Article 2[i] of the Partnership Contract was a joint report dated 28 September 1997 from Arthur Andersen & Co and Whinney Murray & Co (a member of Ernst & Young International). The covering letter bound into the report was addressed to Sheikh Mohamed as chairman and managing director of Jadawel, and stated:

> "In accordance with your instructions, we have completed our valuation advisory report of Gulf Jadawel International Company (GJI) to provide an indicative range of the fair market value of the Company as a whole. We were not engaged to make specific purchase or sale recommendations. Our work was designed solely for your internal purposes. The usage of this report is restricted to the addressee and should not be relied upon by any third party.
>
> Fair market value is the price at which an entity would change hands between a willing buyer and a willing seller, neither being under compulsion to buy or sell and both having reasonable knowledge of all relevant facts as of September 28, 1997.
>
> The valuation process included an analysis of financial and other data provided to us, discussions with management concerning the prospects and operating performance of the Company and an analysis of economic and financial market conditions prevailing as of the valuation date. We have received the financial data and all related assumptions, provided to us by the Management and others without verification as accurately reflecting the historical and projected financial position and operating results of the Company.
>
> Based on our investigation and analyses discussed in the attached report, we believe that the fair market value of the Company to be in the SR 1,400 to SR 1,550 million range, provided the Company is able to achieve the projected occupancy levels and rental rates set out in the attached report.
>
> In advising you on this valuation, we understand that our report will be solely for your information. This valuation advisory report has been prepared solely for the purpose of your internal use and we do not accept any responsibilities to other parties that become aware of the existence and/ or contents of this report.

> This report has been based on data made available to us as of the date of this report. We have no responsibility to update our report with respect to any circumstances, and information that becomes available after that date. Whereas such information may have a significant effect on the data and assumptions supporting our valuation advice, these factors should be taken into consideration by the parties involved in considering the fair market value of the business for the purpose described above.
>
> This valuation report is subject to the attached Statement of General Assumptions and Limiting Conditions."

23. The Arthur Andersen valuation thus depended on unverified financial data and related assumptions provided by Jadawel's management accurately reflecting the company's historical and projected position and operating results; and the valuation was conditional on Jadawel being able to achieve the projected occupancy levels and rental rates set out in the report for the residential compounds it operated. On those bases, Arthur Andersen valued Jadawel in the range SR 1,400 to SR 1,550 million.

(c) Leasing of the compounds

24. Jadawel's compounds had been built in the 1990s to house foreign military personnel. They were large, and two of them (Compound E and Compound F) were substantially larger than the others. Sheikh Mohamed did not disclose the leases in place in 1997 in respect of Jadawel's compounds. However, the fact that by Article 7 of the Partnership Contract Prince Abdulaziz "*committed to make an effort to provide the necessary support to the company and lease its residential complexes*" tends to suggest that Jadawel felt the need for some help in letting the compounds fully. That view is also consistent with the details set out in the Arthur Andersen valuation about current occupancy of Jadawel's compounds as at September 1997, indicating that:

    i) Compound B (100 units) was leased to British Aerospace until 2000;

    ii) Compound C (172 units) was "*expected to be occupied*" but "*[n]egotiations with several potential lessees are in progress*";

    iii) Compound D (50 units) was not leased at all, though a lease was expected in January 1998;

    iv) Compound E (540 units) was leased to McDonnell Douglas, but only until 2001; and

    v) Compound F (408 units) was under construction, with 50 units (i.e.12.25%) currently leased by Hughes Aircraft under a one year lease, and was expected to be fully occupied from the beginning of 1998.

25. Nevertheless, the Arthur Andersen valuation assumed 100% occupancy and continuity of rental income over a long period. It also assumed significant rent escalation from year to year of between 5% to 9%.

26. The valuation noted that Compounds E and F had been valued by DTZ Debenham Thorpe in July 1995 and September 1997 respectively, on open market value and replacement value bases, as follows:

    i) Compound E: open market valuation SR 1,385 million; replacement cost valuation SR 552 million.

    ii) Compound F: open market valuation SR 1,434 million; replacement cost valuation SR 801 million.

    The DTZ reports were said to have been attached to the Arthur Andersen valuation but were not available at trial.

(d) Valuation of Ajwa

27. The Partnership Contract did not mention any external valuation of Ajwa, and nor has any been disclosed from this period. It is reasonable to infer that, insofar as he attributed value to Ajwa, Prince Abdulaziz relied on the financial flow report provided by Sheikh Mohamed referred to in Article 2[ii] of the Partnership Contract.

(e) The Saba (Deloitte) valuations of Jadawel

28. On 13 April 1998, a few months after the Partnership Contract was signed, Mr Firasat Ali Chowdry (Director of Finance and Administration at AGI, and a member of Sheikh Walid's Private Office) faxed to Sheikh Majid the Executive Summary of a Valuation Report on Jadawel prepared by Saba, Abulkhair & Company ("***Saba***"), part of the Deloitte Touche Tohmatsu International group. On 23 April 1998, Saba sent Mr Chowdry a draft valuation of Ajwa. On 4 May 1998, Mr Chowdry thanked Saba for a final valuation report on Jadawel and draft valuation report on Ajwa, and asked Saba to finalise the Ajwa report. The disclosed documents available at trial included:

    i) an Executive Summary Valuation Report on Jadawel (the "***Saba Jadawel report***"); and

    ii) a "*Summary of Valuation Report*" on Ajwa and a full Valuation Report on Ajwa ("***the Saba Ajwa report***").

29. The Saba Jadawel report gave a materially lower value for Jadawel than the Arthur Anderson valuation had. It valued the company in the range SR 594 million to SR 766 million, compared to the SR 1,404 million to SR 1,544 million range in the Arthur Andersen report.

30. As to the leasing of the compounds and rental income, the Saba Jadawel report noted that the management revenue projection of SR 419 million for 1998 (itself 113% higher than their budget for 1997) "*is based on the assumption that Jadawel would lease out all of its five compounds on January 1, 1998, except Compound "F" which is apparently under construction"* (emphasis added). Hence it appears that Jadawel management were assuming full occupancy of all compounds except Compound F on 1 January 1998. Various further assumptions are stated, including that the rental income would continue uninterrupted "*for the whole year throughout the forecast period of ten years".* The report includes a table giving details of Compounds B to F, including the

names of lessees. However, the report does not provide details of the length or other terms of such leases as were already in existence.

31. The report on Jadawel also stated *inter alia* that:

i) management hoped to enter leases with certain named lessees (p78);

ii) "*During this valuation exercise, Saba was provided with audited historical data and forecast operational data*" (p78);

iii) *"Saba has relied primarily on revenue and expense forecasts, growth expectations and other information provided by the management"* (p81);

iv) "*Ten year forecasts…were provided by the management of Jadawel*" along with "*Actual audited results for the years 1993 to 1996… However, the results of 1997 were unaudited"* (p81);

v) Saba had been provided with certain "*supporting documentation for the forecasts (e.g. contracts, etc.)"* (p81);

vi) management had provided "*Key management assumptions*" (p81); and

vii) "*management's assumptions*" had been provided in respect of loans (p83).

These passages indicate that Jadawel's management had provided a substantial amount of information to Saba for the purposes of its valuation.

(f) The Britt deposition

32. On the topic of the Jadawel leases, the parties also relied on passages from the transcript of a videotaped deposition of Mr David Britt, who among other roles had been MBI's Chief Operating Officer in Iraq from November 1997 to October 2005. Mr Britt said he previously worked for McDonnell Douglas and met Sheikh Mohamed while employed there. He stated that he had worked at Jadawel as an adviser, and then as Chief Operating Officer, from some time around late 1997. As part of that role he had interactions with Jadawel's customers, and according to Sheikh Mohamed Mr Britt was responsible for ensuring the Compounds were ready for Jadawel's American tenants. Mr Britt's description was that he *"managed the managers"* of the Compounds; he was based in London, and was *"more of an overseer than direct hands-on day-to-day".*

33. Mr Britt is resident in California and was deposed on 28 February 2023. The Defendants on 17 March 2023 served a hearsay notice in respect of parts of the deposition, on the basis that Mr Britt was resident in the US and unwilling to give witness evidence voluntarily due to confidentiality provisions in agreements between him and companies owned or controlled (now or in the past) by Sheikh Mohamed. The notice did not relate to the parts of the deposition regarding the Jadawel leases, but at trial counsel for Sheikh Mohamed put to Sheikh Majid passages in which Mr Britt said the Dorrat Al Jadawel compound (Compound F) was leased to Hughes Aircraft Corporation in *"'98, '99 best as I can recall"*; that he believed the Jadawel City compound (Compound E) was leased to McDonnell Douglas, Boeing or the US military training mission; that he believed he was involved in Compound E in *"the time period '97 to '99, 2000. It was leased prior to that"*; that in 1999 or 2000 the lessee changed

to the Saudi Ministry of Defence Aviation ("***MODA***") or another government agency; and (a few pages later in the transcript) that *"I would say at that point in time"* Jadawel was not experiencing financial difficulties *"because we were fully leased, and we'd been paid"*.

34. Sheikh Mohamed in his written closing highlighted *inter alia* these passages from the Britt deposition:

> "Q. …Could you describe why and how the Dorrat Jadawel and Jadawel City compounds came to be leased by the Ministry of Defense or other government agency?
>
> A. Pure speculation on my part. It would be because the funding issues -- again, peripheral funding issues within the US government caused a change of the lessee.
>
> Q. Okay. So what funding issues are you referring to?
>
> A. There -- there was a funding shortfall, as I remember, in the FMS cases, and the government pushed back on leasing houses. And so the ministries and the Kingdom decided to get together, however it was done, and elected to assume the responsibility of leasing. Because the governments in Saudi Arabia still had responsibility to provide housing and support to FMS contractors and to government contractors."
>
> ***
>
> "Q. Do you recall roughly the time period that you were involved with the two compounds that the US government was paying the leases?
>
> A. So the US government funded the leases through contractors, and I went to Saudi in '83, and that practice had started in '81. And it went from '81 until it stopped in '99 or 2000, whenever that break changed.
>
> Q. Okay. And then after either 1991 or 2000, depending on when exactly that happened, it was the Saudi government that was funding the lease payments?
>
> A. That is -- clarification. The Saudis always funded the lease payments. Okay. Even when the US government was paying them. Because I think I mentioned earlier, it was non-appropriated money, which meant the Saudis paid it into FMS cases. The US Air Force who managed those cases then paid those bills on behalf of and for the government of Saudi Arabia, the Kingdom. When it transitioned, the US government was cut out, and the Saudi government paid them direct."
>
> ***

"Q. Did you discuss the potential consequences to Jadawel's cash flow with those individuals including Sheikh Mohamed or the other person you mentioned, Mohamed Ramady?

A. I would have discussed them, I'm sure, with Mohamed Issa (phonetic), probably with Ramady. And maybe with several other people in the organization about what would we do, yes, and -- and is there any way to influence the US government's decision. Those would have been the types of high-level conversations we would have had.

…

Q. And what were you hoping to influence them to do?

A. We were hoping to get them to change their mind, you know.

Q. And why was it important to for them to change their mind?

A. Because it's the way we've always done things in the past. And frankly, the government guarantee from the US government for payment was pretty solid when you went to a bank.

Q. What did Sheikh Mohamed tell you regarding the financial difficulties that Jadawel would experience if the US government did not change its mind?

MR. MAJOR: Objection. Foundation.

THE WITNESS: I don't think he ever mentioned that we would have, you know, significant financial difficulties. He always mentioned that there would be -- we'd have to find another -- another customer and knowing that the Saudi government still had responsibility for provide house -- providing housing, it was assumed by me that that would be going to the [Saudi] government direct."

***

"Q. Hi, Mr. Britt. Before we were -- went onto a break, you were discussing some of the cash flow issues that would have arisen for Jadawel if new lessees were not found.

Can you describe whether Jadawel was experiencing financial difficulties aside from these issues with the leases at that point in time?

MR. MAJOR: Objection. Foundation. Speculation.

THE WITNESS: I would say at that point in time, no, because we were fully leased, and we'd been paid."

35. Immediately after this last quoted passage, the deposition continued as follows:

> "Q. And if the US government was going to withdraw from funding of the lease compounds, the two that we were discussing before, Dorrat Jadawel and Jadawel City, how would that situation change?
>
> MR. MAJOR: Objection. Foundation. Speculation.
>
> THE WITNESS: I think as I mentioned earlier, it would have hurt cash flow. Like any business, not just Jadawel, but any business that loses its source of revenue would have to find another way to use their assets.
>
> BY MR. WEISS:
>
> Q. And you were chief operating officer of Jadawel at this time, right, Mr. Britt?
>
> A. That's correct.
>
> Q. What would the loss of this cash flow from the two compounds have done to Jadawel's operations and financial position if new lessees were not found?
>
> A. Well, like I said, finances was not my thing, but the assumption would be it would have been a negative impact, right. You're looking at the loss of total revenue stream.
>
> Q. How large was the revenue stream that Jadawel received from the two compounds in relation to the rest of its revenue stream? Like, what percentage of revenue were derived from these two compounds?
>
> MR. ECK: Let me just interpose an objection as to time, if that is a difference.
>
> THE WITNESS: Pure guesswork, a hundred percent speculation, probably 95 percent, 94 percent."

36. In my view limited assistance can be obtained from this evidence. In the passage where Mr Britt said Jadawel was fully leased and had been paid, it is unclear which particular period of time was under discussion. In any event, he also indicated in some of the passages quoted above that the US government became reluctant to continue to provide funding, which created a risk for Jadawel. Similarly, in other passages of the deposition, Mr Britt said he had heard through contacts in the US government, and had seen correspondence between the US government and the Royal Saudi Air Force suggesting, that there had been some kind of funding shortfall or unwillingness on the part of the US government to continue to fund the leases. However, the Saudi government retained a responsibility to provide housing and support to the US Foreign Military Sales ("***FMS***") contractors. Mr Britt said the solution was for MODA or another Saudi government body to take over the leases. In that connection, Mr Britt at

one point agreed with a suggestion that Jadawel was worried at the time Compounds E and F would become non-performing assets. He said he had discussed the matter with Sheikh Mohamed and that *"I don't think he ever mentioned that we should have … significant financial difficulties. He always mentioned that there would be – as we'd have to find … another customer and knowing that the Saudi government still had responsibility for … providing housing, it was assumed by me that that would be going to the government direct".*

37. Overall, Mr Britt's evidence does not allow any clear conclusions to be drawn about the letting position in 1997/8. It is vague about the details of the leases of the Compounds, and is at least consistent with the view that the reason, or a reason, for the Saudi government taking over the leases was an actual or threatened funding shortfall on the US side.

38. Sheikh Mohamed also relied on submissions made by his companies' own US counsel in the New York Proceedings on 7 December 2015:

> "MR. NEWMAN: And they were originally leased through something called a Foreign Military Sales program, where the US government essentially paves the way for military contractors to have housing for themselves and their families while working overseas.
>
> THE COURT: Was the US paying directly for this?
>
> MR. NEWMAN: What happened was that the Saudi government was paying the US and the US was paying Jadawel, but it was a cost plus arrangement, so there was a 7 percent bump up and so eventually, the Saudi government came to Jadawel, my client, and said why don't we just do a direct lease, because it will be a lot easier and plus we won't have to pay the 7 percent and our client was agnostic on the issue because they will get their lease payments regardless. It really didn't matter."

However, those were submissions, not evidence, and do not assist Sheikh Mohamed in the present context.

39. Accordingly, I consider that the available documentary sources, namely the Arthur Andersen and Saba valuations (together with the contents of the Partnership Contract itself) are the most reliable source of information about the leasing position, and suggest that the Compounds had not been fully let on long-term leases at the time those valuations were prepared.

(g) Saba valuation of Ajwa

40. The Saba Ajwa report referred to detailed financial information that could only have been obtained from the company, for example "*Information and data covering the nature of operations and information about the historical and forecast financial position for ten years etc., which were furnished to it by the management*". However, Saba were unable to provide any reliable valuation for the company. The overview set out at the beginning of Saba's report stated:

> "As discussed in more detail in Section V of this report, and due to the fact that significant management assumptions were either inconsistent, unsupported or highly speculative in nature, we believe that these assumptions do not provide a reasonable basis for the prospective financial information, and as such, we were unable to apply the valuation procedures previously agreed with you (i.e. discounted cash flow) in a manner that would yield a meaningful indication of value.
>
> Accordingly, we are unable to, and do not conclude as to the fair value of 100 percent interest in the equity of Ajwa as of January 1, 1998."

(h) March 1999 leases of Compounds E and F

41. In March 1999 MODA entered into two leasing and services contracts with Jadawel in respect of Compounds E and F. The leases were for a minimum period of 12 years. The contracts indicated that MODA was represented by Prince Abdulaziz's uncle and Jadawel was represented by Sheikh Mohamed. The preamble to lease GAD-E 9901, in respect of Compound E, stated:

> "Whereas the "lessor" had constructed and built an integrated residential city in the Eastern Province, Kingdom of Saudi Arabia (called Al Jadawel City and referred to hereinafter in this contract as the complex) which has specially been constructed for the accommodation of the employees of the contractors of the military sales and the employees of the Royal Saudi Air force as decided by the Ministry of Defense and Aviation (the lessee), the complex consists of many supporting facilities for the provision of miscellaneous services to the occupants of the said complex, and based upon the Royal Decree no A and AB dated 26/9/1419H … an agreement has been reached between the lessee and the lessor on this day 8 Dhu Al Haja 1419I corresponding to 25 March 1999 …"

(i) MBI initial refinancing

42. Thereafter, the MBI group took various steps towards, and ultimately achieved, a refinancing. The documents available at trial about this were, I was informed, obtained from proceedings in New York commenced in 2014 in which MBI International Holdings Inc and Jadawel sued Barclays Bank Plc. These documents indicate that the following steps occurred.

i) In December 2000 two Saudi legal instruments, 'hawalas', were executed which in substance assigned rental income streams from Jadawel to a special purpose vehicle, Compound Lending Corporation ("***CLC***"). One hawala related to Compound E and the other to Compound F.

ii) A Deposit Agreement was entered on 12 March 2001 between CLC, MBI International Inc. and The Bank of New York, appointing the bank as recipient of the lease payments.

iii) On 14 June 2001, CLC and the banks entered a "*Bridge Facility Agreement*". This document was not available at trial but is mentioned in the Term Facility Agreement and Cash Collateral Agreement mentioned below. It appears to have been a bridging facility in respect of the MBI group's existing debt of US$450 million, pending the entering of the Term Facility Agreement.

iv) Also on 14 June 2001, a Cash Collateral Agreement and a Deed of Assignment were entered into. These granted security to Dresdner Bank Luxembourg SA, as Security Trustee, over the cash and an assignment in respect of the rights transferred under the hawalas, to secure the Bridge Facility Agreement. The recital to the Cash Collateral Agreement recorded that *"The Assignor [CLC] will enter into a US$900,000,000 Term Facility Agreement"*.

43. As noted in (iii) above, by the time of the Bridge Facility Agreement on 14 June 2001, it was envisaged that a US$900 million Term Facility Agreement would be entered into with CLC. I return to that Agreement below.

(j) Settlement Agreement between Sheikh Mohamed and Prince Abdulaziz

44. On 15 June 2021, the day after the Bridge Facility Agreement was entered into, Sheikh Mohamed and Prince Abdulaziz entered into a Settlement Agreement. This provided as follows:

> "Preamble:
>
> Whereas the above two parties have previously concluded a contract between them on 10/11/1997 AD that arranges rights and obligations between them according to the annex (Attachment No. 1).
>
> Whereas, the above two parties decided to terminate this contract and make the necessary clearance between them by transferring the share and investment of the First Party [Prince Abdulaziz] in full to the Second Party [Sheikh Mohamed] in exchange for the amount of money indicated in this agreement. This amount is also a complete and final liquidation of all current and future rights and claims of the First Party with the Second Party. The Second Party further acknowledges that this agreement is also a liquidation of its rights to and that it has no present or future demands on the First Party in accordance with the following clauses: -
>
> First: The above preamble and Attachment No. 1 shall be deemed an integral part of this Contract and shall be complementary and construed to its provisions.
>
> Second: By signing this agreement, the commercial relationship established between the two parties under the contract dated 10/11/1997 AD ends (Attachment No. 1)

> Third: The Parties have agreed that the Second Party shall pay to the First Party an amount of 937.5 million riyals, equivalent to US$250 million in consideration for the transfer of the First Party's share and investment to the Second Party as a comprehensive and final release between the said Parties so that US$150 million will be paid on 17 July 2001 and the amount of US$100 million to be paid during the month of October 2001.
>
> Fourth: The amount referred to in Clause (iii) above shall be paid to the account number [the Royal Account] at the bank of _____ in the city of Geneva to (MR. Walter Gallon).
>
> Fifth: The Second Party acknowledges that if any future obligations of the aforementioned contract arise, it shall be bound by them alone and may not be referred to the First Party.
>
> Once the First Party receives the amount described in clause (iii) above, the First Party shall have received all its current and future rights towards the Second Party, and the Second Party shall be exempted from any financial claims in the future, whether from him personally or from his legal heirs, regarding any claim or rights in relation to this contract."

45. The effect of the Settlement Agreement was to unwind Prince Abdulaziz's investments in Jadawel and Ajwa, buying him out for a total of SR 937.5 million. That sum was substantially more than the "*less than 600*" million riyals that, on Sheikh Mohamed's oral evidence, the Prince had paid for the investments pursuant to the Partnership Contract.

46. Sheikh Mohamed or his team initially redacted from the disclosed copy of the Settlement Agreement the amounts of the settlement payments, and indeed the words in the Third article indicating that there was a second tranche payment at all, until shortly before trial, when HHJ Pelling ordered them to be unredacted. The account details for the payment to Prince Abdulaziz were un-redacted at the same time. I have, for reasons of privacy, replaced the account number with the words "*the Royal Account*", which was the term used at trial. The payment details and the Royal Account number are both potentially significant, given the details mentioned below about the payments which Sheikh Mohamed caused to be made on 3 January 2002.

47. A newspaper cutting from 23 July 2001 stated *"Jadawel repays SR1b loan before schedule"*. The article noted that the Jadawel International Group had repaid loans worth more than SR 1 billion (c. US $266.7 million) to the National Commercial Bank eight years ahead of schedule.

(k) MBI's Term Facility Agreement

48. A US$900 million Term Facility Agreement ("***the Term Facility Agreement***") was entered into dated 27 December 2001. This provided for a syndicate of banks to advance to CLC US$900 million, of which US$450 million was to be used to repay the Bridge Facility and various costs. The balance was to be used "*for the general investment purposes of the MBI Group, on terms that any funds so used will be paid*

only to members of the MBI Group". "*MBI*" was defined as "*MBI International Inc*", and "*MBI Group*" was defined as MBI International, Jadawel, JJW Limited and AJWA and their respective subsidiaries. The balance was to be "*credited to such account as the Company [CLC] may specify for application in compliance with Clause 3.1(b) (Purpose)"*.

(l) Receipt and payments on 3 January 2002

49. A few days later, on 3 January 2022, US$425,798,782.16 was received into MBI International's US Dollar Account with HSBC Republic Geneva from Dresdner Bank. It is common ground that this payment was received pursuant to the Term Facility Agreement, and evidently represented the balance of the US900 million after repayment of the bridging facility and various costs. On the same date, a variety of payments were made to accountants, consultants and lawyers who had been involved in work in connection with the Term Facility Agreement.

50. Also on 3 January 2002, MBI International paid from the same account:

    i) the Payment, i.e. the sum of US$30,000,000 transferred to Durango Management Limited ("***Durango***") that is the focus of the present claim, and

    ii) US$104 million to the Royal Account.

51. I consider in section (G) below the evidence about the setting up and financing of the Al Arabiya television channel, which on Sheikh Mohamed's case explains the Payment. I consider in section (H) below the evidence relating to the transfer instruction(s) pursuant to which the Payment was made. At this stage, in the remainder of section (F), I focus on Sheikh Mohamed's and Sheikh Majid's rival accounts relating to the evidence about the ownership and purpose of the Durango account into which the Payment was made.

(m) Durango and the 370 account

52. Durango was incorporated in the Bahamas on 17 January 2000. On 5 March 2000, Sheikh Majid instructed Credit Suisse Trust to purchase the entire issued share capital of Durango, and to appoint as the Board of Directors the entity Dizame Consulting S.A. ("***Dizame***"). By an agreement of the same date, Sheikh Majid entered into a management agreement with Dizame which provided that Sheikh Walid was authorised to give Dizame instructions. Shortly before 5 March 2000, Sheikh Majid had on 22 February 2000 appointed Sheikh Walid under a power of attorney giving Sheikh Walid full power to represent Sheikh Majid in every respect at Credit Suisse.

53. By request dated 22 March 2000, Durango opened a bank account with Credit Suisse Private Bank. The account opening forms, stamped by the bank, name Sheikh Majid as Durango's sole beneficial owner. Initial transfers to the account in March 2000 recorded, as the provenance of the funds, *"fortune de la famille"*.

54. A fax dated 2 June 2000 was sent to Sheikh Mohamed by Mr Osman Ali (or "*Othman Ali*"), identified as "*Group Chief Internal Auditor*", providing accounts details for Sheikh Walid's personal bank account with Saudi British Bank, for "*funds deposit for the Portugal Property Fund*". The Portugal Property Fund was an asset that Sheikh

Mohamed had purchased (as agent for his company, JJW) from Sheikh Walid pursuant to a Share Purchase Agreement entered into on 25 January 1999. The transfer had not gone smoothly and had led to litigation. In the version of the fax disclosed by Sheikh Walid, there is a hand-written note next to the bank account details: "*SW's [Sheikh Walid's] personal account. SW $ & does not go to Durango as to a [illegible] account*".

55. On 7 January 2002, the Payment reached Durango's account with Credit Suisse. The money was transferred on the same day, by instruction of Sheikh Majid, into a US$ account with Credit Suisse Private Bank, with an account number beginning 370 ("***the 370 Account***"). In his instruction to Credit Suisse, Sheikh Majid referred to Durango as "*my company*".

56. The 370 Account had been opened on 4 April 2000 by Sheikh Majid and another of his brothers, Sheikh Saud bin Ibrahim al Ibrahim. A faxed copy of the 7 January 2002 transfer instruction has a handwritten note *"confirm avec le client 7.1.2002 "excess liquidity""*. This was the only transfer of money into the 370 Account (apart from interest credits) during 2002, though the opening balance at the start of that year was more than US$83 million.

57. On 13 March 2002, two 'final' zakat payments in respect of 2001 were made from the 370 Account in the amount of US $700,842 each, referred to in a cash flow summary for the year as being for "SW" and "SM" i.e. Sheikh Walid and Sheikh Majid. Zakat is a tax paid on uninvested funds. On 4 December 2002 payments of US$1 million each were made, referred to as "*Prelim Zakat trf to SM*" and "*Prelim Zakat trf to SW*".

58. On 10 April 2002, Credit Suisse Trust sent a letter to Mr Ali of AGI concerning Durango, asking Sheikh Majid to approve the financial statements and Sheikh Walid to sign a management agreement granting him power of attorney.

59. In October/November 2002, Sheikh Majid entered into a fiduciary agreement for Cornerways Limited and Waves End Limited to hold the shares in Durango, attaching a list of persons to give instructions naming (only) Sheikh Walid.

60. On October 2002, US$20 million was withdrawn from the 370 Account and invested in Permal Cinco Notes, a financial investment product.

61. On 2 April 2003 Mr Ali sent to Credit Suisse Trust certain Durango documents that had been provided for signature, including Sheikh Majid's signature on behalf of Dizame and a specimen signature of Sheikh Walid as a person authorised to give instructions.

62. During 2003 there were significant payments into and out of the 370 Account. The payments out included two payments on 3 December 2003 of US $500,000 referred to in the summary as "*Partial Zakat for SM*" and "*Partial Zakat for Sheikh Walid*".

63. As at 28 June 2012, the 5,000 shares in Durango were held by two professional trustees for Sheikh Majid absolutely, according to Declarations of Trust of that date and a later summary as at 26 February 2014.

64. On 30 June 2012, Sheikh Walid was appointed a director of Durango.

65. On 17 February 2014, Sheikh Walid resigned as a director of Durango.

66. I deal later with Sheikh Majid's evidence about Durango and the 370 Account.

(2) Sheikh Majid's account of these events

67. In this section and section (3) below, I consider Sheikh Mohamed's and Sheikh Majid's account relating to the matters summarised in section (1) above. The views I express in these sections are at most provisional, because in order to form any final assessment it is necessary to have regard to the evidence as a whole, including in particular the evidence that I consider in section (G) below relating to the Al Arabiya television channel which, on Sheikh Mohamed's case, lies at the heart of the case.

68. I begin with Sheikh Majid's account, because he is the party who alleges that these events provide the explanation for the Payment.

69. A key criticism made by Sheikh Mohamed of Sheikh Majid's account is that it has changed over time. I therefore summarise the way in which Sheikh Majid has responded to the claim over time.

70. On 16 June 2015, Sheikh Mohamed's solicitors Zaiwalla & Co ("***Zaiwalla***") sent a letter before action, addressed to both Sheikh Majid and Sheikh Walid, alleging that *"[i]n late 2001, during a meeting"* Sheikh Majid asked Sheikh Mohamed for a loan of US$30 million to enable him and Sheikh Walid to establish an Arabic international satellite television news station; that following that request Sheikh Mohamed orally agreed to make the loan; and that pursuant to that loan agreement *"a transfer was executed on the 3rd January with a value date for 4 January 2002"* pursuant to which US$30 million was paid to *"you"* via the London branch of HSBC.

71. In response, Sheikh Majid on 8 July 2015 stated that the letter before claim was devoid of relevant information and supporting documents, in relation to a transaction 13 years previously, and asked for specified details of the alleged discussion, loan agreement and related matters (including details of any communications about the matter during the preceding 13 years). The letter also asked for certain details relevant to jurisdiction, and reserved the Defendants' position in that regard.

72. Zaiwalla provided certain further details by a letter of 27 July 2015, including the following information:

> "In mid-2001 there were discussions between our client and you and your brother about a plan to create an Arabic language 24-hour news broadcaster to compete with Al Jazeera. In August /September 2001, you both made a request to our client in earnest for initial funding through a loan of $30 million for this purpose. During December 2001 Sheikh Majid contacted our client by telephone at his London office requesting immediate funding by a personal loan of $30 million.
>
> As currently advised, this conversation occurred during late December 2001. Our client agreed to provide the requested loan for $30,000,000 and asked for details and particulars of where to transfer the· money. Soon thereafter a fax transmission was sent to our client by a Mr Ali, who we are instructed was then the

> Financial Controller of the ARA Group. Upon receipt of this fax, our client gave immediate Instructions to his bank in London to effect the transfer. Due to the high volume of year-end transactions, the instructions were not sent until 3 January 2002
>
> For your information, we attach a copy of our client's bank instruction: dated 3 January 2002. You will note that the bank client reference states *"Sheikh Walid and Majed Al Ibrahim".* We are advised as well that although the instruction was sent on the letterhead of MBI International & Partners the account from which the funds were transferred is owned by our client."

The letter enclosed a copy of what purported to be a transfer instruction for the Payment, to which I shall return in section (H) below.

73. Sheikh Majid sent a short response on 3 August 2015, rejecting Sheikh Mohamed's claim as being factually implausible and inconsistent with itself, and indicating an intention to challenge jurisdiction in the event of a claim.

74. Sheikh Mohamed suggests that Sheikh Majid was in this correspondence fishing to see what evidence Sheikh Mohamed had, and notes that the two responses provided no alternative explanation for the transfer of the US$30 million. Asked in cross-examination why the letter did not say that the Payment was a fee due to him, Sheikh Majid said he could not remember this correspondence and that it was probably a recommendation from a lawyer. Although the lack of a positive explanation at this stage in the correspondence perhaps counts slightly against Sheikh Majid's account, I do not find it altogether surprising given the lapse of time, and the possibility that in circumstances where jurisdiction was going to be challenged a tactical decision had been taken not to engage with the merits of the claim.

75. Sheikh Majid signed his first witness statement a few weeks later, on 10 November 2015, in support of the Defendants' challenge to the jurisdiction. He stated that the *"payment was, in fact, made to me in consideration of an advisory role I had undertaken in relation to an unrelated real estate venture in Saudi Arabia"* (§42). Sheikh Majid said he met Sheikh Mohamed in "*about early 1997*" in circumstances where Sheikh Mohamed *"was having difficulties in reaching agreement with the two Ministries. I had good business connections with both the Ministry of Defence and the Ministry of Finance and I was introduced to Sheikh Mohamed on the basis that I might be able to assist him"* (§45). He stated that he *"knew who at the Ministry of Defence and the Ministry of Finance Sheikh Mohamed would need to contact in order to progress particular elements of the transaction, and how Sheikh Mohamed should best present the proposal to the Ministries in order to ensure that it was received as favourably as possible"* (§46).

76. Sheikh Majid estimated that he met with Sheikh Mohamed *"about 20 times in total (over a period of about four years) and we also spoke a number of times by telephone to discuss the transaction. All of those meetings took place either at my home in Riyadh or at another house I own in Jeddah …"* (§48). He said *"reaching agreement regarding the lease transfers was both difficult and protracted. It took about two years of discussions with the Saudi Ministries"* and that MODA *"eventually signed the leases in early 1999"* (§51). The Payment was a "*one off consultancy fee*" (§56), which

Sheikh Mohamed would pay "*when any restructuring had been concluded*" (§53). Sheikh Majid said Sheikh Mohamed called him "*in late 2001 to confirm that the documents had all been finally concluded, that he was now in receipt of funds and he asked me to send to him the account details into which the payment of the fee should be made*" (§53).

77. Later, in his Defence dated 22 February 2019, Sheikh Majid characterised the fee as a contingent "*success fee*" rather than as a consultancy fee.

78. The account given in Sheikh Majid's witness statement for trial, his third witness statement dated 11 January 2023, corrected and supplemented in his fifth witness statement stated 19 April 2023, may be summarised as follows:

i) In around late 1997, Sheikh Majid was introduced to Sheikh Mohamed by Prince Abdulaziz. The Prince was the son of one of Sheikh Majid's sisters, who was married to the late King Fahd. Sheikh Majid and his nephew were close, and would meet most nights together with other family.

ii) The Prince sought advice from Sheikh Majid about a business arrangement the Prince had entered with Sheikh Mohamed. Sheikh Majid was told that this had involved the Prince investing SR 600 million (c.US$160 million) in Jadawel as a first tranche payment to acquire 50% of the company. The Prince said he had entered this arrangement on the faith of claims by Sheikh Mohamed that Jadawel had been valued in the region of SR 2.4 billion-2.8 billion. The intention was for the Prince to invest SR 1.2 billion for 50%.

iii) The Prince sought a second opinion, as he was "*having second thoughts*", and asked Sheikh Majid "*to have a more detailed review of the proposal*". Sheikh Majid agreed, and Prince Abdulaziz arranged for him to meet Sheikh Mohamed at Prince Abdulaziz's palace in Riyadh in the winter of 1997. This was a short introductory meeting.

iv) Sheikh Majid had a second meeting with Sheikh Mohamed at Sheikh Majid's Riyadh home. Sheikh Mohamed explained that he had constructed large compounds in Saudi Arabia, but he was currently struggling to lease them. He confirmed to Sheikh Majid that Jadawel was worth about SR 2.4 or 2.8 billion and he gave Sheikh Majid a copy of a valuation report to support that. Sheikh Mohamed said that, if he could successfully lease the compounds to the Saudi Government, the value of Jadawel would increase significantly beyond this figure: so this was a good opportunity not only for him but also for Prince Abdulaziz. Sheikh Mohamed was very clear that he was also looking for assistance from Prince Abdulaziz in securing the contracts with the Saudi Government, specifically MODA, to take the compounds on a long-term basis in the next few months.

v) Sheikh Majid looked at the Jadawel valuation report that Sheikh Mohamed had provided. He did not recall which firm had produced it, but did recall that it stated on its first page that it could not be relied upon. Sheikh Majid spoke to Prince Abdulaziz and suggested that they needed an independent valuation of Jadawel to assess whether the proposed investment was a good idea.

vi) As to the valuation report, Sheikh Majid continued (in his third witness statement):

> "15 I decided to approach Arthur Andersen given that they were one of the "Big Five" at that time and I knew one of the local partners, Faisal Al Sayrafi. I told Sh. Mohamed that I was doing this and said that the valuers may contact him or his team for further information. I made clear to Sh. Mohamed that this deal had to be seen as an arm's length transaction and therefore be justifiable on the figures.
>
> 16 I asked Osman Ali, who was in charge of my investments at my private office to instruct Arthur Andersen and I believe he also worked on this with his father Firasat Chowdry. In this regard, I have been shown [a] copy of valuation of Jadawel International Company prepared by Saba Abul Khair & Co (Deloitte Touche Tohmatsu), which appears to have been sent to me by Firasat Al Chowdry ... However, my clear recollection is that it was Arthur Andersen that we approached, as that is where Faisal Sayrafi was at that time.
>
> 17 Arthur Andersen's findings were delivered by way of a presentation - together with a copy of their report - at a meeting at Prince Abdulaziz's palace. I remember that Mr Al-Otaishan, Osman Ali, Firasat Chowdry, Sh. Mohamed and myself were all present at that meeting. My solicitors have searched for this valuation report, including speaking with the relevant member of my private office and attempting to contact Firasat Chowdry and Deloitte (into which Arthur Andersen in the Middle East was merged after its collapse). Unfortunately, these searches and enquiries have not identified the valuation report from Arthur Andersen.
>
> 18 From what I recall, Arthur Andersen's valuation of Jadawel was only 400 million Riyals; not the 2.4 or 2.8 billion Riyals that Sh. Mohamed had suggested. This appeared to come as a surprise to Sh. Mohamed, who argued that the valuation misunderstood certain issues and had failed to take into account certain elements and the potential value of the compounds, once they were let. There was then a lengthy discussion in which Sh. Mohamed argued, albeit calmly, with Arthur Andersen's valuation. However, by the end of the meeting, I recall that Sh. Mohamed had accepted that his valuation was not going to be agreed and that I would, therefore, have to discuss the significantly different position with Prince Abdulaziz."

vii) By the time of his fifth witness statement, Sheikh Majid had been shown a copy of the Partnership Contract, which refers to a valuation by Arthur Andersen having been attached to it. Sheikh Majid said that, having considered the matter again, it seemed to him that the Saba valuation must have been the valuation of Jadawel *"that we instructed"*. Whilst he believed it had been prepared by

Arthur Andersen, he must (he said) have been mistaken as a result of the length of time that had passed and his recollection of a meeting with Arthur Andersen at which Mr Sayrafi was present. Sheikh Majid confirmed that, aside from his role advising Prince Abdulaziz, there was no other reason why he (Sheikh Majid) would have wanted to know the value of Jadawel.

viii) The independent valuation of Jadawel came out as a fraction of the sum which had been represented to the Prince; in his third witness statement, before having seen the Saba valuation, Sheikh Majid recalled the figure of SR 400 million (see the evidence quoted above).

ix) Sheikh Majid's advice to the Prince was that he should not pay any more towards Jadawel, as it was simply not worth the SR 600 million that Prince Abdulaziz had already paid. At that time Jadawel needed to enter leases for its huge compounds with the Saudi government, and Sheikh Mohamed, having fallen out with Prince Turki, lacked a sponsor. As a result:

> "22 Without a high-level government contact it seemed to me that time would catch up with Sh. Mohamed and the compounds and that Jadawel would become insolvent. If that happened, neither Sh. Mohamed nor Prince Abdulaziz would receive anything. I therefore suggested to Prince Abdulaziz that he should instead look at a one-off deal whereby he helped Sh. Mohamed, at arm's length, with his compounds and if, as a result, Sh. Mohamed was able to secure new loans on the completed leases he could then repay Prince Abdulaziz his 600 million initial investment plus an uplift (I suggested something in the region of 50 to 60%). Prince Abdulaziz would be giving up the prospect of greater profits if he retained an interest in Jadawel and the leases were agreed with MODA, but my view was that there should be a clean break so as to protect Prince Abdulaziz's reputation. Prince Abdulaziz agreed to consider this type of arrangement and asked me to liaise with Sh. Mohamed to determine what could be agreed.
>
> 23 I would act as a conduit between Sh. Mohamed and Prince Abdulaziz, and other Ministers and officials. As a result of my regular social contact with Prince Abdulaziz, I could give Sh. Mohamed very regular access to Prince Abdulaziz, that would far exceed the frequency and quality of any communications that Sh. Mohamed could achieve otherwise. I and Prince Abdulaziz were not unique in this regard, but we were willing to assist, and I am not aware of anyone else being willing to help Sh. Mohamed in the same way.
>
> 24 I do recall telling Prince Abdulaziz that I would ask Sh. Mohamed for a success fee (over and above the repayment of his investment) if we could secure the completion of the leases. Prince Abdulaziz was happy with that approach. As with Prince Abdulaziz, I would only receive any money in the event that Sh. Mohamed was in a position to repay Prince Abdulaziz.

> 25 After my discussion with Prince Abdulaziz, I again met with Sh. Mohamed at my house in Riyadh where I told him that, based upon the Jadawel valuation, I had advised Prince Abdulaziz that he should invest no further money in Jadawel and, in fact, Prince Abdulaziz now wanted the return of his original 600 million Riyal investment. Sh. Mohamed was clearly disappointed, but he was open with me that he did not have the money to repay Prince Abdulaziz.
>
> 26 I therefore made the proposal I had discussed with Prince Abdulaziz that, given Sh. Mohamed's financial position, in return for assisting Sh. Mohamed with MODA, if the lease negotiations were successful, he would (i) repay Prince Abdulaziz his 600 million Riyals; (ii) pay Prince Abdulaziz a further 360 million Riyals; and (iii) pay me a US$30 million success fee.
>
> 27 The figure of USD$30 million was not negotiated between me and Sh. Mohamed. I considered it an appropriate figure. I proposed it and he accepted it. Given what was on the line for Sh. Mohamed, that did not surprise me. Had I said a higher figure I expect he would have agreed that as well.
>
> 28 I made clear to Sh. Mohamed that such payments were only ever to be made if the leases were successfully completed with the Saudi Government - as I knew that was the only way Sh. Mohamed would ever be able to pay anything. …" (Majid 3rd witness statement)

x) There was another company, Ajwa, which formed part of the deal; the Prince's investment also obtained for him a share of 50% in that business. However, that was not understood by the Prince (or therefore Sheikh Majid) to be a material part of the transaction; the main focus and interest was on Jadawel (Majid 5th witness statement).

xi) The granting of the leases took some time, and the subsequent refinancing took a further two years. Sheikh Majid said that he and Sheikh Mohamed met on a number of occasions (he would estimate 15-20 in total), at Sheikh Majid's houses in Riyadh and Jeddah, each meeting lasting at least an hour and often far longer. The discussions were in Arabic. Sheikh Mohamed would sometimes bring documents to show Sheikh Majid, such as a letter from MODA, but Sheikh Majid did not keep any documents.

> "After each meeting, with Sh. Mohamed I would relay whatever message I had been asked to relay to Prince Abdulaziz, which I would do at our next evening meeting. I recall I would also then sometimes, and as necessary, contact a relevant Minister or official after discussing this with Prince Abdulaziz. Without that level of communication, I am sure the delays in Sh. Mohamed negotiating the leases with MODA would have been much longer and the negotiations themselves much more difficult,

> especially as the financial position of Jadawel was declining all the time. If the delay had been too great there may never have been an agreement reached between Jadawel and MODA, because Jadawel could have collapsed. These events are all a very long time ago and I had no reason to think about them between 2002 and 2015, neither were they particularly important to me at the time. Therefore, I cannot now recall the exact detail of the discussions I had in relation to the leases or who they were with." (Majid 3rd witness statement)

xii) Sheikh Mohammed paid Sheikh Majid his fee in January 2002, and around that time Sheikh Majid confirmed with the Prince that he had also been paid. Sheikh Majid believed that he provided bank details to Sheikh Mohamed in late 2001 for the Payment to himself and the payment to the Prince on a piece of paper. He added, in his fifth witness statement:

> "Whilst I believe that I gave Sh. Mohamed my bank details and Prince Abdulaziz's, this is my belief to the best of my recollection, which is not certain. When making that statement I was aware that Sh. Mohamed said that he received a fax with the bank details of Durango Management Limited on, and that Osman Ali, formerly of my private office, has said that a fax had, from his recollection, been sent by him or someone else in my private office. Despite that, the best of my recollection was and is that I handed my details for the payment to Sh. Mohamed and that I also gave him Prince Abdulaziz's bank details at the same time. It is not a certain recollection, but it is what I recall and is what happened to the best of my belief and recollection."

xiii) It was confirmed a few days later that the two payments had been made, and thereafter Sheikh Majid and Sheikh Mohamed had a dinner in Riyadh to celebrate the successful transaction.

79. Sheikh Majid gave some more detail in cross-examination about the services he provided to Sheikh Mohamed in return for the agreed fee:

> "A. I did -- I did provide the services between Mr Al Jaber and Prince Abdulaziz.
>
> Q. The service is now between Prince Abdulaziz and Sheikh Al Jaber; is that what you are saying?
>
> A. Yes. Yes, I was coordinating between the two.
>
> Q. Between the two of them; yes?
>
> A. Yes.
>
> Q. Where does the Ministry of Finance come in relation to the dealings between Sheikh Mohamed and Prince Abdulaziz?

A. Well, Sheikh Mohamed would tell me about, like, update me and give me the obstacles that he faces with whichever, I mean, ministry. I deliver to Prince Abdulaziz and come back with a direction."

(Day 7/146/1-14)

"A. I was brought to this -- to this investment from Prince Abdulaziz to evaluate the company. I did evaluate the company. Then I recommended to Prince Abdulaziz that he should be out. And this is what happened. And I was coordinating between Mr Al Jaber and Prince Abdulaziz in concluding this -- in concluding these leases."

(Day 7/147/17-24)

"Q. In relation to the advisory services which you allege that you were providing for Sheikh Mohamed; were you talking to Prince Abdulaziz or to the ministries, or both?

A. I was talking to Prince Abdulaziz. I take whatever Sheikh Mohamed is conveying on his difficulties with the two ministries. I conveyed the message to Prince Abdulaziz and came back to Sheikh Mohamed with a direction.

Q. I see. So then, you are saying that you didn't speak to the ministries at all; is that right?

A. There was one occasion where I did speak to one of the ministers.

…

Q. A minister? Yes.

A. There was an occasion when I did speak to one of the ministers, yes.

Q. Well, let's investigate that a little further. In relation to the Ministry of Defence, there was only one minister, wasn't there, Prince Sultan? Prince Abdulaziz's uncle.

A. Yes.

Q. Was he the person that you say you spoke to?

A. Yes.

> Q. Why would you be speaking to the uncle of Prince Abdulaziz yourself, when Prince Abdulaziz could himself do that more conveniently? After all, it was his uncle, wasn't it?
>
> A. Actually, there was one occasion when Prince Sultan was visiting his brother, the late King Fahd, and that was a frequent visit that he usually does. And on his way out, I walked him up to his car and I delivered a message to him; it was a reminder message from Prince Abdulaziz when Prince Abdulaziz was out of the country.
>
> Q. So it was a reminder message to the Prince, to Prince Sultan; that is the only occasion?
>
> … A. Yes."
>
> (Day 8/3/7-24 – 4/11-22)

80. Sheikh Majid was taken to the evidence, quoted above, in § 33 of this third witness statement about contact with Ministers and officials, which it was suggested gave a different impression from his oral evidence. It is necessary to quote the ensuing exchanges at some length:

> "Q. ….Now, that is a completely different picture, isn't it, from what you are telling the court now? Do you agree
>
> A. That is exactly what I am telling the court.
>
> Q. … You haven't told us about any contact with any official at all, have you, today? You have just told us about contact with a minister?
>
> A. That was the contact with the minister. There were contacts with the officials. I really cannot recall names right now, but there would have been the people that are working with Prince Abdulaziz, the government employees that works with Prince Abdulaziz.
>
> …
>
> A. They are working with Prince Abdulaziz in his office.
>
> …
>
> Q. Why would you [] be contacting an official in Prince Abdulaziz's office with a view to ensuring that -- or preventing delays occurring in Sheikh Mohamed's negotiation of the leases himself with the Ministry of Defence? It doesn't make any sense, does it?
>
> A. It does. I do send them, sometimes, papers regarding Jadawel. Sometimes after I finish with Prince Abdulaziz I

deliver to them messages from Prince Abdulaziz regarding the same issue.

Q. Let's just go on a little bit further:

> "Without that level of communication, I am sure the delays in Sheikh Mohamed negotiating the leases with MODA would have been much longer."

You were not discussing with officials at MODA at all, were you?

A. No, that wasn't officials of MODA. … Aside of the occasion that I talked about.

Q. You go on:

> "The negotiations with MODA themselves, much more difficult."

So your discussions, if you had any, with officials in the private office of Prince Abdulaziz had nothing whatsoever to do with MODA, did it?

A. That was to deliver messages from either Prince Abdulaziz or from Mr Al Jaber to Prince Abdulaziz.

…

Q. Let me see if I have it correct. You had no contact with officials at MODA at all, first of all; do you agree?

A. I agree.

… Aside of the [inaudible] that I talked about.

Q. The only contact that you had with any minister was this one single occasion -- which you now recall for the first time, I suggest -- with Prince Sultan.

A. Correct.

Q. And that was the only occasion when you had a discussion with any minister at all?

A. Yes.

Q. Right. What you were doing there was passing on a reminder; is that right?

A. A reminder message from Prince Abdulaziz, yes.

Q. A reminder from the Prince to his uncle?

A. Correct.

Q. Yes. How was Sheikh Mohamed being helped by simply you reminding the defence minister of something his nephew had said to him?

A. Sheikh Mohamed was helped through Prince Abdulaziz. That was the help he has got, and through myself, to put the whole thing on a fast track for Sheikh Mohamed. And time was clearly important for Sheikh Mohamed -- because his company was going down.

Q. … What you were doing was in fact acting -- in the one instance that you are able to identify, you were acting as a messenger for Prince Abdulaziz, weren't you?

A. I was passing the messages on a fast track for Sheikh Mohamed, otherwise it would have been -- it would have took him a very long time to lease those compounds. Because Prince Abdulaziz was a very busy person, there was no way for Sheikh Mohamed to reach out to him that fast.

Q. So whatever that message was that you were reminding Prince Sultan, the minister, about, it was something that had been initiated by Prince Abdulaziz towards his uncle previously?

A. Correct.

Q. Correct. You'd had no hand in that earlier message at all?

A. No,

Q. No. Your role, therefore, was really nothing more, I suggest, than the small role of being a messenger from Prince Abdulaziz to his uncle as a reminder?

A. That incident, yes.

Q. Yes. Well, you haven't told us of any other, and you told us that was the only occasion when you spoke to any minister; do you agree?

A. Yes, I agree. Aside from Prince Abdulaziz, I agree."

(Day 8/5/12-10/5)

81. The gist of the above evidence is that the help which Sheikh Majid provided to Sheikh Mohamed centred on his connection with Prince Abdulaziz, extending also to dealings with employees in the prince's office and, on one particular occasion, a reminder given to the defence minister, Prince Sultan (who was Prince Abdulaziz's uncle).

82. Sheikh Majid asked for the Payment to be made to Durango. He said in his witness statement that he regularly used such an account/company to provide an extra layer of anonymity and privacy over his personal bank details. Durango was a company he used, and Sheikh Walid had no interest in it. Sheikh Majid added:

> "42 … As a result of these proceedings, I have been made aware that Sh. Waleed was an authorised signatory on behalf of Durango, from around 2002. I do not recall this arrangement being put in place but it would not be unusual for me to ask my brother to act in this type of role. At that time documents usually needed to be signed in person, rather than electronically, and therefore, it was often convenient to have an additional signatory. The fact that Sh. Waleed was an authorised signatory did not mean that he had any interest in, or knowledge of, funds in Durango' s bank account and he did not.
>
> 43 I also understand that documents show that Sh. Waleed was a director of Durango from 2014, more than 10 years after the relevant payment was made. Again, I have no recollection of this but it is perfectly possible that I asked Sh. Waleed to be a director at some point. However, I do not believe this means he would have had any interest in funds held in Durango' s bank account. I was the beneficial owner of the company."

83. In his third witness statement, Sheikh Majid said Durango was used *"to provide an extra layer or degree of anonymity"*. In his oral evidence he said "*I managed money for the family and financial investments"* and that it could have been the case that money came into Durango's account because it was going to be distributed amongst the family bank accounts. He also said *"Sometimes I sent money to Durango, then it would be distributed to my account and other accounts of my family, which is the four brothers"*. An example from March 2000 of a receipt of funds into the account on Sheikh Majid's order was noted by the bank as being *"pour être distribués sur les comptes de la family chez nous dans le but d'augmenter les avoirs"* (to be distributed to family accounts with us in order to increase the assets.)

84. In his second witness statement, Sheikh Majid stated that after the Payment had been received into Durango's account with Credit Suisse on 7 January 2002, it was transferred on the same day to the 370 Account. That was, Sheikh Majid said, one of his current accounts, which he used to make monetary investments in various financial instruments. It was not a joint account and no-one else had any interest in it. The opening balance on 3 January 2002 was approximately US$83 million and the closing balance at the end of the year US$35.7 million. There was no payment out or series of payments out, in a sum similar to the US$30 million Payment, to any company related to Al Arabiya, MBC or Sheikh Walid. The Payment remained virtually untouched in the 370 Account until mid-October 2002 when US$20 million of the funds were invested in the Permal Cinco note. Permal Group is a leading global alternative asset manager (or Hedge Fund), part of the Legg Mason group, with no connection to Al Arabiya, MBC or Sheikh Walid.

85. Sheikh Majid was cross examined on the basis that the monies in the 370 Account with Credit Suisse were held jointly with Sheikh Walid. The main basis for that allegation

was the use of the account to make zakat payments on behalf of both Sheikh Majid and Sheikh Walid. The suggestion was rejected by Sheikh Majid, who said the use of money from this account for zakat was fortuitous – the payments could have come from any account – and that this account was his. That is borne out to a degree by the fact that, whilst the final zakat payment for 2001 was made from the 370 Account in 2002, the final zakat payment for 2002 was not paid from the 370 Account in 2003. There was also this exchange as part of Sheikh Majid's oral evidence:

> "Q. Again, what I suggest to you is that the account that was being used, 370, was one which was being generally available, or made available, as family money between you and your brother Walid, for the discharge of whatever liabilities either of you had. It didn't matter to you, it was all family money; do you agree?
>
> A. Not true. That account is mine -- is a personal account. I do transfer amounts there to be invested, and some of them could have been for some of my brothers. And I do transfer them there, and from there they are invested. And that is one of the investment accounts."

86. Sheikh Mohamed also relies on the fact that Sheikh Walid was granted a power of attorney in relation to Durango. However, (i) Sheikh Walid explained that that was merely for administrative convenience, saying he and his brothers often appointed each other as 'signing attorneys' for reasons of practicality; and (ii) there is no evidence that Sheikh Walid made any relevant use of the power of attorney in 2001-2003. So far as the evidence reveals, Sheikh Walid was not a director (at the relevant time) or owner of Durango, and did not actually receive any funds representing any part of the Payment.

(3) Sheikh Mohamed's account of these events

87. Sheikh Mohamed responded to Sheikh Majid's account of these events, in his seventh, ninth and tenth witness statements. In summary, Sheikh Mohamed said as follows.

i) He had a direct personal relationship with Prince Abdulaziz. If he needed anything, he would simply ask him. They had a partnership and their interests were aligned. However, their mutual business was concluded before Sheikh Mohamed met Sheikh Majid, and Sheikh Mohamed never needed a conduit to communicate with the Prince.

ii) The Compounds had been designed and built for MODA's own specific purposes, the designs being the result of close cooperation between Jadawel, MODA and the US FMS programme (as reflected in the recitals to the leases). No other developers had been able to pre-finance and build at such a scale. The contracts were negotiated by Sheikh Mohamed's own team, led by himself, and he enjoyed access to the highest levels of officials in MODA throughout the period.

iii) Sheikh Mohammed never discussed the leasing of the Compounds with Sheikh Majid, with whom he did not have a close relationship, nor did he need or take Sheikh Majid's advice about them or any restructuring of his finances. The

Compounds had been his (Sheikh Mohamed's) own main business as a developer since the late 1980s, more than 15 years before he met Sheikh Majid.

iv) The restructuring was the Saudi government's own initiative, and for its own benefit rather than Jadawel's, in order to save management fees. It needed no encouragement to agree to the restructuring. The FMS programme had been charging MODA cost plus fees of up to 20% for the Compounds, at a time when the oil price was on average only US$10 a barrel. MODA therefore wanted an agreement direct with Jadawel.

v) No approvals were necessary from the Saudi Ministry of Finance ("***MOF***"). MODA was the party to the leases and the hawala. The lease contracts were personally signed by Prince Abdulaziz's uncle and approved by a Royal Decree. The MOF had only an ancillary role as to payments, and its involvement in the hawala was simply to satisfy the lenders. The leases and hawala were signed and sealed at the highest level of MODA and there was thus no requirement for further approvals from the MOF. Sheikh Mohamed arranged the transaction himself, with the help of top law firms such as White & Case and Baker Mackenzie. MOF was required to pay under the leases by the Royal Decree and therefore had no discretion in the matter.

vi) Sheikh Majid was not involved in the exit arrangements for Prince Abdulaziz's investments in Jadawel and Ajwa. Sheikh Majid's lack of involvement is reflected in the facts that (a) Sheikh Majid was clearly unaware that Prince Abdulaziz had invested not only in Jadawel but also in Ajwa; (b) because he was unaware of the Ajwa element to the partnership, Sheikh Majid was forced to suggest, wrongly, that Sheikh Mohamed paid out Prince Abdulaziz with an uplift of 50-60%; (c) Sheikh Majid's account suggests that he became involved in assisting Sheikh Mohamed around the end of 1997, even though under the Partnership Agreement the last tranche of SR 400 million *"was to be paid by 30 December 1997"*; (d) Sheikh Majid was wrong to have suggested that he instructed Arthur Andersen to report on the value of Jadawel; and (e) Sheikh Majid must have been wrong to suggest that he gave Sheikh Mohamed Prince Abdulaziz's bank details in late December 2001, because the Settlement Agreement itself set out Prince Abdulaziz's bank details and *"as the agreement shows, the payment was made in July 2001"*.

vii) Neither Sheikh Mohamed nor his companies were in financial difficulties *"in 1999-2002".* On the contrary, they achieved what CSFB described as a "*pioneering securitisation*" of US$320 million (SR 1.2 billion) for one Compound alone; the scale of financing showed how highly the lending banks valued the Compounds; and, as reported in Arab News on 23 July 2001, Jadawel paid loans for over SR 1 billion eight years ahead of schedule, and was highly ranked in the Top 100 Saudi companies.

viii) As to Durango's involvement, Sheikh Mohamed alleges that Durango's bank details were faxed to him by Mr Ali, on behalf of both Sheikh Walid and Sheikh Majid, presumably on the basis that Sheikh Walid was a director of Durango.

(4) Provisional evaluation

88. I assess these competing accounts only on a provisional basis at this stage. As noted earlier, before forming any firm views it is necessary also to consider the events relating to Al Arabiya (which I consider in section (G) below) because those events provide the explanation for the Payment on Sheikh Mohamed's case.

(a) Saba valuations

89. Sheikh Majid's version of events, summarised in section (2), above is significantly corroborated by the existence of the Saba valuations of Jadawel and Ajwa, and the fact that they were sent to Sheikh Majid at all. He had no prior involvement in either company, and no cogent reason has been suggested why he should have received the valuations other than in connection with some role involving Prince Abdulaziz, which is consistent with Sheikh Majid's recollection. There was a faint suggestion made at trial that Prince Abdulaziz or perhaps Sheikh Walid was looking into the companies' value and may have done so using the corporate structure and resources of AGI, but that was speculative and does not adequately explain the sending of the valuations direct and specifically to Sheikh Majid.

90. Sheikh Majid's knowledge of the existence and general tenor of the earlier Arthur Andersen valuation also provides some support for his account: there was no evidence that its existence had been made public. It was mentioned in the Saba valuations, but the valuation itself was not produced by Sheikh Mohamed until the eve of trial. Sheikh Majid's recollection that the Arthur Andersen valuation stated on its first page that it could not be relied on rings true as a blunt paraphrase of the disclaimers quoted in § 22 above.

91. The fact that the Saba valuations were obtained only a few months after Prince Abdulaziz entered into the Partnership Contract and made his initial investments in Jadawel and Ajwa also tends to support the view that the Prince had concerns about the investments and wanted some independent scrutiny of them. Sheikh Mohamed's evidence was that he was unaware that the Saba valuations were being done. However, that evidence is in my view implausible. The valuations indicate that detailed financial information, projections and assumptions were provided to Saba by the companies' managements. It seems very unlikely that the management would have been willing to provide this information to a third party without the knowledge and permission of Sheikh Mohamed, the companies' founder and 50% shareholder.

92. The contents of the Saba valuations are also consistent with Sheikh Majid's account, because they indicated that the companies were worth much less than the valuations on the basis of which Prince Abdulaziz had invested pursuant to the Partnership Agreement. They would have provided a reason for Prince Abdulaziz to reconsider, and potentially seek to exit from, the investments.

93. Sheikh Mohamed suggests that the Saba valuations were not based on information provided by him, relying on a passage in Sheikh Majid's oral evidence in which Sheikh Majid contrasted them with the earlier Arthur Andersen valuation *("the whole thing was based on projection that the management gives the others")*. Sheikh Mohamed also said in oral evidence about the Saba valuations that *"this horrible information they have, it shows that is not from the company"*. He submitted that the valuations appear

to be little more than desktop valuations, containing basic errors, and that if Saba did have any information from the companies it may have come from Prince Abdulaziz himself, perhaps liaising with employees of the company. There is, however, no adequate reason not to take at face value the statements in the Saba valuations about the management information on which they have relied. The notion that Prince Abdulaziz himself may have provided the information attributed to the management, perhaps liaising with company employees himself, is entirely speculative and inherently unlikely given his role as a passive investor. The correctness or otherwise of the valuations is beside the point: their significance is that they show that a valuation exercise was done, and explicitly reported to Sheikh Majid, and that Saba's valuations of the companies were much lower than the values assumed in the Partnership Contract. That provides a reason why Prince Abdulaziz may well have wished to exit from the investments.

94. Counsel for Sheikh Mohamed suggested at trial that Prince Abdulaziz may have arranged the valuations as part of a review of his shareholdings in connection with his imminent appointment in May 1998 as a Minister of State. However, there was no evidence of any requirement for such a review, nor any output of any such review (such as a declaration of Prince Abdulaziz's investments). Moreover, it is unclear why any such review would have required the companies to be valued, why further valuation for Jadawel would have been needed when Prince Abdulaziz already had the Arthur Andersen valuation, and why Sheikh Majid would have had any involvement in the process. Sheikh Majid in oral evidence said the issue was never discussed. In my view Sheikh Mohamed's theory is mere speculation.

95. The timing of the Saba valuations is consistent with Sheikh Majid's evidence that the deal pursuant to which it was envisaged that Prince Abdulaziz would exit from Jadawel and Ajwa *"was definitely agreed in 1998"*. It also accords with the fact that the long-term leases of Compounds E and F were not entered into until 1999. Sheikh Mohamed contends that, as Prince Abdulaziz remained in partnership with him for another three years, until the Settlement Agreement in 2001, he did not appear to have been keen to withdraw from the investments (even though, under Article 11 of the Partnership Contract, he had a right at any time to terminate the agreement and recover the money he invested). Thus, Sheikh Mohamed submits, it is much more likely that the upshot of the Saba valuations was that Prince Abdulaziz decided to keep his investments in Jadawel and Ajwa, contrary to Sheikh Majid's version of events. However, I find it perfectly plausible that, rather than making an immediate demand for repayment (which Sheikh Mohamed or his companies might not have been able to fulfil), Prince Abdulaziz agreed to the plan for assisting Jadawel with its leasing and a refinancing, which would then provide funds for the Prince to be repaid with an uplift (as ultimately occurred).

(b) Payments under the Partnership Agreement

96. Moreover, the fact that – as eventually emerged at trial – Prince Abdulaziz in fact paid only SR 600 million of the sums due under the Partnership Agreement tends to support the view that Prince Abdulaziz was indeed dissatisfied with his investments in Jadawel and Ajwa as early as 1998. In that context, Sheikh Mohamed's contention that Sheikh Majid is unlikely to have begun assisting Sheikh Mohamed around the end of 1997, when the Partnership Agreement provided for the last tranche of SR 400 million to be paid by 30 December 1997, can be seen to be misplaced (if not misleading). As it

turned out, Prince Abdulaziz did not make that payment, and that non-payment tends to corroborate Sheikh Majid's version of events rather than Sheikh Mohamed's.

(c) Prince Abdulaziz's exit from the investments

97. Sheikh Majid was cross-examined at one point to the effect that 2001 was a strange time for Prince Abdulaziz to exit from his investment:

> "Q. … by the time we come to mid-2001, Jadawel was actually doing rather well. Do you agree? You had obtained --
>
> A. Yes. Yes, I agree.
>
> Q. So this was rather a bad moment then, from the point of view of your nephew, to end the partnership and simply settle for the figures set out in the settlement agreement.
>
> A. The settlement agreement was done in 1998, so my nephew would not go back and say: no, I am not going to settle now because we didn't write. …"

I find that answer perfectly plausible.

98. Sheikh Mohamed suggests that the real reason why Prince Abdulaziz wished to exit from his investments in Jadawel and Ajwa is likely to have been unrelated to any problem over their value. Rather, he suggests, it related to his appointment in 2001 to an even more senior position in the Saudi government. Sheikh Mohamed refers to Sheikh Majid's evidence that *"[f]rom early 2000, [Prince Abdulaziz] was made head of the Council of Ministers"* (corrected in oral evidence to "*head of the chambers … of the Council of Ministers*"); that it was a "*very senior appointment*" politically in Saudi Arabia; and that the prince was important even before that. Sheikh Mohamed submits that Prince Abdulaziz was therefore a "*Politically Exposed Person*" within the Financial Action Task Force definition, and cites the Task Force's Recommendation 6:

> "Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures:
>
> a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.
>
> b) Obtain senior management approval for establishing business relationships with such customers.
>
> c) Take reasonable measures to establish the source of wealth and source of funds.
>
> d) Conduct enhanced ongoing monitoring of the business relationship"

99. The suggestion appears to be that the banks involved in the securitisation would have had to investigate Prince Abdulaziz's assets pursuant to that Recommendation, and that

that in some unspecified way made it necessary or appropriate for him to divest himself of his investments in Jadawel and Ajwa. There was no evidential or logical basis for this entirely speculative suggestion.

100. Sheikh Mohamed simultaneously advanced in his closing a different theory about Prince Abdulaziz's exit from the investment, namely that Sheikh Mohamed himself wished to be able to say, in the context of the securitisation, that he was the sole beneficial owner of the companies. He said in oral evidence:

> "The agreement of the exit was a bond agreed between the two parties without anybody knows. For me, my Lord, at the signing of full securitisation with four banks on December, I have to put my hand being under oath that I am the owner 100 per cent and there are no high political person a partner with me. That agreement was between me and the Prince, Majid and anybody on earth knows about that. Prince was not seek to exit, I am the one who has convinced him."

101. I find that evidence entirely implausible. First, there is no documentary support for it, as would reasonably have been expected. Secondly, the Settlement Agreement was signed only on 15 June 2001. By then, the Bridge Facility and related contracts had already been executed. If it really had been the case that the lending banks were concerned about the ultimate beneficial ownership of Jadawel, then it would no doubt have been raised in the due diligence process long before that. It is absurd to suggest that the matter would be addressed only by asking Sheikh Mohamed to declare or sign some form of confirmation at the very last minute, at the completion meeting in December 2001. Thirdly, the borrower under the facility was not Jadawel but a special purpose vehicle, to whom the right to the rent under the Compound leases was assigned. Overall, this evidence strikes me as having been invented by Sheikh Mohamed while giving oral evidence.

(d) Leasing of the Compounds

102. Some support for Sheikh Majid's account of events is also provided by the fact that, according to the Arthur Andersen and Saba valuations, the compounds were not fully let by 1998 – and certainly not on long-term leases – whereas new long-term leases were entered into in 1999. Sheikh Majid's oral evidence was that, according to his recollection, (as he variously put it) *"the compounds were not leased", "compounds were not leased"* and *"there was compound, or two compounds, that were not leased"*; and he referred to a visit he made with Sheikh Mohamed to one compound in Riyadh that was empty. On a fair reading of his evidence as a whole, Sheikh Majid was not suggesting that <u>all</u> the Compounds were unlet, but that one or two of them were, and that one was empty when he visited it. That is consistent with the contents of the valuation reports. These indicate that there were some unlet Compounds, and that neither of the largest Compounds, E and F, had long-term leases. Long-term leases seem likely to have been necessary in order to achieve the securitisation and to secure Jadawel's long-term future. The leasing position is accordingly consistent with Sheikh Majid's recollection that Sheikh Mohamed wished to have some assistance in relation to the letting of the compounds. Indeed, as already noted, the Partnership Contract explicitly provided for Prince Abdulaziz to provide such assistance. The parts of the Britt deposition referred to in section (F)(1)(f) above, albeit that they contain an element

of speculation, provide some further support for the view that the Compound leases were to a degree precarious. It is relevant to note in this context that Sheikh Mohamed disclosed only very limited documentation about the leasing and refinancing of the Compounds.

103. Sheikh Mohamed makes the point that parts of Sheikh Majid's account, such as the suggestion that Barclays had reportedly used a "g*overnmental fixer*" to help secure repayment of its loan ("*approaching a Saudi prince and paying millions to a company he owned for advisory services*"), and the fact that in due course new direct long-term leases were entered into in 1999 by the Saudi government, was information publicly available from the New York proceedings or news reports; so the fact that Sheikh Majid knew such information does not support his account. The claimants in those proceedings (commenced in October 2014 and struck out on limitation grounds in December 2015) had alleged that Barclays, in its role heading the debt financing transaction, had wrongly settled a lawsuit against the Saudi government claiming payments owed to Jadawel by way of lease payments for the two Compounds. It was contended that Barclays had thereby breached its duty to Jadawel, in order to obtain for itself a banking license in Saudi Arabia. The claimants alleged that Barclays had "*approach[ed] a Saudi prince and pa[id] millions to a company he owned for "advisory services""*, which was in fact a "*thinly disguised bribe*" to obtain the banking license. However, quite apart from the disconnect between (a) Barclays employing advisory services in the way alleged in the New York proceedings and (b) Jadawel/Sheikh Mohamed obtaining advisory services from Sheikh Majid in order to assist Jadawel, there are important aspects of Sheikh Majid's account that he could not have learned from the New York proceedings: in particular, the existence of the Partnership Contract and the fact that Prince Abdulaziz had made an investment of SR 600 million. Sheikh Mohamed's evidence was that he had kept the Partnership Agreement a secret until his disclosed it in these proceedings. There is no obvious route by which Sheikh Majid could have come to know of Prince Abdulaziz's involvement or the Partnership Agreement unless Prince Abdulaziz told him about these matters in 1997 (as Sheikh Majid suggests). Nor is there any other route by which Sheikh Majid could have learned the amount Prince Abdulaziz had invested: as to which Sheikh Majid turned out to be substantially correct when Sheikh Mohamed eventually revealed at trial that, though the Partnership Agreement called for a total of SR 937 million to be invested, Prince Abdulaziz had only ever paid *"less than 600"*.

(e) Services provided by Sheikh Majid

104. Sheikh Mohamed criticises Sheikh Majid's evidence on the basis that he first mentioned the involvement of Prince Abdulaziz in January 2023. Sheikh Majid's explanation at trial was "*I didn't want to mention Prince Abdulaziz at this early phase, which is the jurisdiction phase*" (Day 7 p. 121 ln 9-11). Sheikh Mohamed submits that that makes no sense: if Sheikh Majid was content to raise the issue of Prince Abdulaziz, it made no difference whether he did so at an interlocutory or trial phase, and did not justify creating a misleading account at the interlocutory stage.

105. However, it was a feature of both Sheikh Mohamed's and Sheikh Majid's evidence that they were initially reluctant to discuss their dealings with Prince Abdulaziz. For example, in his ninth witness statement Sheikh Mohamed said:

> " I feel great regret at addressing this transaction as it delves into my private business affairs with HRH Prince Abdulaziz , who, so far as I am concerned, has nothing whatsoever· to do with this commercial claim. I believe strongly that such matters should never have been raised by Sheikh Majid, as a means of supporting of his false defence. However, in light of Sheikh's Majid's evidence, I have been left with no choice. Followin9 advice from my lawyers, however, I believe that I must address these false allegations, but I wish to let it be known that I would never have disclosed any confidential information relating to HRH Prince Abdulaziz if f had not been forced to do so by the Defendants. I have the profoundest respect for the Prince and have kept our business dealings confidential for the last 25 years."

I do not find it particularly surprising that Sheikh Majid may have been reluctant to refer to Prince Abdulaziz's involvement until he felt it absolutely necessary in order to explain his position.

106. Sheikh Mohamed submits that the matter goes further than that: Sheikh Majid, he says, fundamentally changed his account of the services he claimed to have provided in return for the US$30 million fee. According to his initial account, he was providing advisory services as to contact with two ministries, given his own contacts and experience with them. In this trial witness statement, he said he would "*sometimes, and as necessary, contact a relevant minister or official after discussing this with Prince Abdulaziz*". According to his oral evidence, however, he was merely acting as a kind of messenger between two business partners, namely Sheikh Mohamed and Prince Abdulaziz.

107. Bearing in mind that Sheikh Majid was, at all stages, doing his best to recall largely undocumented events some 17 or more years previously, I do not consider there to have been any fundamental change in his account, leaving aside his initial reluctance (addressed above) to refer to Prince Abdulaziz. The essence of the services provided was the facilitation of the long-term leasing arrangements via high-level contact within the Saudi government. Ultimately, in his oral evidence, Sheikh Majid said those contacts were made very largely via Prince Abdulaziz himself or via officials in the prince's office. That is not, in my view, undermined by Sheikh Mohamed's point that he was already in contact with Prince Abdulaziz as his business partner. It is entirely plausible that, as Sheikh Majid suggested, Sheikh Mohamed had somewhat lost the confidence of Prince Abdulaziz after it emerged that the companies in which Sheikh Mohamed had persuaded him to invest turned out (according to the Saba valuations) to have been seriously overvalued.

108. Sheikh Mohamed further submits that it is not credible that he would (as Sheikh Majid suggests) have agreed to pay US$30 million for such services. Nor would he have readily agreed in 1998 to pay SR 960 million to Prince Abdulaziz having so far received less than SR 600 million from the prince pursuant to the Partnership Agreement. Sheikh Mohamed points out that Sheikh Majid had no involvement in the Partnership Agreement, nor in the drafting of the Settlement Agreement. Moreover, Sheikh Mohamed said, Prince Abdulaziz had his own skilled investment office team, whereas Sheikh Majid had no experience of international finance.

109. In my view those comments miss the point. For the reasons given above, Sheikh Mohamed was in need of assistance in order to secure long-term leases and refinance Jadawel. The Partnership Agreement itself demonstrates that Sheikh Mohamed was in need of assistance. Sheikh Majid was close to Prince Abdulaziz and had some involvement in real estate. After the problem about the valuation of Jadawel emerged, Sheikh Majid was in a position to provide assistance by acting as an intermediary, in order to obtain swifter results than Sheikh Mohamed may have been able to achieve himself. The US$30 million fee, though substantial, was only 3.3% of the US$900 million securitisation proceeds, which could not have occurred without the long-term leases that the Saudi government entered into with Jadawel in 1999.

110. Sheikh Mohamed makes the further suggestion that, when lifting his account from the New York proceedings, Sheikh Majid erred by including reference in his first witness statement to his use of connections with the Saudi MOF in order to assist Sheikh Mohamed (meaning, presumably, to secure the necessary agreements). Sheikh Mohamed's companies' Complaint in the New York action included reference to the point that the MOF *"agreed to make the lease payments on the Ministry of Defence's behalf, as directed by a Saudi Royal Decree"*. After Sheikh Mohamed in his statements pointed out the error, Sheikh Majid in his trial witness statement omitted reference to the MOF, only to resurrect it in his oral evidence, where he said *"I think [Sheikh Mohamed] was struggling at the beginning with the Ministry of Finance, but I really cannot recall now the details"* and that it was to do with *"secur[ing] the money, with the rents"*. I do not, however, accept Sheikh Mohamed's contention that this undermines the credibility of Sheikh Majid's evidence or suggests that he simply adopted parts of the file in the New York case. The passage quoted above from the New York Complaint itself indicates the limited nature of the MOF's role (payment as directed by a Royal Decree), but it plainly had some role in the matter, and I do not consider that Sheikh Majid has sought to exaggerate it.

111. A further criticism made of Sheikh Majid's account is that the advisory fee arrangement, if true, would have been an adjunct to the Settlement Agreement and would have been documented as such. Sheikh Majid's answer in cross-examination was this:

> "Q. Wouldn't you have considered it important to have such an agreement written down and signed by each of you? Or agreed?
>
> A. No. No, because I didn't think, at that time, that Sheikh Mohamed would upset Prince Abdulaziz because he has done a lot for him, and he wouldn't sacrifice the relationship because of $30 million compared to what he is going to get. And this is what happened."

I find that response plausible. In any event, the fact is that – whatever it was for – the basis for the Payment was not documented. It is not a point that realistically can help Sheikh Mohamed make out his claim.

(f) Other matters

112. As noted earlier, Sheikh Mohamed suggested in his witness evidence that Sheikh Majid must have been wrong to suggest that he gave Sheikh Mohamed Prince Abdulaziz's

and Durango's bank details in late December 2001 (see § 78.xii) above), because the Settlement Agreement itself set out Prince Abdulaziz's bank details and *"as the agreement shows, the payment was made in July 2001"*. Sheikh Mohamed had, at this stage (February 2023), disclosed only a redacted copy of the Settlement Agreement, stating that the prince's bank details were not relevant to any issue. However, following HHJ Pelling KC's order that the agreement be produced in unredacted form, it became clear that the Settlement Agreement in fact provided for not only a payment in July 2001 but also a further payment in October 2001. The entire phrase "*and the amount of US$100 million to be paid during the month of October 2001*" had previously been redacted. In the event, that payment was made only on 4 January 2002. It follows that part of Sheikh Mohamed's evidence as to why Sheikh Majid must be wrong about the bank details, namely because "*the payment*" under the Settlement Agreement had already been made, was wrong and highly misleading.

113. Conversely, the fact that a second tranche was due under the Settlement Agreement is consistent with Sheikh Majid's evidence, in his third witness statement, that Sheikh Mohamed telephoned him in late 2001 and confirmed that he had been able to secure funding based on the leases, and asked for account details for Sheikh Majid and Prince Abdulaziz. Prior to disclosure of the unredacted Settlement Agreement, there was no public information (e.g. in the New York proceedings) that would have told Sheikh Majid that further money was due to Prince Abdulaziz under the Settlement Agreement.

114. At trial, Sheikh Mohamed put forward further reasons why Sheikh Majid must be wrong, namely that the Prince's bank details were already set out in the Settlement Agreement itself; a first tranche had already been paid in July 2001; Sheikh Majid would not personally have been involved in passing on bank details; and Mr Ali of Sheikh Majid's private office had previously said that he himself had sent the bank details for the payment to Durango by fax (though it appears no such fax could be found by the time of these proceedings). Asked why Sheikh Mohamed would have wanted the prince's bank details again, Sheikh Majid replied *"Probably because he wanted to compare what he has in the settlement agreement"*. Sheikh Mohamed suggests that is 'nonsensical'. However, given the size of the payment it would not be altogether surprising for further confirmation to be sought about the destination account details. In any event, Sheikh Majid made clear, in the passage I quote in 78.xii) above, that he was unsure of his recollection. I do not consider the point to be of major significance in the context of his evidence as a whole. It pales into insignificance compared to the misleading nature of the evidence from Sheikh Mohamed to which I refer in the preceding paragraph.

115. I have referred earlier to Sheikh Mohamed's suggestion that Sheikh Majid's lack of involvement can be seen from the facts that (a) Sheikh Majid was clearly unaware that Prince Abdulaziz had invested not only in Jadawel but also in Ajwa; (b) because he was unaware of the Ajwa element to the partnership, Sheikh Majid was forced to suggest, wrongly, that Sheikh Mohamed paid out Prince Abdulaziz with an uplift of 50-60%. Sheikh Mohamed's written closing said:

> "in the account provided by Sheikh Majid in his third witness statement, he was initially entirely unaware of Ajwa. He sought to cure this by his late fifth witness statement on 19 April 2023 by saying "*I do recall Ajwa. However, when I discussed the investment with Prince Abdulaziz the focus was on Jadawel*"

> [H/1/4]. That understanding is at odds with the Partnership Agreement itself, which made clear that the first tranche of 300 million Saudi Riyal was allocated 50 million Saudi Riyal to Jadawel, and 250 million Saudi Riyal to Ajwa: Articles 3 and 4, Partnership Agreement."

116. However, as to (a), the documents referred to earlier show that a valuation of Ajwa was commissioned at the same time as a valuation of Jadawel. The latter was certainly sent on to Sheikh Majid, and it is a logical inference that he commissioned both of them following the concerns expressed to him by Prince Abdulaziz about his investments. The fact that Sheikh Majid may have forgotten for a time about Ajwa is therefore neither here nor there. Further, despite the allocation of consideration in the Partnership Agreement, it is highly likely that Jadawel was indeed the focus. Jadawel is the company for which an external valuation was obtained, and it seems unlikely that Prince Abdulaziz would in reality have invested SR 400 million in Ajwa based only on Ajwa's own cash forecast. As to (b), Sheikh Majid was indeed correct about the uplift: see § 103 above.

117. Another criticism made of Sheikh Majid's evidence was that he was wrong to have suggested that he instructed Arthur Andersen to report on the value of Jadawel. In his third witness statement, he said (as quoted earlier) :

> "I asked Osman Ali, who was in charge of my investments at my private office to instruct Arthur Andersen and I believe he also worked on this with his father Firasat Chowdry. In this regard, I have been shown copy of valuation of Jadawel International Company prepared by Saba Abul Khair & Co (Deloitte Touche Tohmatsu), which appears to have been sent to me by Firasat Al Chowdry ... However, my clear recollection is that it was Arthur Andersen that we approached, as that is where Faisal Sayrafi was at that time. "

118. Later, having seen the reference in the Partnership Agreement to the Arthur Anderson valuation, Sheikh Majid accepted that his recollection must have been mistaken:

> "Having considered the matter again, it seems to me that the valuation by Saba Adbulkhair, that I referred to at paragraph 16 of my Third Witness Statement, must have been the valuation of Jadawel that we instructed. Whilst I believed it was Arthur Andersen that was instructed I must have been mistaken as a result of the length of time that has passed and my recollection of the meeting with Arthur Andersen, at which Faisal Al Sayrafi was present. I knew Faisal Al Sayrafi and therefore I believe I must have thought we had instructed him." (5th witness statement)

His previous adherence to the original recollection even after seeing the Saba valuation does not seem to me to suggest any deliberate untruth: rather, Sheikh Majid's evidence on this point shows a degree of confusion, which is perhaps unsurprising given the passage of time.

119. Turning finally to Durango, as the recipient of the Payment, I do not consider the evidence to support the suggestion that it was jointly owned by Sheikh Majid and Sheikh Walid, though Sheikh Majid accepted that money could come into Durango's account because it was going to be distributed amongst the family bank accounts. The contemporary documents, particularly those referred to in §§ 53, 55, 58 (approval of accounts) and 63 above indicate that it was Sheikh Majid's company alone, albeit Sheikh Walid had some involvement as a signatory and (later) director, which may well have been for reasons of administrative convenience. Further, the documents suggest that Mr Ali, who was employed in Sheikh Majid's private office (among other roles), was the individual charged with acting on behalf of Durango generally.

120. I also do not consider the evidence to support the view that the 370 Account, into which the Payment was paid on, was jointly owned by Sheikh Majid and Sheikh Walid. There is no evidence that Sheikh Walid was involved in the opening or operation of the account, and the zakat payments made from it are inconclusive (see § 85 above). Sheikh Majid accepted that he would sometimes transfer into it money to be invested for some of his brothers.

121. However, the fact that Durango and the 370 Account could sometimes be used for the transmission of family money does not mean that the Payment necessarily represented money due to anyone other than Sheikh Majid himself. The routing of the Payment through Durango and the 370 Account appears to me to be at most a neutral factor.

(g) Overall provisional view

122. For the reasons set out above, my provisional view, subject to consideration of the Al Arabiya events which I address in section (G) below, is that Sheikh Majid's account of the reasons for the Payment is plausible and consistent with the evidence taken as a whole including the documents. It provides a coherent explanation of events, and the various criticisms Sheikh Mohamed has made of it are very largely unfounded.

(G) MBC AND THE AL ARABIYA TELEVISION CHANNEL

123. As with the preceding section, I begin by summarising the basic documentary evidence available with a bearing on this part of the case, and go on to consider the parties' recollections and competing accounts of the events in question.

(1) Documentary evidence

(a) Ajwa's advertising with MBC

124. MBC was founded by Sheikh Walid in 1991, and was the first independently owned 24-hour, pan-Arab satellite broadcaster. AGI, founded in December 1994 by Sheikh Walid and Sheikh Majid, became MBC's ultimate parent company.

125. Sheikh Mohamed's company Ajwa was a major source of advertising revenue for MBC, and this appears to be how Sheikh Mohamed first came into contact with the Defendants, in the late 1990s. Sheikh Mohamed stated in his evidence that Ajwa sponsored twelve MBC programmes, including the most successful television programme on Arabic TV at the time, "*Who Wants to Be a Millionaire*", produced by MBC and broadcast on one of their satellite channels. Ajwa was the main sponsor of

the programme, and provided the prize money of up to SR 1 million. Sheikh Mohamed stated that Ajwa was paying US$4-5 million a year to MBC at that time; and in his ninth witness statement said he believed Ajwa's total spend with MBC to have been around US$8 million. The programme was extremely popular, and the prize cheques bearing Ajwa's name would be shown to the viewers.

126. The documented agreements and transactions evidencing this relationship included, in particular, the following.

i) On 15 May 2000, US$2 million was transferred from Jadawel's US$ account with Saudi British Bank to ARA Media Services ("***AMS***"). AMS sold advertising on MBC: Walid 1 §63.

ii) A contract dated 6 April 2001 between Ajwa and AMS noted that AMS was the advertising agent for MBC, and recorded that, in exchange for US$5,000,000, MBC would broadcast advertisements across nine programmes. The appendix noted that Ajwa was (in translation) *"one of the distinguished customers of [AMS]"*. The contract gave Ajwa the right to *"[g]rant a check to the winner of the millionaire program"*.

iii) An internal reconciliation records a payment having been made on 8 December 2001 from the "*Saudi British Bank MBI Account*", of SR 2,812,500 to AMS with the reference "*MBC TV – 1.688 mill, MBC Radio – 1.030 mill, Showtime – balance*". A further payment to AMS of SR 11.25 million was made on 6 January 2002. Sheikh Mohamed understands these to represent payments by a company associated with Sheikh Mohamed for advertisement on MBC.

iv) On 15 September 2002, Ajwa entered into a further contract with AMS, whereby AMS was to broadcast commercials for Ajwa's products for a year on MBC, FM, and Show Time channels.

v) A settlement agreement dated 25 December 2004 between Ajwa and AMS resolved a dispute arising from the 2002 advertising contract mentioned above, with Ajwa to pay AMS US$3 million in tranches over the course of 2005. The settlement agreement was later challenged, but was upheld by a Saudi court in November 2011 which ordered Ajwa to pay AMX US$2.5 million.

(b) MBC's operations in 1999-2001

127. There are indications that during this period MBC was loss-making and reliant on shareholder loans. For example, on 15 April 1999, Sheikh Majid provided funding for MBC Ltd, London, in the amount of £2,119,000 with the stated purpose on the bank transfer instruction *"Funding for Second Quarter of 1999"*. MBC Limited's Report and Financial Statement for the year end 31 December 2000 (produced subsequently, dated 10 October 2003) declared group losses that year of £48,662,000. The Notes to the financial statements recorded that *"included in loans from shareholders are loans of £17,000,000 that bear no interest"* and the *"loan of £35,127,308 from ARA Group International Limited (the ultimate parent undertaking) and the £154,623,579 additional shareholders' loans, have no defined repayment dates and bear a one off interest charge of 10% …"*.

128. On 15 January 2001, Mr John Whitehead, of the Group Legal Department of MBC, requested details of ownership of MBC TV for the renewal of its UK TV licence. Mr Chowdry of AGI (and Mr Ali's father) responded by letter dated 24 January 2001. He noted the share ownership of Sheikh Walid, and also that of another brother, Sheikh Mohammed Al Ibrahim. As to Sheikh Majid, the letter stated that Sheikh Majid "*has no ownership or Directorships in MBC TV or FM and should be none*". However, it also noted that *"[a]s for Glencove Investment Corp. that now owns Cominco NV's share which amounted to 37.5% you may confirm the beneficial owner by contacting Andreas Limburgh in Switzerland"*. In fact, it appears from a letter to Sheikh Majid dated 2 April 2001 from Mr Andreas Limburgh and Mr Pietro Supino of Private Client Bank that Sheikh Majid was Glencove's beneficial owner: *"We herewith confirm that we will act as directors of Glencove Invest Corp. in accordance with your instructions … We understand that the main purpose of Glencove Invest Corp. is to hold 5,125,000 shares in MBC Limited. In this respect we have executed the relevant documentation for transfer of those shares from Cominco NV"*.

129. By letter dated 14 May 2001, Ms Najwa Safwat of MBC Limited (Head of Executive Office to the Board), London, wrote to Sheikh Walid notifying him of a Board Meeting *"to continue the discussion of the future funding of [MBC] by Ara Group International Ltd given MBC's immediate liquidity requirements"*.

130. The minutes of a board meeting of MBC on 21 May 2001 note that *"A decision on the funding is urgently required to enable the business to continue"* (§ 1). Those present were concerned about *"placing the Company in administration*", which would *"kill the screen, as an administrator would not be able to run a broadcaster"* (§ 5). It was resolved that *"the Board would write to the individual shareholders of MBC and invite the shareholders to inject new funds and that in the absence of such funding that the Board was entitled to take the funding offered by AGI on its terms on the basis that that was the only funding available to it"* (§6) and that, in order to reduce costs, the *"operations of MBC should be moved to Dubai"* subject to sufficient funds for it to do so (§ 7).

131. On 16 July 2001, minutes indicate that Mr Fadi Ismail had a meeting with Mr Ali Al Hedeithy, both of MBC. One of the proposals discussed was a *"Proposal for a new structure for a semi-independent Current-Affairs; Translation and Documentation unit"*. On the same day, Mr Ismail emailed Mr Assad Abu Al Jadail, CEO of ARA Media Services, with *"my ideas for the specials that we can discuss we [sic] Mohammed Bin Issa [i.e. Sheikh Mohamed]"*, envisaged as being:

> "60-90 minutes well-prepared, well-researched, and pre recorded episodes on "Strategic Topics" pertaining to issues of prime interest and importance to Arab political and economic decision makers as well as opinion makers and intellectuals, discussing political, social or intellectual issues that affect the lives of the Arabs. the guests have to be well known vip's, political/economic/intellectual leadership and personalities, as well as respected experts and opinion makers. These special episodes can be pre-recorded in Beirut OR in any other suitable location in the Arab world, Europe or the USA."

132. MBC's report and financial statement for year ended 31 December 2001 recorded accumulated debt of £224.47m.

(c) Incorporation of MBI Network Television Limited

133. In October 2001, Sheikh Mohamed arranged for the incorporation of a company called "*MBI Network Television Limited*", listed on Companies House as having been incorporated on 1 November 2001. The named contact for the company was Mr Stephen Vogel, a solicitor at Fulbright & Jaworski LLP. The nature of business was listed as "*Motion picture production activities*". Sheikh Mohamed's evidence was that he incorporated this company with the intention of commencing his own news television channel to rival Al-Jazeera. This occurred shortly before Ramadan, which fell from 15 November 2001 to 15 December 2001.

134. The parties' evidence about what ensued is considered later. Sheikh Mohamed's case is that he spoke to the Defendants and entered into a loan agreement during the last week of December 2001.

135. Then, as noted earlier, in the first week of 2002, Sheikh Mohamed made 12 transfers from his MBI International account, totalling US $175,157,400. Those transfers included the US $30,000,000 transfer to Durango, i.e. the Payment, which is the focus of these proceedings. I discuss in section (H) below the transfer instruction(s) relating to the Payment.

(d) Events in 2002-February 2003 relating to the setting up of Al Arabiya

136. On 11 April 2002, minutes of a meeting recorded a discussion about the founding of the "*News Project*". The meeting was recorded to have been attended by five people: (i) Sheikh Walid; (ii) Mr Abu Al Jadail; (iii) Mr Ismail; (iv) Mr Al-Sayrafi, of FTH; and (v) Mr Kishek. The minutes noted the political significance of founding a news channel to rival Al-Jazeera. As to the commercial aspects, the minutes stated:

> "The total capital of the project is initially estimated at US$ 300 million, with US$ 100 million to be committed at first and the remaining to be phased in as needed.
>
> The estimated payback period is over 5 years.
>
> The Arabic partners intend to pay 100% of the capital required, while the foreign partner provides technical/expertise support to the channel.
>
> Currently, the key participants/partners with firm commitments are MBC and the Future T.V. at 50 – 50 each, with potential other names as Najjeb Seewaris that has also indicated interest in the project. Other partners would be allowed a maximum of 49%. MBC share of capital would include the location if it is to be located in London.
>
> The new channel will be independent from the existing MBC, however with the possibility to share back-office support.

> Location will be in either Dubai Medial [sic: Media] City or London in the old MBC location. London will be perceived as more independent at first.
>
> An added value in locating in London is that the MBC offices has a license, which was obtained before the current licensing laws were established, to up-link to satellites from the city.
>
> Otherwise, the location has to be outside the city. This would give importance to the News Channel of being in the middle of an important decision making capital in the world. …"

(The reference to "*the Future T.V.*" is understood to be to Mr Rafic Al Hariri's Lebanese television station "*Future Television*".) The minutes continued:

> "FTH [Financial Transaction House i.e. Faisal Al Sayrafi] to help search for a CEO.
>
> The name of the News Channel to be (ARABS, FREEDOM, THE NATION, OPENESS, etc.).
>
> Mission: To promote Democracy to the new generation in the Arab World. To be seen as a pure Arabic Channel, to be credible and appeal to Arabic Masses.
>
> Start date is targeted for September 2002."

137. A presentation (said by Mr Rasheed, one of the Defendants' witnesses, to have been created in March 2002 and amended in May 2002) referred to this news channel by its eventual name: "*Alarabiya: a new project presentation*". The presentation stated that the channel was to be founded in Dubai.

138. By September 2002, Deloitte & Touche had drawn up a full business plan for AGI's "*Alarabia – the 24hr Arabic News Channel*". As a strategic imperative for the founding of the channel, the presentation noted that *"To be a world class media group ARA is likely to need a news channel"* and that the *"value of the news channel will be in terms of the strategic potential for ARA as a media group"*. The report indicated that there would be an anticipated loss of US $30m in the first year, and the start-up costs would be US$36.7 million. The report stated that MBC generated around US$70 million per year from advertising. A diagram showing the proportion of advertising revenue indicated that Ajwa provided a significant proportion of that revenue, and was by far the largest sponsor in the category "*conventional food*" (substantially larger than McDonald's).

139. On 30 September 2002, "*Al Arabiya News Holding Limited*" was incorporated in the BVI.

140. In August 2002, Sheikh Mohamed's company JJW acquired the Grand Hotel in Vienna. There was to be an opening gala on 21 October 2002. Emails between individuals at MBC and MBI made arrangements for the opening gala to be covered by

MBC's reporter and cameraman. The guests invited included Mr Al Jadail, COO of MBC .

141. On 28 October 2002, Sheikh Walid opened a bank account with Credit Suisse called "SUB A/C 8 – AL-ARABIA" ("***Sub-Account 8 Al Arabiya***"), and on 30 October 2002 he paid US$20 million into it. This payment is categorised in a list of private equity investments under the heading "*Loans & Subsidy*". A handwritten document disclosed by Sheikh Walid concerning Al Arabiya states *"total subsidy received in 2002 ($20 million)"*, and an internal reconciliation appears to refer to this payment as *"Subsidy received from NCB Acct"*.

142. On 11 November 2002, Mr Vogel of Fulbright & Jaworski LLP, who had previously acted for Sheikh Mohamed in incorporating MBI Television Network Limited, was now acting for MBC in connection with the founding of Al Arabiya. He wrote to Mr Richard Peters, a solicitor at Harney Westwood & Riegels, to see whether they would be able to act, saying: *"MBC, as the founding shareholder, will contribute certain assets to Al Arabiya and will retain thirty percent (30%) of the shares. The remaining capital will be contributed by a select group of no more than ten (10) investors from the Middle East over the course of the next five years."*

143. On 13 November 2002, three payments were made out of Sub-Account 8 Al Arabiya to Sheikh Walid totalling US$12 million. These payments appear to have been repayments of loans that Sheikh Walid had provided in relation to Middle East News ("***MEN***"). MEN commenced its operations on 1 January 2003 and appears to have been intended to facilitate the sharing of assets/employees/back-office support between MBC and Al Arabiya. The payments were recorded as:

    i) US$9m payment "*Reimb to ANA for MEN Funding*" or "*Reimb to ANA-CSB Sub 2 for MEN Funding*",

    ii) US$2m "*Reimb to SBB A/C 800 MEN Funding*", and

    iii) US$1m "*Reim to CSB 7 A/C 12 Re: O3 Production*"**.**

144. On 20 November 2002, Sheikh Walid paid $22 million into Sub-Account 8 Al Arabiya, making the balance in the account $30 million. An internal reconciliation appears to refer to this payment as *"Transfer from ANA - Loan"*. Thereafter, pursuant to instructions given on 18 November 2002, the $30 million in Sub-Account 8 Al Arabiya was put on repeated 7-day time deposits. Sheikh Mohamed suggests that this US$30 million was separated in the account in November 2002 because it was intended as the initial share subscription on behalf of AGI required to found Al Arabiya. The funds were held in Sub-Account 8 Al Arabiya until they were eventually paid over in March 2003.

145. On 25 November 2002, Sheikh Walid procured from Credit Suisse a letter confirming that there was US$30 million held in Account 8 Al Arabiya.

146. By the end of November, Fulbright & Jaworski LLP had prepared first drafts of the Information Memorandum, Confidentiality Agreement, Stock Purchase Agreement and Shareholder Agreement for the investment in Al Arabiya. These were passed on to Mr Al Sayrafi, at FTH, who in turn forwarded them on to Mr Barnett at MBC.

147. Over December 2002 and January 2003, Sheikh Mohamed's company, MBI & Partners UK Ltd, was contracted to arrange the cover design and printing of binders, for FTH, of the cover for the "*Al Arabiya News Holding Limited; confidential information memorandum*". An MBC employee (Ms Julie Sheldon) asked Ms Andrea King of MBI whether Andrea could provide a one-page introduction about Al Arabiya, noting that it *"might come through Faisal Al Serafi"*.

148. The confidential Information Memorandum for Al-Arabiya explained that it was *"being delivered to a limited number of persons who have expressed an interest in the proposed business of the Company and its plans for commencing business operations, including the Company's plans for the financing of its business and operations."* It stated that the lead financial adviser was FTH, advising AGI, which was "*the Founding Shareholder of the Company*". The Co-Founding Shareholder was named as Al-Hariri Group, "*owned directly or indirectly by H.E. Sheikh Saad Al Hariri*". Under the heading "*FINANCING*", the Information Memorandum stated:

> "ARA and AHG Financings
>
> ARA intends to contribute $30 million in cash to the Company with respect to the Company's start-up and initial operations. With respect to the Company's potential subsequent funding requirements, ARA intends to enter into a Commitment to contribute up to an additional $30 million in cash. In consideration for ARA's payment of $30 million, it is intended that the Company will allot and issue to ARA 300,000 Class A Shares at an acquisition price of $100 per share. In the event the Company makes any demand under ARA's Commitment, the Company will allot and issue further Class A Shares to ARA at the price of $100 per share.
>
> AHG intends to form a new company in its group of affiliated companies that would contribute $30 million in cash to the Company with respect to the Company's start-up and initial operations. With respect to the Company's potential subsequent funding requirements, AHG intends that its new company will enter into a Commitment to contribute an additional $30 million in cash. In consideration for the new AHG company's payment of $30 million, it is intended that the Company will allot and issue to such new AHG company 300,000 Class B Shares at an acquisition price of $100 per share. In the event the Company makes any demand under AHG's Commitment, the Company will allot and issue further Class B Shares to AHG at the price of $100 per share.
>
> It is intended that the ARA and AHG financings be closed on or before March 15, 2003.
>
> … With respect to the Company's start-up and initial operations, the Company intends to raise up to $90 million from strategic investors through the private placement of up to 900,000 Class C Shares at an acquisition price per share of $100. …"

The document also included reference to reimbursement of US$4 million of pre-formation costs relating to Al Arabiya, yet did not refer to US$30 million of funding received from Sheikh Mohamed or MBI.

149. By letters dated 18 January 2003, FTH prepared confidentiality agreements to provide information about the possible investment in Al Arabiya News Holding Limited. A limited number of these were prepared, including for Dr Nadim Munla of Al-Hariri Group; Sheikh Mohamed of Ajwa; and Prince Al Waleed Bin Talal Bin Abdulaziz Al Saud.

150. An email dated 19 January 2003 from Mr Rasheed sent or copied to nine other individuals, including Mr Al Jadail, Mr Ismail, and Mr Barnett, stated:

> "We have a VIP, Shaikh [sic] Muhammad Bin Issa, coming to see AL Arabiya within the next 15 minutes. Cld you pl [sic] ensure that all of you are available on the 3rd floor in the conference room ASAP. …"

Handwritten notes of a meeting on 19 January 2003 at 20.00 hours list the attendees as Sheikh Mohamed, "*Assad + Faisal*", "*Fadi / Nakhle / Sam / Mostyn / Saleh*", and state:

> "* Introduction of all parties
>
> Agenda: Al Arabiya News Channel
>
> * Sh. Moh'd → member of BOD. [Board of Directors]
>
> → active role
>
> * launch date of channel →
>
> → appearance of channel → [? unclear]
>
> → conditions to becoming member"

151. On 19 January 2003 a memorandum of association of Al Arabiya News Channel FZ-LLC was signed by Mr Al Jadail.

152. By a fax transmission dated 20 January 2003, Mr Chowdry explained to Sheikh Walid the details concerning "*Transfer of funds (US$ 30 million) to FTH – Al Arabiya Subscription Account*". Mr Al Sayrafi also appears to have written to Sheikh Walid on the same day explaining that FTH had decided to set up a subscription account with Barings Bank, which *"will collect all funds for the transaction from all subscribers to the Al Arabiya"*. He noted that FTH wished to collect the funds in the Subscription Account opened by FTH (which was an account with Barings bank in Guernsey) with the aim of gathering all the funds quickly in one place before they were transferred to Al-Arabiya.

153. Also on 20 January 2003, Mr Khizar Hayat of FTH sent an email to Ms Maha Abdullahad, with the subject "*Al-Arabiya Project*", two attachments "*PresntInvstrs-V10-ak.ppt*" and "*Account No.doc*", and the following content:

> "STRICTLY CONFIDENTIAL
>
> Please pass the attached documents to Sheikh Mohammed Bin Issa Al-Jaber.
>
> …Message mailed on behalf of Mr. Faisal Al-Sayrafi"

154. The attachments were (i) the details of FTH's subscription account with Barings bank, and (ii) a presentation titled "*Al Arabiya, 24 hour news channel, Summary information, January 2003*". The presentation noted that the "*Founder*" was AGI, and the Co-founder was "*Al Hariri Group*". A slide headed "*The Financing Plan*" stated that the "*Founding Shareholder's Contribution*" would be "*US$ 30 million (1st year)" and "US$ 30 million (within 5 years)*" – with the same for the Co-founder.

155. By a fax transmission from Mr Chowdry to Sheikh Walid dated 27 January 2003, Sheikh Walid was asked to sign three transfer letters. The first was a transfer of US$20 million to Sub-Account 8 Al Arabiya. The other two were transfers of US$2.67 million (said to be equivalent to SR 10 million) "*to yours and Sheikh Majid's account*". There were accordingly the following three transfers effected in relation to Sub-Account 8 Al Arabiya:

i) On 6 February 2003, there was a transfer from Sub-Account 8 Al Arabiya to an account in the name of Sheikh Majid with Saudi British Bank in the amount of US$2,666,667.

ii) Also on 6 February 2003, there was an identical transfer but to an account in the name of Sheikh Walid with UBS bank.

iii) On 4/5 February 2003, Sheikh Walid transferred US$20 million into Sub-Account 8 Al Arabiya, which an internal document referred to as *"Subsidy Transfer from SBB [Saudi British Bank]"*.

156. The transfers out to Sheikh Majid and Sheikh Walid from Sub-Account 8 Al Arabiya may have been loans, as they made corresponding (re)payments into Sub-Account 8 Al Arabiya on 9 and 13 October respectively.

(e) Al Arabiya is launched: events from February 2003 onwards

157. On 6 February 2003, Al Arabiya News Channel FZ-LLC was incorporated in Dubai.

158. A meeting took place on 14 February 2003 between Dr Nadin of Al-Hariri Group and Mr Al Jadail. A handwritten note disclosed by Sheikh Walid referred to the subject of the meeting as "*Al Arabiya News Channel*". The notes included reference to a loan agreement for US$30 million between Sheikh Walid and Sheikh Saad Al Hariri (seemingly with a bank guarantee), under which Sheikh Walid would pay US$30 million and Sheikh Saad would enter into an agreement with Sheikh Walid: "*w/i 1yr", "int. rate", "min payment - $5m"*. The notes also stated *"Bank – known to Sh. M + Sh. Waleed"*.

159. On 17 February 2003, Mr Rasheed confirmed to Mr Barnett, by forwarding on an email from Khizar Hayat of FTH, that the Information Memorandum and its appendices had been sent out.

160. Also on 17 February 2003, Mr Terry Horsfall of MBC faxed a letter dated 11 February 2003 to Mr Chowdry noting that Al Arabiya was due to launch on 19 February, and would be obliged to pay US$51 million per annum *"almost entirely to MEN (Middle East News FZ-LLC)"*. It stated that Al Arabiya had an urgent need for funds, and requested *"funding of US$6,000,000 (six million US dollars) as soon as possible"*, which would be *"treated as a short-term loan in the books of Al Arabiya pending receipt of its initial shareholder capital of $150 million (of which $30 million, or 20%) will be due from AGI or a related party"*.

161. Mr Chowdry passed this request on to Sheikh Walid by letter dated 18 February 2003. He advised that Sheikh Walid should transfer US$ 10 million "*to MEN to cover the operating costs of February and March, and hopefully by the end of that time Al-Arabiya may have it's [sic] Share Capital subscribed by Shareholders and Al-Arabiya will be able to pay to it's [sic] suppliers*". On 18 February 2003 Sheikh Walid directed a transfer of US $10 million from Sub-Account 8 Al Arabiya to MEN's US$ account. That sum appears to have been repaid on 15/16 July 2003.

162. On 20 February 2003, Sheikh Walid directed Mr Chowdhry to transfer US$30 million to *"the Al Arabiya Subscription Account"*.

163. MBC obtained advice on 26 February 2003 from Starr Legal LLP about the market in agency fees in corporate finance transactions, which indicated that the 5% fee to be charged to MBC by FTH was a bit high. This advice appears to have led to renegotiation of the terms of FTH's mandate. On 15 March 2003, Mr Al-Sayrafi of FTH wrote to Mr Al Jadail of AGI to confirm a revision to the mandate; in particular, no success fee would be payable if the only subscription funds made available were the US $30 million "*paid by the Founder*" .

164. On 17 March 2003, in light of the amendments to the mandate, Mr Chowdry asked Sheikh Walid to *"sign the new transfer letter for US$ 30 million … and approve whether the transfer should be made".* Sheikh Walid signed a transfer letter, now dated (by hand) 23 March 2003, directing a transfer from Sub-Account 8 Al Arabiya to FTH's Barings (Guernsey) Limited account. The bank transfer instruction recorded the payment's purpose as "*Payment of Subscription of Share Capital in Al-Arabiya*". The transfer took place on 26 March 2003. Barings (Guernsey) confirmed receipt of the funds on 27 March 2003: *"Fds revd from Waleed Al-Ibrahim as ARA Grp Intl Hldgs Co Ltd – Purchase A Shrs"*.

165. A presentation dated April 2003 addressed the "*MBC Holding Structure*", noting that the current holding structure has *"many gaps*" and there is "*secrecy as to the ownership and lack of information*". It proposed a revised holding structure.

166. On 15 April 2003, Mr Vogel of Fulbright & Jaworski LLP wrote to Barings (Guernsey) saying that *"after this first completion of the offering of Al Arabiya shares, it is envisioned that there will be a second completion in respect of a subscription to be agreed with Sheikh Saad Al Hariri"*.

167. On 21 May 2003, Sheikh Walid made a payment out of Sub-Account 8 Al Arabiya in the amount of US$266,667 (roughly corresponding to SR 1 million), identified as being for subscription of share capital in Al-Arabiya. There appears to have been a further

share capital subscription payment on 31 May 2003, this time from an account with Saudi British Bank.

168. By a fax dated 22 December 2003, Mr Barnett of MBC wrote to Mr Chowdry of AGI saying:

> "Al Arabiya has not been successful in arranging for further financing. This has lead [sic] to an accumulation of receivables in the books of MEN to the extent of USD 19M. Last month we had obtained loan funding from AGI to keep the operation running. We now have reached again the position where the money is depleted. … we have to request for an additional loan from AGI. … let us know if the agreed funding of USD 10M could be arranged within next week to allow us to make the urgent payment due".

169. On the same date, Al-Arabiya made a payment out to Sheikh Walid of US$5 million.

170. On 27 December 2003, a loan of US$10 million was provided to MEN from Sub-Account 8 Al Arabiya.

171. There appears to have been a change of approach to the US$30 million that had been paid to FTH on 26 March 2003. Having previously been regarded as a subscription for shares in Al Arabiya, it was re-characterised as a loan from Sheikh Walid to Al Arabiya:

    i) On 31 December 2003, Mr Chowdry of AGI wrote to Al Arabiya News Channel stating that AGI had "*debited*" your account by US $30 million "*representing payments of Loans / Advances for the year 2003*", and referencing the payment made on 26 March 2003. The letter stated *"Please arrange to transfer the funds to the following bank account, at your earliest"* and provided details of Sheikh Walid's personal account with Banque Saudi Fransi.

    ii) Similarly, the draft financial statements for Al Arabiya News Channel FZ LLC dated 31 December 2003, which recorded a net loss for the period 6 February 2003 to 31 December 2003 of US$73,991,857, referred to equity share capital of only US$136,250, an "*Additional capital contribution*" of US$30,000,000 and "*Amounts due to shareholder"* of US$26,893,276.

172. In June 2004, in the context of compiling AGI's financial statements, Mr Chowdry provided a list of all AGI companies, which noted that (i) AGI was owned jointly by Sheikh Walid and Sheikh Majid; and (ii) "*Al Arabia for Advertising Services*" was a company owned jointly by Sheikh Walid and Sheikh Majid.

173. On 11 July 2004, FTH sent to Mr Chowdry a signed share subscription agreement with Sheikh Saad Al Hariri which included the following definitions:

> ""ARA Contribution" means the contribution made by ARA to the Company [Al Arabiya News Holding Limited] in connection with the founding of the Company, ARA's contribution of $60 million in cash to the Company made in connection therewith

> and the Company's allotment and issuance to ARA of 600,000 shares classified as Class A Shares, which is under process.
>
> "Sheikh Saad Commitment" means the binding commitment by Sheikh Saad to contribute a total of $60 million by January 31, 2005 in exchange for 600,000 Class B shares of the Company".

174. A consolidated bank account reconciliation document for MEN/Al-Arabia stated that *"a sum of US$ 30 Million was received from Hariri Group as its Share Capital and paid after deducting a commission of $1.20M, the net amount of $28.80M was tfd to Al-Arabiya"*.

175. An internal reconciliation of loans to MEN from Al Arabiya and other bank accounts reported that, on 24 July 2004, there was a repayment by MEN-Dubai of US $26.9 million.

176. On 4 March 2010, Mr Chowdry wrote to the CFO of Al Arabiya News Channel :

> "Please find herewith the annual Debit Notes in respect to AGI Loans/Advances paid to Al Arabiya during the years 2003 to 2009 which totals to US$ 291,000,000 …
>
> As you are aware, AGI have already reconciled these amounts with Al Arabiya (AA). …"

The enclosed Debit Notes included the 31 December 2003 letter referred to above (in effect claiming back as a loan the US$30 million paid on 26 March 2003).

177. On 16 August 2010, in the context of proceedings brought by Standard Bank Plc, the court made a freezing order against Sheikh Mohamed. At a hearing on 18 and 19 July 2011, Sheikh Mohamed applied to set aside the freezing order, but that application was dismissed. In the context of those proceedings, Sheikh Mohamed was required to file a schedule of his assets worldwide exceeding £50,000 in value and details of his bank accounts. Sheikh Mohamed's list of assets did not record the Loan Agreement.

178. On 14 October 2011, Burton J heard a summary judgment application in the Standard Bank proceedings ([2011] EWHC 2866 (Comm)). In response to the possibility of conditional leave to defend, Sheikh Mohamed made his seventh affidavit in those proceedings, dated 26 October 2011, in which he stated:

> "My asset position is as set forth in my Fourth Affidavit. In short, while I hold a number of assets, these are not liquid assets and I do not hold any cash deposits of substance. … Considering the state of the global economy, my financial position generally and the challenges I now face as a result of the Bank's action against me, I do not realistically think that I could raise more than $50 million. I would expect the disposal process to take at least 2 months and probably longer". (§ 21)

179. On 24 August 2016, in the context of preparing consolidated financial statements for the "*MBI International Holding Group Inc*", Mr Falak Yussouf of MBI asked Tariq

Javed of MBI to *"include the note as below in 2011 accounts and every year thereafter"*. The note was a reference to the alleged loan agreement as an account receivable: *"This relates to total the [sic] amount of the 2002 loan together with interest to W and M Al Abrahim [sic] (AL-ARABIYA)"*.

180. On 4 September 2016, EY Egypt, MBI's auditors, asked for "*justification/supporting documents*" in respect of the increase in accounts receivables by US$30 million. On 7 September 2016, EY Egypt provided the draft financial statements including the restatement to include the suggested note (at note 4). The amended consolidated accounts were provided to Bloomberg on 4 November 2016, for the purposes of assessing Sheikh Mohamed's net worth.

(2) Sheikh Mohamed's account of events relating to Alarabiya

181. Sheikh Mohamed's version of the events concerning Al_Arabiya is set out in his various witness statements. In summary, it is as follows.

182. Sheikh Mohamed refers to his pre-existing contacts with the Defendants, through the advertising business that Ajwa placed with MBC and the Portuguese property transaction mentioned in § 54 above. Sheikh Mohamed says the latter transaction took place at Sheikh Walid's request, because he wanted to exit the investment and knew that Sheikh Mohamed had business interests in Portugal. The purchase – like the (alleged) loan which is the subject of these proceedings – was arranged by Mr Ali. Sheikh Mohamed stated that he dealt with both of the Defendants in relation to this transaction.

183. In 2001 Sheikh Mohamed was about to launch a 24-7 Arabic satellite TV news channel based in London, to counter Al Jazeera. The company was called MBI Television Network Limited and was incorporated in England on 1 November 2001. His intention was that this news channel would operate from London. Some time that year, Sheikh Walid and Sheikh Majid must have found out about Sheikh Mohamed's plan to launch a rival news channel. They called him to arrange a meeting and Sheikh Walid insisted that they meet in London. Sheikh Walid had a permanent suite at the Intercontinental Hotel in Park Lane. MBC at the time was also based in London.

184. Sheikh Mohamed says the first meeting to discuss the channel was over dinner at Annabel's in London, which according to his oral evidence took place in *"July, September, I don't remember the times"*. (His pleaded case and previous evidence was that the meeting took place prior to telephone calls in August/September 2001: see further below). Sheikh Mohamed said the Defendants sought to persuade him to allow them instead to launch and run the rival channel. Sheikh Walid said to me words to the effect of "*you are entering our sector*" and "*I am trying to give you good advice, we have good experience, a whole operation, enough staff to operate this news channel for you, very economically and cheap*". He warned Sheikh Mohamed that it was not his line of business and would be very costly and risky. The Defendants had the infrastructure and the media centre there in London. Sheikh Mohamed said "*Walid convinced me to finance the project at this first meeting. They had the editors, the production, a very big building outside London, which I also visited*." The idea at that time was to run the channel from London, where MBC was located.

185. According to Sheikh Mohamed, Sheikh Walid said the channel would cost US$90 million to run for the first few years, until it could be self-sufficient. He said he would need another investor, which Sheikh Mohamed believed was the Hariri family. At this time Sheikh Walid said there would be three investor/partners with each to contribute US$30 million representing 33% of the total investment required. Sheikh Mohamed continued:

> "I explained in my second witness statement, at paragraph 22, that I expected any US$30 million that I provided would be repaid with commercial benefit to me for having provided the money. At that time, when we discussed me being a partner, I would have been content to be paid by equity. The discussions we had were at a high level, and in our business culture it is not normal to talk of interest in a direct way. In any event, it was obvious that the US$30 million that I was being asked to provide was for a commercial purpose and so should accrue a commercial benefit to me as an investor." (7th witness statement § 16)

186. Sheikh Mohamed added, in his second witness statement, that "*it is not unusual for me to enter into oral contracts in this way and I have done so many times over the course of my years in business*." (§ 24)

187. Sheikh Mohamed also met Sheikh Majid sometimes in Saudi Arabia, and the conversation always turned to MBC: he was Vice Chairman, and Sheikh Walid was Chairman. Sheikh Majid was always chasing Sheikh Mohamed to renew his sponsorship of "*Who Wants To Be A Millionaire*".

188. The second meeting was with Sheikhs Walid and Majid in Sheikh Walid's suite in the Intercontinental in London. The Defendants were again persuading him to give them the money for the new channel.

189. In addition, Sheikh Mohamed met Sheikh Walid alone in Paris, and encountered the Defendants socially in Saudi Arabia during Ramadan, in November or early December 2001 at their house in Jeddah. The Defendants were still chasing him to send them the US$30 million for Al Arabiya.

190. During December 2001, Sheikh Mohamed states that he received telephone calls from the Defendants concerning their requests for a loan. Sheikh Majid called in December 2001 while Sheikh Mohamed was in London. He said that Sheikh Walid was following up on when Sheikh Mohamed was going to send them the money. Sheikh Mohamed asked for the account details, and Sheikh Majid said that Mr Ali would send them details. The accounts Sheikh Mohamed gave of these telephone calls from the Defendants in his first to third and seventh witness statements are reproduced below:

> Al Jaber 1 §§33-34: "During December 2001, I recall very clearly that I received a number of telephone calls from the Defendants about me making a loan to them for their Al Arabiya project. The tone of urgency in these calls and requests seemed to intensify over the period, culminating in calls from Sheikh Walid followed by a call from Sheikh Majid that I received in

my office on Wigmore Street in late December 2001. Although I do not remember the exact day, it was I believe in the last week of December. I had the clear impression at the time that, and from the outset, that although they acted together, Sheikh Walid took the lead in substantive discussions, whereas his brother Sheikh Majid, dealt with follow up and points of detail. It was plain that their calls were made on behalf of both of them.

The purpose of Sheikh Majid's call was to stress urgency and to request that I now make an immediate loan of US $30 million to both the Defendants for their 24-hour news channel project. I agreed to lend them this money, and requested that the Defendants send to me the banking details for the remittance of the funds."

Al Jaber 2 §23 : "… The discussions that I had with Sheikh Walid on behalf of the Defendants about investing in Al-Arabiya spanned a number of months, over the course of which we spoke both in person and over the telephone. The initial discussions were conducted at a number of face-to-face meetings in London and once in Paris and subsequent discussions took place over the telephone. In these discussions, Sheikh Walid sought to persuade me to invest in the Defendants' enterprise and I frequently expressed my interest in so doing but, even by October 2001, I was still entertaining the notion of establishing my own news channel rather than investing in their business. It was not until the telephone call in December 2001, which I received at my offices on Wigmore Street, that his proposal for a loan was accepted and, from my perspective, the loan agreement was finally concluded. …"

Al Jaber 3, §6-9 explain that Sheikh Mohamed "considered the principle of the loan agreement to have been agreed with Sheikh Walid as the "leader" of the discussions" and "it was Sheikh Majid who then made a further (and the last) telephone call to me at my office in Wigmore Street in December 2001. … It was in this conversation that Sheikh Majid told me that he would arrange to send me the details of the bank account to which the loan money should be transferred".

Al Jaber 7, §20: "I explained in paragraph 33 of my first statement, how during December 2001, I received telephone calls from the Defendants concerning their requests for a loan. Majid called me in December 2001 while I was in London. He said that Walid was following up on when I was going to send

> them the money. I asked for their account details, and he said that Mr Ali would send those details to me."

191. Thereafter, in January 2002, Sheikh Mohamed paid the US$30 million from (according to his recollection) one of his accounts with the Geneva branch of HSBC Republic Bank. Some time later, Sheikh Walid and Sheikh Majid made telephone calls to Sheikh Mohamed to thank him.

192. Sheikh Mohamed said he did not actually recall the meeting he attended on 19 January 2003 with MBC management about Alarabiya and his role in it. His recollection of this period, early 2003, was that there was a delay to the launch of the channel, due to staff issues.

193. In February or March 2003, before the official opening of Al Arabiya, Sheikh Mohamed was invited by Sheikh Walid to Dubai, where MBC had recently relocated. He flew by his private jet specifically for this meeting, and stayed at the Fairmont hotel near their office (a hotel which Sheikh Walid also mentioned that he used). He met with all the MBC staff, including the general manager, and they gave him a full tour. He had coffee with the general manager for approximately 1¼ to 2 hours. He watched a pilot of Al Arabiya live, and saw the set and the presenter. Sheikh Walid did not attend the tour but he arranged a dinner party for Sheikh Mohamed at a restaurant at the hotel with a lot of media people. The people he met included Mr Jadail, who Sheikh Mohamed believed to have been the general manager, and Mr Sayrafi, the Managing Director of FTH, the company dealing with the corporate investments. The reason Sheikh Mohamed was invited was because he had contributed part of the initial funding for the channel, by lending the US$30 million, and the tour was to demonstrate to him how the money was being spent.

(3) The Defendants' accounts of events relating to Alarabiya

194. Sheikh Walid's evidence about this, in summary, was as follows.

195. The funds for the establishment of MBC came from Sheikh Walid and other members of his family, including Sheikh Majid. However, the television and media businesses were overseen exclusively by Sheikh Walid.

196. When he and his brothers shared an investment or business, one of them will be responsible for it and the other(s) would be silent shareholders or partners, with no involvement in the business or investment. For example, Sheikh Majid was responsible for their investments in investment products, financial instruments and property. Sheikh Walid had no involvement in those investments: his focus was on media businesses. However, for practical purposes, it was not uncommon for his brother to ask him to hold a power of attorney or signing authority in respect of particular investments, so that documents could be signed if he were unavailable for any reason. When this happened, the usual process would be for a formal, written, power of attorney or signing authority to be put in place; and, if Sheikh Walid was required to sign anything, Sheikh Majid's office would send the papers to him and he would speak to Sheikh Majid to confirm that he was to sign the documents.

197. MBC was originally based in London, due to the availability of the necessary skills and infrastructure for running a satellite broadcaster. At that time, Sheikh Walid was

Chairman of MBC. He had overall oversight of the business but was not involved in its day-to-day running and did not have an office at MBC's offices in London. MBC had a CEO who managed the day-to-day running of the business.

198. His role in MBC in 2001 was of a high-level strategic nature. He would be kept updated on matters relating to the finances of the business and was involved in the overall strategic development of the business, such as deciding on jurisdictional expansion. He was not involved with advertising clients: that was the responsibility of Mr Al Jadail, who was CEO of ARA Media Services, which was responsible for selling advertising on MBC, and later also COO of MBC.

199. Sheikh Walid said his visits to the offices in London were very, very limited. He had no need to visit the offices to carry out business and did not do so. He never retained accommodation at the Intercontinental Hotel in London for any significant period of time, and never lived there.

200. The idea for a 24-hour Arabic news channel came about in 2001 but was not developed until later in that year and 2002, and the name "Al Arabiya" itself did not come about until 2002. Sheikh Walid recalled this because he had invited a number of friends and contacts to the Royal Suite at the Fairmont Hotel in Dubai for dinner and then, after dinner, they had a brainstorming session about the concept of a 24-hour Arabic news channel. The late Ahmad Al-Ruba'i, a Kuwaiti politician and intellectual, said they should call it Al Arabiya, which was agreed.

201. Sheikh Walid stated that in around late 2002/early 2003, Mr Al Jadail suggested to him that he invite external investors into the project with a view to attracting high profile, regional, strategic players to invest in Al Arabiya. This was to both spread the financial investment risk and also to help establish it as a pan-Arab station. Sheikh Walid was not convinced that investors would come to a business without a track record and did not have any great expectation that the attempts to gain external investment would be successful, but he nonetheless said 'go ahead'.

202. Professional advisors were instructed to prepare a business plan and memorandum and FTH was appointed to market the investment opportunity. FTH was given a period of time, which was quite short, to explore whether there was any interest from external investors. The level of interest was not very high, because the business required a large amount of cash to run its operations and would not turn to profit for several years; and investors wanted to see a track record in the news business and did not consider MBC as having such a track record. Therefore, Sheikh Walid established the business with his own funds, providing the initial US$30 million subscription funds and then further funds, when they were required, were provided by him and his family, including the late King Fahd.

203. Sheikh Walid said he had been made aware, as a result of these proceedings, that Sheikh Mohamed's name appeared on a list of potential investors prepared by Fulbright, the lawyers instructed on the potential fundraising, but did not know why that would be. It was quite possible that he was approached by FTH.

204. Sheikh Walid believed there could have been occasions at which he was at Sheikh Majid's house when Sheikh Mohamed was also there, and may therefore have spoken with him socially, but he did not recall any specific meetings or conversations with him.

He had no particular reason to remember any specifics of having ever met Sheikh Mohamed in 2001.

205. Sheikh Walid understood that, from the evidence of Mr Whitehead, it seemed Sheikh Walid was in London at least once in 2001, to visit the offices of MBC, but did not recall that occasion and did not believe that he met Sheikh Mohamed in London at that time, with or without Sheikh Majid. If he did meet Sheikh Mohamed in 2001, there was no reason why Sheikh Walid would have raised Al Arabiya or its concept, let alone funding for it. At that time the idea for an Arabic 24-hour news channel was at an early stage. Sheikh Walid believed no work would even have been undertaken, let alone completed, on a budget for the project.

206. Sheikh Walid said Sheikh Mohamed's allegation (as it was then framed) that in August and September 2001 Sheikh Walid made a request of Sheikh Mohamed for initial funding of US$30 million for Al Arabiya was untrue. He had no cause to seek any such funding from Sheikh Mohamed, and could say clearly that he never asked or authorised Sheikh Majid or anyone else to request a loan from Sheikh Mohamed on Sheikh Walid's behalf.

207. It was quite possible that Sheikh Mohamed was invited in or around 2003 to the offices of MBC, which are shared with Al Arabiya, and shown around, but Sheikh Walid had no reason for inviting him personally or directly and no recollection of doing so. There was certainly no invitation connected to any loan.

208. Sheikh Walid said that prior to the commencement of these proceedings, he did not have any recollection of Durango. It had been drawn to his attention that he was an authorised signatory of Durango's bank account, and seemed to have been a director of Durango from 2012 to 2014. However, he did not take any positive role in the management of Durango and was not a beneficial owner of it. It would not be unusual for him to act as an authorised signatory, or a director, on behalf of companies linked to his family; but he did not believe that that meant he had any rights to the funds in the account. Sheikh Walid said he also did not believe, to the best of his knowledge, that he was ever asked to sign anything in relation to Durango's bank account, and he did not have access to that account.

209. As to the zakat payments from the 370 Account, Sheikh Walid explained that zakat is a payment of 2.5% of a person's wealth, made under the laws of Islam. He and his brothers would share certain investments, with one running them and the others acting as silent shareholders or partners. It was possible that a payment in respect of zakat was made on his behalf for some reason, either out of convenience or because it arose from an investment managed, in part, on behalf of himself.

210. As to the Payment, Sheikh Walid said that Mr Ali worked for Sheikh Majid and was the son of Mr Chowdry who worked in Sheikh Walid's private office. There was no reason why Sheikh Walid would have asked Mr Ali to send his bank details to anyone and he did not ask him to send his bank details to Sheikh Mohamed.

211. From late 2004 onwards, after MBC's move to Dubai and the departure of Mr Al Jadail as CEO of MBC, Sheikh Walid became involved in the day-to-day management of the business. At that stage he moved with his family to Dubai in 2004, so as to be located in the same country as its centre of operations.

212. Sheikh Majid's evidence about this part of the case was that he had no involvement in the operations of MBC in 2001, day-to-day or otherwise. MBC and the media businesses were Sheikh Walid's concerns. Sheikh Majid was very rarely in London in 2001 and, when he was, he had no reason to visit MBC. He recalled visiting MBC's office in London only once, when it first opened in 1991. Sheikh Majid said Sheikh Walid at that time also lived in Saudi Arabia and to the best of Sheikh Majid's knowledge was not himself directly involved in its day-to-day operations as he had a management team. Sheikh Majid said he was not involved in Al Arabiya, or its creation or financing. He had no recollection with discussing Al Arabiya with Sheikh Mohamed.

213. Sheikh Majid said his family was independently wealthy and related to the Saudi Royal Family. He and Sheikh Walid were both brothers-in-law of the late King Fahd. It was inconceivable that either he or Sheikh Walid would need to borrow money from a third party like Sheikh Mohamed, particularly such a relatively modest sum as US$30 million. When they needed to access funds for a particular business venture or investment, they would use family funds. Sheikh Majid had never borrowed money from an individual from outside his family. He never had any discussions whatsoever with Sheikh Mohamed about any loan, of any value, for any purpose; and Sheikh Walid never asked or authorised him to discuss a loan with Sheikh Mohamed.

214. Sheikh Majid said the only other time he recalled having any business dealings with Sheikh Mohamed related to the Portugal Property Fund transaction (property development investment), which took place during the period of the ongoing negotiations in relation to the Jadawel Compounds. He and his brothers had jointly acquired the investment and owned it for 3-4 years. However, he said that they were only limited partners, had little knowledge of the Portuguese real estate market, and had not been in control of the development. Sheikh Majid had been invited to stay, and did stay, with Sheikh Mohamed for a couple of nights at his compound in the Algarve; and as he clearly had interests in the Portuguese property market Sheikh Majid offered Sheikh Mohamed the investment at the price for which Sheikh Majid and his brothers had bought it. The investment was managed by Sheikh Majid's private office. Sheikh Majid understood that the shares themselves were held in Sheikh Walid's name and that he therefore signed the documentation to transfer the shares. Sheikh Majid did not recall the specific reason why this was: he expected it was because he was unavailable when the shares were first acquired so asked Sheikh Walid to sign the original paperwork for them, which would not be unusual.

215. Sheikh Majid stated that following payment of the US$30 million fee, he probably only saw Sheikh Mohamed once or twice again and then only in passing. He did not remember any specifics. The first time Sheikh Mohamed ever suggested that Sheikh Majid had borrowed money from him was when his solicitors wrote in 2015.

(4) Provisional evaluation

216. As with my consideration of Sheikh Majid's account of the reasons for the Payment, I first provisionally consider, in this section, Sheikh Mohamed's version of events on its own merits. Later, in section (I) below, I state my overall conclusion about these competing factual accounts.

(a) Documents

217. One of the first factors to consider, when seeking to evaluate Sheikh Mohamed's allegation that the Payment was a loan, is that there is no real documentary support for it. On the contrary, the documents tend to undermine it. The main point here is not the absence of a written loan agreement: in principle (and leaving aside the questions of law considered later) an oral loan agreement can be made, and in some circumstances can plausibly be evidenced. (It could equally be said that there is no written agreement for payment of the advisory fee which Sheikh Majid contends was the explanation for the Payment.) Rather, the point is that there are several contemporary documents, as summarised above, which identify the sources of Al Arabiya's initial funding, including the funding obtained from the Al-Hariri group as co-founding shareholder, but none of the documents makes any mention of Sheikh Mohamed or any of his companies as having been a lender, shareholder or other source of funds. There is also no evidence of Sheikh Mohamed having ever complained about the failure to mention him in the summary information document he was sent in January 2003. Nor is there any other mention of a loan of US$30 million in any correspondence, formal or informal, in the first thirteen years (2002 to 2015) for which it is alleged to have been outstanding. This would be all the more surprising if, as Sheikh Mohamed latterly suggested, the Defendants' objective was to tie him into the project and forestall his own plan to create a television channel.

218. Sheikh Mohamed counters that Sheikh Walid and Sheikh Majid understandably wanted to present themselves – through AGI – as the founders and providers of the funds. The Defendants were obtaining substantial additional financing by way of "*subsidy*" (presumably from the Government/Royal family: Sheikh Walid accepted in oral evidence that some subsidies were received from the government); but this financing too was nowhere acknowledged in any of the public-facing material by Al-Arabiya. However, the lack of mention of funding from Sheikh Mohamed is not confined to the public-facing documents. There is no apparent mention in any disclosed document of his having provided funding to Al Arabiya.

(b) Inherent probabilities

219. A second factor relates to the inherent probability of the Defendants having looked to Sheikh Mohamed to lend US$30 million for the project which became Al Arabiya. No persuasive case was advanced that Sheikh Walid or MBC needed to borrow US$30 million from Sheikh Mohamed in late 2001/early 2002 (or at any other time). The documents indicate that, as at 27 December 2002, Sheikh Walid held, in his eight Credit Suisse personal bank accounts alone, (i) GBP10,826,154.73; and (ii) US$112,028,348.16 (of which US$30,050,417.22 was held in the Al-Arabiya sub-account), all in a mixture of cash or cash deposits; and at the time the Payment was made, Sheikh Majid held in that account a 7-day fiduciary cash deposit of US$83,407,000. Sheikh Majid's funds and investments summary as at 31 December 2001 records that he had US$234,821,584 of cash and investments, of which US$105,932,543 was held as cash.

220. It was put to Sheikh Walid in cross-examination that the MBC Group was losing a significant amount of money, and he volunteered that it had lost £200 million across the first ten years of its operations. However, Sheikh Walid explained that this was part of the business plan and that he was able to support MBC from family funds and

from government funding. He said that when he decided to launch Al-Arabiya without external investors, "*we were committed to going all the way, for whatever amount is needed*". It was never suggested to Sheikh Walid that he simply did not have the money to finance Al-Arabiya himself.

221. It is true, of course, that the Al-Hariri group subsequently became a co-investor in Al Arabiya, but that occurred as a fully documented and structured investment more than a year after the Payment. By contrast, there was no apparent reason linked to the establishment of Al-Arabiya why there needed to be an urgent, undocumented loan of US$30 million by or in January 2002 (let alone before that, when Sheikh Mohamed alleges the Defendants began their requests for funding). There is no evidence of a business plan having been prepared for Al-Arabiya until August 2002 (see the evidence of MBC's CEO, Mr Barnett, who became its Director of Operations in October 2002). FTH was not instructed until 31 July 2002 and did not draw up information for potential investors until December 2002.

222. Sheikh Mohamed advanced the argument that the Defendants' real reason for seeking the loan was an attempt to avoid Sheikh Mohamed starting his own television station, the first step towards which he had taken by incorporating MBI Network Television in November 2001. However, the chronology does not readily fit that version of events. As noted earlier, his evidence for trial was that Sheikh Walid "*convinced*" him to invest in Al Arabiya at the meeting in Annabel's. Sheikh Mohamed's first witness statement indicated that he had discussions with both Defendants "*at some point in mid-2001*" about their proposal to establish what became Al Arabiya, including two face-to-face meetings with Sheikh Walid, one in London and one in Paris; and that that was followed by telephone requests by both Defendants for funding in August and September 2001, repeated in the ensuing months culminating in telephone calls in December 2001. His oral evidence at trial was that the meeting at Annabel's took place on a date he did not recall but which could have been as late as September 2001. On any view, though, it is unclear why he would then have been taking steps in October 2001 (initial documents signed on 10 October) to incorporate a company for the purpose of setting up his own television channel, having been persuaded instead to go with the Defendants' project.

223. A further aspect of the inherent probabilities concerned the use made of the Payment. There is no evidence that it was used for the Al Arabiya project. The documents indicate that it remained in one of Sheikh Majid's bank accounts as part of a larger balance, save that from time to time some of the money in the account was invested in long-term investment notes issued by the Permal Group. Sheikh Mohamed makes the point that he does not make a tracing claim, and there is no need to show that the same funds were used for the Al Arabiya project. However, if the Payment was required as a reasonably urgent loan for Al Arabiya, as Sheikh Mohamed suggests, one might reasonably expect to find evidence that either the Payment, its proceeds, or a roughly equivalent sum from another account held by Sheikh Majid (or perhaps Sheikh Walid) was used, in or shortly after January 2002, to meet expenses of the Al Arabiya project. No such evidence was put forward or can reasonably be inferred. Sheikh Mohamed pointed out that the launch of the channel ran behind schedule. However, Al Arabiya News Holding Limited was not even incorporated until 30 September 2002; and AGI's US$30 million seed funding was (at least on Sheikh Mohamed's case) put aside only on 18 November 2002. It is entirely speculative to suggest that there had nonetheless been a pressing need for US$30 million of funding as long ago as mid to late 2001.

224. Two further considerations relevant to the inherent probabilities are that Sheikh Mohamed (a) did not seek to call in the loan until 2015 and (b) did not include it in his statement of assets in the *Standard Bank* proceedings.

225. As to (a), Sheikh Mohamed explained the delay from 2002 to 2009 on the basis that he did not want to seek immediate repayment of the loan, which would have been *"insulting"* among *"Middle Eastern businessmen"*. As regards the rest of the period, Sheikh Mohamed said this in his oral evidence:

> "Q. But in 2009, you didn't make any attempt to call in the loan, despite considering it appropriate to do so, yes?
>
> A. You know, you have to give the chance, you have to give this, you call the loan, you go to the court -- it is not an easy decision.
>
> Q. Why didn't you just ask for it back?
>
> A. Sorry?
>
> Q. Why didn't you just ask for it back?
>
> A. I think I asked on a nice way through a friend, through my lawyer in Riyadh, so yes.
>
> Q. Are suggesting, Sheikh Mohamed, that in 2009 you made any attempt to call in the loan?
>
> A. I make what?
>
> Q. Are you suggesting that in 2009 you asked Sheikh Walid or Sheikh Majid for the return of the loan?
>
> A. I don't remember the date exactly but I think I start from that times, or after little, I think about to ask the -- they was already doing well and I felt they don't need the money anymore.
>
> Q. The first time you asked for the loan back -- and we will come to it -- was in 2015, wasn't it?
>
> A. That when I made official demand through the court.
>
> Q. You have made no reference in any communications with Sheikh Walid or Sheikh Majid prior to 2015 to this loan or its repayment, have you?
>
> A. It was all on a friendly basis through friends, through -- yes, it is not official.
>
> Q. And, Sheikh Mohamed, at no time in this litigation in any of your ten witness statements and affidavits have you ever suggested that you attempted to call in this loan prior to 2015, have you?

A. I don't remember that but, you know, I just --

Q. In fact, in this particular witness statement – it happens to be your second -- you are at pains to explain why you say you didn't ask for the money back, because you say you didn't know what documents existed.

A. I don't remember what you say here.

Q. You are making it up, aren't you, Sheikh Mohamed? You have never suggested that at any time prior to 2015 you asked for this money --

A. I don't made up anything. I was just, you know, a generous man, tried to work with trust and confident on the people I had tried to help them."

226. The following day, Sheikh Mohamed gave the following evidence:

"Q. I just want to explore; do you say this is the first time since 2002 that you have raised this loan with the defendants?

A. Not I raised this loan. It was a lot of times in – you know, just on a friendly talk, but this -- first – may be the first time to put that through a lawyers.

Q. So it is your evidence to this court that prior to 2015, you had asked for the money back; is that right?

A. You know, on a friendly basis, yes.

Q. When?

A. I don't remember date, but it was in -- a several time I talk to friend of both of us and I, you know – this is -- this matter on our culture, you don't go immediately to litigate.

Q. But roughly when?

A. I remember it start from 2009 and onward. You know, that times, maybe.

Q. So, in 2009, did you speak to Sheikh Walid about it?

A. You know, our culture, you don't speak direct about calling a loan or -- you know, just on a friendly basis you remind him through a friend, through something like that.

Q. You speak to one of his people, you say?

A. Not his people. You know, common friend.

> Q. Who was it?
>
> A. I will not tell.
>
> Q. I am afraid you have to, Sheikh Mohamed, because it could be rather important for this case that you --
>
> A. No, it is not important.
>
> Q. Who do you say you made a request to, to recall this loan, in or around 2009?
>
> A. You know, somebody -- it is a lawyer, by the way. And I don't want -- no, I don't know if he allows me to disclose his name.
>
> Q. We lawyers don't have such power, Sheikh Mohamed. You are on oath before the court here, in England, and I am asking you --
>
> A. I don't know that. I been asking friendly. He talk to him or he don't talk to him. I ask him just to remind him."

227. Eventually, Sheikh Mohamed named a Dr Abdulaziz Al Qasayer. Asked what response was received he said "*I don't know exactly how he [Dr Al Qasayer] was conducting the matter*" and added "*I don't questioning him, he is my lawyer for the last 25 years*". Thus, in the first of these accounts Sheikh Mohamed said he personally spoke to a mutual friend, without any lawyer involvement, but in the second account indicated that he had left his long-time Saudi lawyer to deal with the matter.

228. The Defendants' evidence was that they had never heard of a Dr Al Qasayer.

229. I find this new evidence of Sheikh Mohamed's implausible. Despite the obvious significance of the point, and despite the point having been squarely raised by the Defendants, no mention was made in any of Sheikh Mohamed's numerous witness statements of any such contact in or starting from 2009. The evidence is also inconsistent with evidence in Sheikh Mohamed's second and fifth witness statements that it was only when Mr Brook returned to MBI in 2015 that he began to take steps to recover the loan.

230. As to point (b), Sheikh Mohamed's only explanation for not referring to the loan in his assets list in the *Standard Bank* proceedings in August 2010 was that he left it to his legal team. However, if (as Sheikh Mohamed now suggests) he had begun taking informal steps to recover the loan in 2009, it is all the more surprising that he did not mention it to his legal team.

(c) Sheikh Mohamed's evidence

231. In addition to the documents and the inherent probabilities, doubt is cast on Sheikh Mohamed's account by the lack of clarity in, and in some instances changes to, his account of the key events.

i) Sheikh Mohamed's pleaded case about the initial meetings regarding the loan is that discussions began in about mid 2001 about the Defendants' plans to set up a channel, primarily face to face with Sheikh Walid, with requests for funding beginning in August and September 2001. In his first witness statement, he said there were two meetings, in London and Paris, about the Defendants' plans, followed by telephone requests for funding starting in August and September 2001. He said that he recalled telling the Defendants that he was thinking about establishing a new channel himself, but they were keen to persuade him to join them instead.

ii) However, in his witness statement for trial (his seventh witness statement), Sheikh Mohamed stated that the Defendants had found out about Sheikh Mohamed's own plans to create a channel, approaching him over dinner at Annabel's in London to try "*to persuade me to allow them instead to launch and run the rival channel*", and at the same meeting invited him to invest US$30 million. He then met Sheikh Majid a number of times in Saudi Arabia, there was a second meeting in London at which the Defendants were again persuading him to provide money, and a further meeting with Sheikh Walid alone in Paris.

iii) Thus, on Sheikh Mohamed's original account, the first London meeting was about the Defendants' proposed channel, whereas on the new account it concerned Sheikh Mohamed's own proposed channel and who should run it. On the original account the requests for funding were made in subsequent telephone calls, whereas on the new account such a request was made at the meeting at Annabel's. On the original account, Sheikh Mohamed told the Defendants about his own plans in response to hearing theirs, but on the new account they found out about his plans and reacted by approaching him about theirs. On the original account, the meetings were mainly face to face with Sheikh Walid, whereas on the new account the two main meetings were with both Defendants. Sheikh Mohamed did not provide any coherent explanation for these significant alterations in his version of events.

iv) The documents included a "*Summary information*" document dated January 2003 which FTH emailed to MBI with the message "*Please pass the attached documents to Sheikh Mohamed Bin Issa Al-Jaber*". When shown it at trial, Sheikh Mohamed initially said *"I think it was one of those presentations"* and that he remembered seeing (or seeking) *"some presentation like this"*. However, when it was pointed out that the presentation did not mention him, Sheikh Mohamed claimed that he had never seen it and had made that clear as soon as it had been shown to him. That was despite the fact that Sheikh Mohamed had himself disclosed the document under cover of a letter of 27 July 2015 from his solicitors; and referred to it as the 'road show' presentation and relied on it in his first two witness statements as well as in the inter solicitor correspondence.

v) Sheikh Mohamed's pleaded case was that the Payment was a loan. However, in his oral evidence he stated, for the first time, that he had the option to convert it to equity, even claiming that that had always been his case (which it had not been). Sheikh Mohamed went even further, suggesting that there had been a specific conversation several years after the Payment had been made, in which the Defendants suggested that it would be better for the sum to remain a loan

rather than Sheikh Mohamed becoming a shareholder. This was an entirely new case. It is difficult to believe that that had always been Sheikh Mohamed's recollection in circumstances where, after a series of iterations, it did not appear anywhere in his pleaded case or witness statements; and it is difficult to resist the conclusion that Sheikh Mohamed was simply inventing evidence in the witness box.

(d) Factors said to favour Sheikh Mohamed's account

232. Sheikh Mohamed submitted that there were eight central factors in favour of his account of these events.

233. First, Sheikh Mohamed points out that the amount transferred by Sheikh Walid as AGI's subscription for Al-Arabiya in March 2003 was US$30 million, the very amount that Sheikh Mohamed says he had lent at the Defendants' request. As explained in the presentation circulated in January 2003, US$30 million was (i) the amount of the founding shareholder's contribution, (ii) the founding shareholder's capital requirements over the next 5 years, (iii) the co-founder shareholder's contribution, (iv) the co-founder's capital requirements over the next 5 years, and (v) $30m was likewise the 'magic number' in the confidential Information Memorandum. Sheikh Walid in March 2003 (with a sum earmarked for the purpose in November 2002), paid US$30 million as AGI's founding shareholder's contribution to subscribe for shares in Al Arabiya News Holding Limited. This US$30 million was for AGI's subscription of 300,000 A shares in Al Arabiya News Holding Limited (BVI). US$30 million was, again, the 'magic number' for investment by the Al Hariri family for share capital. All of this, Sheikh Mohamed says, reflects what Sheikh Walid told him was the Defendants' financial plan back at the original meeting in Annabel's in 2001. There, Sheikh Walid had said the new channel would cost US$90 million to run for the first few years, and that there would be three investor/partners with each to contribute US$30 million representing 33% of the total investment required.

234. On the Defendants' case, this must be nothing more than a coincidence. But, Sheikh Mohamed says, it would be the most remarkable one: the alleged fee for Sheikh Majid's advisory services could have been almost any number at all, and indeed could have been expressed by reference to Saudi Riyals rather than US Dollars.

235. I would accept that this is a factor to be taken into account, as part of the overall assessment of the competing accounts of the reason for the Payment. It cannot, however, be regarded as compelling, since it is perfectly possible that the round number of US$30 million constituted both the agreed advisory fee for Sheikh Majid and the sum sought from Al Arabiya's founders.

236. Secondly, as already noted, Sheikh Mohamed incorporated a company with a view to setting up his own TV news station, which would have rivalled AGI's offering. Sheikh Mohamed explained that this initiative was aligned with his philanthropic work with the London Middle East Institute at SOAS and Olive Tree at City University. It was intended to act as a counter-balance to the 'tabloid' broadcasting provided by Al-Jazeera, and the urgency of that project only increased following 11 September 2001. He spoke widely about his intention to do so, including (he said) to the Defendants' own employees in London, including at a meeting in his office in Wigmore Street *"maybe some time 1998, beginning of 1999"*. (That evidence is, he says, consistent

with Sheikh Mohamed having a business card from Mr Al-Hedeithy at MBC from the time while MBC's operations were still located in Battersea, London.) Sheikh Mohamed states that he was successfully put off doing so by instead being persuaded to provide finance for the Defendants to do it instead. The urgency about the payment was the need to head Sheikh Mohamed off from starting his own channel. The Defendants then used on the Al Arabiya project the same professionals that Sheikh Mohamed recommended to them, including Mr Vogel at Fulbright & Jaworski, and Mr Al Sayrafi at Arthur Andersen (and who then moved to FTH).

237. Again, the evidence of Sheikh Mohamed contemplating setting up a TV channel himself, and incorporating a company for that purpose, is to be weighed in the balance. On the other hand, I have already pointed out the inconsistency in Sheikh Mohamed's evidence about how that possibility affected his discussions with the Defendants about what became the Al Arabiya project: see § 222 above. There may well be other possible explanations for Sheikh Mohamed not having proceeded with any such plan himself. The evidence did not establish that any channel Sheikh Mohamed may have had in mind would have been similar to or a competitor for what became Al Arabiya. Further, the point about the identity of the professionals used on the Al Arabiya project is not compelling, since (a) there is in fact no evidence that Sheikh Mohamed did recommend them to the Defendants for the Al Arabiya project; (b) it remained Sheikh Majid's evidence, in his fifth witness statement, that Mr Al Sayrafi of Arthur Anderson was already known to him in 1998; and (c) Sheikh Walid also said in evidence that his family had known Mr Al Sayrafi for some years from his days at Arthur Andersen. It is unclear how Mr Vogel of Fulbright came to be involved in the Al Arabiya project, and the fact that he was also well known to Sheikh Mohamed again has to be weighed in the balance. At the same time, it is notable that Mr Vogel, in a memorandum dated 11 November 2002 summarising the project to overseas lawyers, referred to MBC as the founding shareholder yet made no mention of Sheikh Mohamed's alleged investment.

238. Thirdly, Sheikh Mohamed had prior social and business dealings with the Defendants, including placing advertisements on MBC through Ajwa and the purchase of the Portugal Property Fund. These media business dealings continued throughout the relevant period, including profiling Sheikh Mohamed's opening gala in Vienna on MBC. In addition, the documents indicate that on 16 July 2001 two important individuals at MBC – Mr Ismail, responsible for current affairs and documentaries and Mr Al Jadail, COO of MBC – were sharing ideas for television specials to discuss with Sheikh Mohamed. All of this is said to be entirely consistent with the Defendants having a positive relationship with Sheikh Mohamed in relation to media matters (and inconsistent with the idea that there had been some great falling out as a result of Sheikh Mohamed selling their nephew allegedly over-inflated assets).

239. Further, the Portugal Property Fund is said to show, consistently with Sheikh Mohamed's account of the Al Arabiya dealings, that Sheikh Majid (and, in particular, Mr Ali of his private office) would be the person dealing with the practicalities of joint investments, following up on the details of high-level instructions provided by Sheikh Walid. For example, on 9 January 1999 Mr Ali faxed to Sheikh Mohammed a draft contract for the sale of shares in the fund with Sheikh Walid personally. This was put to Sheikh Walid in cross-examination: "*Then the share sale itself was handled on your behalf by your brother Majid and his private office? A. That is not unusual*." Further,

as noted earlier, the proceeds of the sale were specifically directed to Sheikh Walid's personal account rather than to Durango. Sheikh Mohamed submits that Sheikh Majid gave unsatisfactory evidence about this, saying in his first witness statement that Sheikh Walid has introduced the investment to Sheikh Mohamed, but in oral evidence that he, Sheikh Majid, had done so that the Sheikh Walid did not know anything about it.

240. On the general point, these prior dealings show that Sheikh Mohamed was a person known to the Defendants, and with whom they had dealt, and hence that if they had been seeking third party funding in late 2001 for Al Arabiya, then Sheikh Mohamed might be a person they could have approached. However, the point really goes no further than that. Conversely, the fact that Ajwa was a reasonably substantial provider of advertising revenue to MBC made it unsurprising that Sheikh Mohamed was invited to certain events and given coverage in the way he was, and was among the limited number of third parties invited in early 2003 to consider investing in the Al Arabiya project.

241. It is fair to say that Sheikh Majid's evidence about the Portugal Property Fund was inconsistent in the respect Sheikh Mohamed points out. On the other hand, by the time of Sheikh Majid's third witness statement, dated 11 January 2023, he had provided an explanation of how and why he had introduced Sheikh Mohamed to the fund following a stay with Sheikh Mohamed in the Algarve (see § 214 above). Moreover, Sheikh Walid had stated as long ago as 18 January 2016, in his second witness statement, that although he signed the documentation he had nothing to do with the transaction. It was not, therefore, a last-minute change of tack at trial. The fact that the proceeds were paid to Sheikh Walid was consistent with his having been the registered shareholder, and (in the light of the general explanations given by the Defendants as to their *modus operandi* for family investments) does not demonstrate that he had any practical involvement in it, high level or otherwise. Overall, I do not consider this matter to reflect in any seriously adverse way on the Defendants' evidence.

242. Sheikh Mohamed also suggests that Sheikh Walid in his oral evidence wrongly downplayed the extent of the contacts that he had with Sheikh Mohamed, and that is contradicted by, for example, Sheikh Walid's earlier witness evidence that he had "*engaged socially with*" the Claimant from the "*late 1990s … until about the end of 2001"*, that "*I believe there could have been occasions in which I was at Sheikh Majid's house when the claimant was also there, I may therefore have spoken with him socially*", and that "*[a]lthough I do not now recall any specific meetings, it is possible that I met [Sheikh Mohamed] in late 2001. However, it is unlikely that I would have met him then in London and it is much more likely to have taken place in KSA or a venue such as Marbella."* Sheikh Mohamed also refers to records indicating that Sheikh Walid's assistant, Mr Ben Cheikh Amor, was in London in May 2001 and February 2002 (albeit Sheikh Walid said Mr Amor sometimes travelled on his own); and the hearsay evidence of Mr Whitehead, in-house legal counsel for MBC, recalled that when he met Sheikh Walid in London it would be "*in his rooms in a 5 star hotel*" (whereas, as noted earlier, Sheikh Walid denied having kept rooms at the Intercontinental Hotel in London). Sheikh Walid agreed in his oral evidence that he had had a meeting with Sheikh Mohamed in Sheikh Majid's house, a social rather than a business meeting, in Riyadh or Jeddah. In my view, any downplaying on Sheikh Walid's part was a matter of degree, and not central to his account of the relevant events.

243. Fourthly, Sheikh Mohamed submits that AGI's approach to setting up financing was indeed to seek third party financing, including by subsidy and by a US$30 million contribution (discussed as a loan) from Sheikh Saad Al Hariri. AGI sought and obtained a US$30 million investment in Al Arabiya from Sheikh Al Hariri, and sought investment from other third parties including (Sheikh Walid said at trial) the Emir of Kuwait and the Prime Minister of Lebanon, "*who were actually willing to invest with us on this one*". It was not simply a venture intended to use MBC's own money. Their own company finances were heavily indebted (as summarised earlier). This is said to contradict the Defendants' evidence, quoted earlier, that they never needed to borrow money from third parties, and instead would use family funds and did so in relation to Al Arabiya, and likewise to contradict Sheikh Walid's evidence at trial that:

> "This was an attempt by FTH to lower the risk, and it did not work, so we stopped the process, and Hariri the only one who came in at that time. Then we stop the whole thing, and we had family contribute and support the beginning of Al Arabiya, with the help of King Fahd and the government at that time."

244. I do not, however, consider there to be any real discrepancy. The focus of the Defendants' witness evidence was on whether they would have needed to borrow. It was never in dispute that strategic co-investment was sought from persons including Sheikh Al-Hariri. For example, the Defendants provided evidence from Mr Rasheed, Director of MBC's Executive Office, that:

> "12. The idea was to pitch the idea not to ordinary investors but to strategic, political level, investors across the MENA region. I was not directly involved in any presentations to potential investors, but as I understood it, the aim was to further the political balance of the proposed pan-Arab channel.
>
> 13. I do recall there were numerous meetings with regional media companies or the relevant ministers in charge of media from Arab countries, including from:
>
> 13.1. Lebanon (which was the Al Hariri family);
>
> 13.2. Yemen;
>
> 13.3. Kuwait;
>
> 13.4. Egypt; and
>
> 13. 5. Bahrain.
>
> 14. As far as I was aware, the only one of these that was really active as a potential investor was Al Hariri from Lebanon. …"

245. Sheikh Mohamed refers to certain evidence to the effect that raising money by way of loan was tax efficient for MBC. Sheikh Walid gave this evidence at trial:

> "Q. Let's look at the family. It had funding in the form of loan, didn't it? That is the 200-odd million loans we see in the annual accounts of MBC, which we looked at on Thursday.
>
> A. Of course, it will be informed loans if you are sending the money from Saudi to London, otherwise you would be paying taxes, more taxes in London for -- of its capital only. This is done by our finance department.
>
> Q. I see. So the money was always being lent as a tax efficient way of funding the company?
>
> A. Yes, of course."

Sheikh Majid at one point in his oral evidence said "*That was an investment, but it was dealt with as loans, with the tax structure*". Similarly, there appears to have been a discussion with the Al-Hariri group on 14 February 2003 about their providing US$30 million using a loan and guarantee structure.

246. However, this provides no assistance to Sheikh Mohamed: it shows, at most, that <u>if</u> MBC had obtained funding from Sheikh Mohamed, it might have wished to do so by way of a loan. But even that is unclear, since when FTH sent an investment invitation to Sheikh Mohamed in early 2003, it seems to have been seeking equity investment: see, for example, the standard form letters sent (or at least prepared to be sent) to prospective investors including Sheikh Mohamed in January 2003 referring to "*possible investment in the equity securities of the company*".

247. Sheikh Mohamed also refers to a fax indicating that pending an initial shareholder subscription of US$150 million, Mr Chowdry was on 11 February 2003 asked to provide US$6 million funding for Al Arabiya by way of a short-term loan. Mr Barnett explained that he had to do this regularly in order to keep the operation going, as the channel was loss-making. However, none of this provides any support for the notion that Al Arabiya required US$30 million of funding from Sheikh Mohamed more than a year previously, in late 2001/early 2002.

248. <u>Fifthly</u>, Sheikh Mohamed submits that the timing of the Payment is consistent with the intended founding of a new TV news channel in 2002 (albeit it ended up running around six months behind schedule). I have already addressed this point in § 223 above. It provides no assistance to Sheikh Mohamed.

249. <u>Sixthly</u>, Sheikh Mohamed, along with Sheikh Al-Hariri, and a handful of other select individuals, was one of the very select group of people who were given the details of Al-Arabiya's financing in January 2003. Sheikh Mohamed was hand-picked, alongside AGI and the Al Hariri family, to be within the top three funders/investors in the Defendants' contemporaneous lists of invitees. He suggests that the chosen persons must have been hand-picked, given the political nature of the Al Arabiya project, and that Sheikh Walid must have known who they were. Sheikh Walid at trial said he *"knew who they [FTH] were approaching at that time, and they have to run the rest by me. But I did not follow with them, because I think when I saw the list of the people, I knew they were not serious",* though he also said *"I also have no knowledge of whether any documents relating to Al Arabiya were sent to the Claimant. I had no reason to*

request or direct that any documents be sent to him, and I did not do so". Sheikh Mohamed suggests that the proposed recipients of the letters may, like Al Hariri and himself, already have invested or agreed to invest. In my view the January 2003 invitation does not assist Sheikh Mohamed. It does not in any way evidence his having already lent a substantial sum to Al Arabiya. If anything, it tends to suggest that he had not but was being invited to invest now: as was Sheikh Al Hariri (albeit Sheikh Al-Hariri had already expressed interest in doing so).

250. Sheikh Mohamed also relies on the meeting referred to in § 150 above. The attendees were high profile individuals involved in Al Arabiya:

i) Mr Al Jadail: Chief Operating Officer of MBC, and CEO of AMS, the sales arm;

ii) Mr Al Sayrafi, of Financial Transaction House, running the share sale;

iii) Mr Ismail, who Mr Barnett explained was *"responsible for current affairs and documentaries. He might have been general manager for O3, which was another subsidiary"*;

iv) Mr Nakhle El Hage, editor in chief/director; *"a senior person in the news room"* according to Mr Barnett;

v) Mr Barnett, director of operations at MBC;

vi) Mr Martyn Wheatley, managing director of Middle East News in Dubai; and

vii) Mr Saleh Negm, a who had joined from Al-Jazeera to launch Al-Arabiya as *"editor-in-chief"* (*per* Mr Barnett).

The email preceding the meeting also went to Mr Paul Farnsworth, head of engineering; Ms Safwat, Head of HR; Mr Abdulaziz Al-Hodaithy, head of administration; and Mr Al-Hedeithy, director general of MBC.

251. Sheikh Walid's account of the reason for this meeting was that it would have been arranged by FTH or AMS without his knowledge or involvement: *"If they are marketing to get investors, maybe they have invited him, maybe"*, or that perhaps Sheikh Mohamed just wanted to *"understand the new channel, if he wants to advertise on it"*. Sheikh Mohamed suggests that that is not credible, given the attendees and in circumstances where Sheikh Mohamed's accommodation was being paid for by MBC (or, on Sheikh Mohamed's case, Sheikh Walid personally). I do not agree. There is nothing implausible about the idea that Sheikh Mohamed was invited to the meeting, and his accommodation paid for, because (a) his company was a major advertiser and (b) more proximately, he was being invited to invest in Al Arabiya.

252. Mr Rasheed said in his oral evidence:

> "A. I remember he came as a guest of MBC. Assad was the -- Assad originally played two roles. He was the CEO of AMS, which was our advertising arm, and COO MBC, as such, as Sheikh Mohamed was coming in, we wanted to show him respect, show him our stars. Everybody wanted to come in and see MBC, like going to CNN or BBC. MBC had relocated to the

United Arab Emirates and everyone wanted to see the stars, you know, the news anchors.

And we showed him respect by having him meet up with the people of the channel that we were doing.

Q. Were you aware that he was one of the people who was being wooed by Sheikh Walid and his brother, Majid, to invest further in MBC?

A. No, I was not.

…

A. At that time, I think I was not working with Sheikh Walid. I was working with Assad Abu Al Jadail, which is the chief operating office.

Q. So you wouldn't really know the circumstances in which Sheikh Mohamed was actually being invited?

A. No.

…

If we look at who there was; these are all senior managers, weren't they?

A. These are all managers who are involved in the production, editing, and engineers, HR, and administration.

Q. Yes. Did you know by then that he was a very wealthy man?

A. I mean, we called him "Sheikh". We paid respect -- a lot of people turned up to MBC, but it was like a very last minute invitation that we had the notification that he is coming over. Rally the troops, show him who we are, and do a small presentation, if need be.

Q. Had you been told that he had assisted in providing some initial financing for Al Arabiya?

A. No. No. I was -- that was never ever mentioned at all.

…

A. … He asked question, if an investor -- firstly, we presented, my Lord, the concept of Al Arabiya. What are we doing, what is the purpose of Al Arabiya, like we did to many other VIPs who turned up. Okay, His Royal Highness, Abdul Al Qasayer, minister of foreign affairs, so we do the same thing. But not to the same level of His Highness Abdullah."

> But we presented him -- very quickly, an overview Al Arabiya, who we are, who the parties were, and he asked questions. For somebody who invested, would it be bought ... we said yes. "Would they have an active role?" he asked. I make comments, and he said: active role. So whether -- you know, were the board members or the shareholders, future shareholders be active, that was the purpose.
>
> Q. Just an ordinary advertiser wouldn't be asking questions about being a board member, would he?
>
> A. He was interested, he was asking questions. In reality, I am not going to stop somebody asking a question. I just noted it down, so there was a very short meeting.
>
> Q. So he was asking questions about board membership?
>
> A. He was asking what would subscribers be, board members? Would they have an active role? And so forth.
>
> Q. Clearly, he wasn't asking that just out of idle interest; he was asking that out of his own interest, wasn't he?
>
> A. I have no idea. I cannot speak on his behalf."

253. Sheikh Mohamed submits that the far more plausible understanding of the contemporaneous documents is that Sheikh Mohamed attended in his capacity as a channel financer – not only as an advertiser. The direction that had been given to the Al Arabiya employees was to ensure he was treated as a VIP. The purpose of the meeting was to discuss whether he would be appointed to the Board of Directors, or otherwise have an active role in the channel. That is said to be consistent with Sheikh Mohamed's account. I do not agree. The brief manuscript notes of the meeting include indications of matters that Sheikh Mohamed might well have raised if he were interested to know the terms on which he might invest in Al Arabiya, in addition to his position as a significant advertiser. However, there is nothing in the notes, or the other evidence in relation to the meeting, that provides any support for the view that the context was Sheikh Mohamed having already provided a substantial loan or other funding to Al Arabiya.

254. Seventhly, there is some common ground between the parties that the relationship following the Payment in January 2002 was positive. Sheikh Majid's evidence is that he and Sheikh Mohamed went for a celebratory dinner together. Sheikh Mohamed's account is that he had dinners with Sheikh Walid and that both brothers thanked him subsequent to the Payment. Sheikh Mohamed was hosted in Dubai at Sheikh Walid's expense, and met with Al Arabiya executives as a VIP to discuss his potential active role, including as a member of the board of directors. It is suggested that such behaviour is consistent only with a positive relationship between Sheikh Mohamed and the Defendants, not hostility from an alleged failed relationship with Prince Abdulaziz, their nephew, following Prince Abdulaziz allegedly having been 'duped' by inflated valuations. I do not accept that submission. A celebratory dinner between Sheikh Mohamed and Sheikh Majid is at least as consistent with Sheikh Majid's account as it

is with Sheikh Mohamed's. By that time, Prince Abdulaziz's dissatisfaction about his investments was water under the bridge. The problem had been solved, by the long-term leasing of the Compounds and the securitisation, which meant Prince Abdulaziz could be bought out.

255. Eighthly, Sheikh Mohamed refers to the sheer implausibility and risk of making up the account from scratch, being able to reverse-engineer this claim as a fabricated story, and pursuing it through these hard-fought proceedings from 2015 to 2023. The coincidence over the US$30 million amounts supports Sheikh Mohamed's case rather than being (as the Defendants suggest) the hook on which he based a fabricated claim. There is no truth in the suggestion he had financial problems in 2015 when he asserted his claim. He gave evidence that he had in fact already raised the issue of the loan in 2009, and by 2015 he had paid off (in 2013) a US$180 million financing in Portugal and was debt-free.

256. I do not find this point particularly compelling. It is not unknown for false claims to be pursued at length through litigation. As for the state of MBI's finances, there was significant evidence that serious problems did exist.

i) Sheikh Mohamed had been the subject of a substantial claim by Standard Bank, which secured summary judgment against him on 8 November 2011 in the sums of EUR 121 million and US$22 million ([2011] EWHC 2866 (Comm) § 2 *per* Burton J) and obtained a freezing injunction. He stated in oral evidence that he had been forced to pay in full.

ii) Press reports from as early as 26 September 2012 stated that Sheikh Mohamed's Portuguese hotel companies were "*bankrupt*", albeit Sheikh Mohamed was quoted in that article rejecting the allegations.

iii) MBI BVI was placed into liquidation on 10 October 2011. After several years of litigation, the Eastern Caribbean Supreme Court dismissed the application to terminate that liquidation on 30 October 2013, and an appeal was dismissed by the Eastern Caribbean Court of Appeal on 14 January 2015.

257. Mr Lawrence's evidence was that in February 2014 the MBI Group's accounts were losing money "*at an alarming rate*", that he raised concerns about "*the deteriorating financial situation*" and that JJW's funds would likely be exhausted by August 2014. He said that salaries were being paid late from September 2014 and that by 2015 "*there were so many creditors that both accounts departments were overwhelmed*". Further, in summer 2014 MBI & Partners U.K. Limited ("***MBI UK***") had started borrowing money at high rates of interest from companies such as Quick Funds and Liquid Finance. It was suggested that this was in fact the work of a Mr Salfiti, who was looking to embezzle from the company. However, Mr Lawrence's evidence was that Sheikh Mohamed was fully aware of these transactions:

> "Q. When you say "he knew"; you don't know, do you? You were not standing next to him when these were paid, were you?
>
> A. I was standing next to him when he was signing them and he was asking questions about them, yes.

Q. I see."

Similarly, Mr Brook accepted in evidence that there were 'issues' about Sheikh Mohamed's companies' ability to repay their debts. Even Sheikh Mohamed accepted that there were 'ups and downs'.

258. In addition to the eight factors considered above, Sheikh Mohamed submitted that it was a weakness in the Defendants' case that they had sought to deny Sheikh Majid's involvement in the media side of the business, including MBC, AGI and the Al Arabiya project; and there was a degree of secrecy over shareholders and interests in the Defendants' media companies (see, for one example, § 128 above). In fact, Sheikh Mohamed submitted, Sheikh Majid ultimately accepted that AGI was a family company; MBC's funding ultimately came from family money; Sheikh Majid handled the family's "*money-related investments*" (as Sheikh Walid put it) as well as property investments; Sheikh Majid was vice chairman of AGI's supervisory board; AGI advanced large sums into the Al Arabiya project and subscribed for 300,000 shares in Al Arabiya; Sheikh Walid eventually accepted that Al Arabiya was 40% owned by "*the family*"; Sheikh Majid went on to become the 50% shareholder in Al Arabiya for Advertising Services; and Sheikh Walid ultimately had to accept (when presented with a newspaper notice dating from August 2017) that Sheikh Majid became vice chairman of MBC at some point.

259. However, none of those points in my view undermines the Defendants' evidence that it was Sheikh Walid rather than Sheikh Majid who in fact handled the affairs of MBC and Al Arabiya; nor do they support Sheikh Mohamed's inferential case that the Payment, made to Sheikh Majid, was in fact an investment in the Al Arabiya project.

260. Sheikh Mohamed submits that Sub-Account 8 Al Arabiya, in which funds were earmarked in November 2002 for investment in Al Arabiya and from which $30 million was paid for that purpose on 26 March 2003, contained a mixture of governmental subsidiary (US$8 million) and inter-company loan from a US company called ANA (US$22 million). Further, the documents referred to in § 155 suggest that both Defendants took a loan from Sub-Account 8 Al Arabiya in early 2003, and thus (Sheikh Mohamed submits) treated its contents as family money. Thus, he suggests:

> "The source of the funding was therefore just a case of piecing together whatever was available from the family wealth. There does not appear to be any significance to the precise source of the funds. It might as well have been from any of the other family accounts. There was certainly no need specifically to identify the $30m from Sheikh Mohamed held in Account 370 (to the extent it had not already been put on an investment to seek to minimise Zakat) and move that particular sum across to Sub Account 8 Al Arabiya."

261. However, this point in my view has little weight, for the reasons given in § 223 above.

(e) Overall provisional view

262. For all these reasons, my provisional view is that Sheikh Mohamed's explanation for the Payment lacks plausibility. It contains serious inconsistencies; it is unsupported by

and in significant respects contradicted by the contemporary documents; and it is at odds with the inherent probabilities.

(H) TRANSFER INSTRUCTIONS FOR THE PAYMENT

(1) The File Copy Transfer Instruction

263. As noted earlier, Sheikh Mohamed's solicitors, Zaiwalla, enclosed with their letter of 27 July 2015 setting out the claim a copy of what was said to be the instruction given to the bank to make the Payment. The letter said:

> "For your information, we attach a copy of our client's bank instruction: dated 3 January 2002. You will note that the bank client reference states *"Sheikh Walid and Majed Al Ibrahim".* We are advised as well that although the instruction was sent on the letterhead of MBI International & Partners the account from which the funds were transferred is owned by our client."

264. The enclosed document, which I shall refer to as the "***File Copy Transfer Instruction***", was on a letterhead bearing the name "MBI International" at the top, followed by the name and address (in London) of MBI & Partners UK Limited. These included a fax number ending 0996. The letter was addressed to Mr John Collier-Wright of HSBC Republic in Berkeley Square, London, copied to Ms Karen Boecker of HSBC Geneva. The body of the letter read:

> "Dear John,
>
> **Re: MBI US Dollar Account with HSBC Republic Geneva**
>
> Please transfer the sum of US$30, 000, 000 (US Dollars Thirty Million Only).
>
> | | |
> |---|---|
> | Value Date: | January 4th 2002 |
> | Bank Client Reference: | Sheikh Walid and Majed Al Ibrahim |
> | Bank: | Credit Suisse |
> | Bank Address: | Geneva |
> | Swift Code: | CRESCHZZ 12A |
> | Bank Account No: | [account number stated] |
> | Reference: | Durango Management Limited |
>
> Thanking you for your assistance.
>
> Yours sincerely,
>
> [signature]

Mohamed bin Issa al Jaber"

(2) Original witness evidence about the transfer instructions

265. Sheikh Mohamed explained in his first witness statement (dated 22 December 2015) that, after a call from Sheikh Majid in late December 2001 stressing the urgency of the need for funds, Sheikh Mohamed agreed to lend the money and asked that the Defendants send him the banking details for the remittance. Sheikh Mohamed continued:

> "35. Later, a fax arrived from a Mr Ali, who I understood to be the Financial Controller of the MBC Group. I recall that the fax had a large "MBC" logo on it. I and my companies had some dealings with the Defendants in relation to media advertising (about which I will expand further below), so I or my staff would have known who Mr Ali was, and his connection to [Sheikh Walid].
>
> 36. The fax served as the basis for the completion of instructions to my bank, HSBC Republic in London on 3 January 2002 for a transfer from my personal bank account [exhibiting the File Copy Transfer Instruction]. This payment instruction was prepared by the MBI Group's Chief Financial Officer, Mr Richard Brook, and signed by me. It clearly states as the client reference of the receiving bank was "Sheikh Walid and Sheikh Majed (sic)". This was some months after 9/11 and, as a result, banks were very sensitive about the transfer of large cash sums, and it had been made very clear to me by my bankers that it was necessary to give the names of the beneficiaries, and not just the name of a private company. It was for this reason that the instructions to my bank specifically stated the recipient beneficiaries to be Sheikh Walid and Sheikh Majid, the two Defendants.
>
> 37. I remember at this period that Mr Brook and I were finalising a number of large payments, which we were trying to complete before the end of the year, although in the end this transfer was only finalized on 3 January 2002. I remember that on that day my bank account manager, Mr John Collier-Wright from HSBC, came to meet me at our offices and wish me well for the New Year."

266. Sheikh Mohamed also served, at that stage, the first witness statement of Mr Brook, dated 22 December 2015. Mr Brook said he remembered the day of the Payment very well, and that he had a relatively large number of fund transfers to prepare, both in value and volume. He would usually fax payment instructions to HSBC, and the relationship manager, Mr Collier-Wright, would then telephone Sheikh Mohamed personally to obtain his oral authority for the payments. Mr Brook exhibited the File Copy Transfer Instruction and said he personally prepared it, entering details from a fax from MBC that Sheikh Mohamed personally handed to him. Sheikh Mohamed told him it was a loan and that the payment *"should show as the beneficiaries 'Sheikh Walid and Majid*

al Ibrahim'. Their account was in the name of Durango …". Mr Brook said that at the time that the present claim was being prepared, he tried to locate a copy of the fax but could not find it. He left Sheikh Mohamed's employment in early 2008 before re-joining in June 2015. After preparing the File Copy Transfer Instruction, he presented it to Sheikh Mohamed for signature. Then:

> "11. Given the importance of the transfers being instructed that day and the time of year, Mr Collier-Wright came to our offices to meet Sheikh Mohamed and wish him a Happy New Year and to ensure that all transfer instructions were properly completed and signed before taking them with him back to the bank in St James's Street to execute that same day.
>
> 12. I later recorded the transfer in my computer records and subsequently checked the details against the bank statement to ensure that funds had been remitted as instructed and debited to Sheikh Mohamed's account accordingly."

267. In his third witness statement, dated 14 July 2016, Mr Brook explained that after his return to MBI in 2015, he found that record-keeping had suffered in the meantime, and Sheikh Mohamed was keen for him to put things in better order. Further:

> "As part of this, I revisited with Sheikh Mohamed various transactions, particularly those with which I had been involved in my previous period of employment. The payment instruction that I had prepared for the loan [i.e. the File Copy Transfer Instruction] was then discovered in one of my old filing cabinets and I discussed it with Sheikh Mohamed. (The fax from Mr Ali with the payment details provided by the Defendants was not in the file, and further searches have so far failed to locate it.)"

268. As part of their evidence for trial, the Defendants served a witness statement dated 10 November 2021 from Mr Lawrence, an accountant and former employee of JJW, a part of the MBI Group, between February 2013 and February 2016. He provided accounting services to JJW, MBI UK and Jadawel. After referring to Mr Brook's evidence about the File Copy Transfer Instruction, Mr Lawrence said:

> "12. I prepared what I recall to be an identical bank transfer at the request of Sheikh Mohamed in late 2014 or early 2015 (the "*Bank Transfer Instruction*"). I cannot be more precise about the date, but I recall that it was beginning to get dark outside by mid-afternoon, and therefore I believe that it was December 2014. On the day in question, following my return from lunch Sheikh Mohamed summoned me to his office. As was usual in my dealings with Sheikh Mohamed, I met with him only very briefly. We did not engage in conversation and our meeting was limited simply to his instructions. Upon my arrival at his office, Sheikh Mohamed showed me a black plastic ring binder which contained various bank transfer instruction letters and a spreadsheet listing each of the transfers. I cannot remember precisely, but I think on looking back that the bank transfer

letters were from about 2000 to 2004. To the best of my recollection, the document exhibited to Mr Brook's statement was not in the file. Sheikh Mohamed pointed to the line on the spreadsheet listing showing the US$30 million transfer and instructed me to produce the Bank Transfer, adding that the format must look exactly like other transfer instructions in the file.

13. Bank transfer letters generally were commonplace at MB1 because the payments system required these letters to be produced for all payments. It was part of my role - shared with one other person in the office - to prepare these letters, which were then kept in both hard and soft copy, though not in any particularly organised way until about 2012. Therefore, by the time I was asked to prepare the Bank Transfer Instruction, the bank transfer letters from 2002 were not available to me in the office. I recall that I produced the Bank Transfer Instruction from a blank document, manually typing out a copy of the layout on a work computer in another transfer addressed to Mr John Collier-Wright of HSBC Republic contained in the file. I cannot now remember where I saved it, but I think I probably saved it to my user folder on the network. That would have been my usual practice. I no longer have access to the document itself, either in electronic or physical format.

14. To the best of my recollection, the details for the Bank Transfer Instruction were brought to me by one of Sheikh Mohamed's assistants (which could have been any one of three people) in the form of a hand-written note, shortly after Sheikh Mohamed had asked me to prepare the Bank Transfer Instruction. 1 do not recall what happened to the note, but 1 imagine that 1 would have left it on my desk with other papers, as was my habit at the time. I do not have a copy now.

15. In order to finalise production of the Bank Transfer Instruction it was necessary to print it on MBI International & Partners Inc. ("MBI International") headed notepaper. I went to the legal department and obtained the necessary paper. When I first printed out a copy, I checked the details and noticed that the registered office was Wigmore Street, but, in 2002, the company's registered address was at St James' Place. Accordingly, I then contacted the company's web designer, Mr David Edmonds, by telephone. Mr Edmonds was an internal employee of MBI who dealt not only with web design but also with the production of headed paper. I requested that he supply me with six sheets of MBI International headed paper with the address of the registered office changed to 2 St James' Place, and he agreed to do so. The paper was produced and delivered by him personally. 1 printed two copies of the Bank Transfer Instruction and gave them to Sheikh Mohamed."

269. Mr Lawrence went on to point out what he said were anomalies in the transfer instruction that he said Sheikh Mohamed asked him to prepare. First, it seemed to him pointless to prepare a transfer instruction so long after the event: however, he said, Sheikh Mohamed often had whims and did not react well when questioned; Mr Lawrence had learned simply to do as he asked. Secondly, the format of the transfer instruction appeared fairly unusual in several respects:

> "a. There is no "Payee" or "Beneficiary" line, which I would usually expect to see. Instead, there is a "Bank Client Reference" which is not something I have seen before. It seemed, however, to refer to the payee. I remember that I was puzzled about this because it refers to both Sheikh Walid and Sheikh Majid. Usually, one would only see one name in the Payee field unless it referred to a joint account. I assumed at the time was that Sheikhs Walid and Majid were brothers, but it seemed odd to me that they should hold a bank account together.
>
> b. The bank account from which the payment was to be made does not appear anywhere on the Bank Transfer Instruction. Usually, the header would contain the account number. A mere description does not suffice since (for obvious reasons) the bank is very keen to ensure that no mistakes or miscommunications occur.
>
> c. The order in which the Bank Transfer Instruction is set out is unusual. I would usually set this out differently, but I had to follow the example provided to me at the time.
>
> d. I was surprised to be producing a document using MBI International letterhead (a BVI entity) given that the company was in liquidation and had been since October 2010."

270. In a second witness statement, dated 30 August 2022, Mr Lawrence commented on discrepancies between the File Copy Transfer Instruction and a file of four redacted transfer requests dating from 2002 that he had been shown. He recognised the 2002 transfer instructions as being similar to those in the black file provided to him by Sheikh Mohamed, referred to in Mr Lawrence's first witness statement. He understood from a discussion with the Group CFO at the time he prepared his first witness statement that the file probably belonged to Mr Salim Khoury, MBI's former head of Treasury. He said the differences between the 2002 instructions and the File Copy Transfer Instruction included the fax number: the 2002 instructions had a fax number ending 4486 whereas the File Copy Transfer Instruction gave a fax number ending 0996. Mr Lawrence said that when he requested notepaper amending the company address shown in the footer, as noted above, he overlooked the need to update the fax number in the header:

> "As a result, the fax number in the header on the Bank Transfer Instruction is the number that appeared on MBI's official headed paper in 2014, when I created the document; it is not the fax number that appeared on the official pre-printed headed paper used in 2002, which was the number shown on all four of the

> 2002 Transfer Instructions (including one such transfer which is dated 10 January 2002 - a mere seven days after the date appearing on the face of the Bank Transfer Instruction)."

In addition, Mr Lawrence said, he failed to notice that the document he prepared had a different font from the notepaper used in 2002, nor that he had failed to capitalise the words "Swift Code" consistent with the other transfer requests in the black file Sheikh Mohamed had given him.

271. Later in that witness statement, Mr Lawrence referred to a brief conversation he said he had had with Mr Brook in September/October 2015:

> "I then asked Mr Brook about the case against the Al Ibrahim brothers that I had seen in the invoices. Mr Brook told me that the brothers were Kuwaiti traders who had a dispute with Sheikh Mohamed. He did not elaborate further. The conversation concluded with me saying that I hoped Sheikh Mohamed was not using the document that I had produced for him the year before (the Bank Transfer Instruction). I did not know whether Mr Brook was aware of the existence of that document, but Mr Brook did not react to the comment and left the office."

272. Mr Brook in his fifth witness statement, dated 13 January 2023, referred to his earlier evidence and added:

> "I remember in particular that the transfer, albeit made to Durango, was being made in respect of a loan to the Defendants, Sheikh Walid bin Ibrahim Al Ibrahim and Sheikh Majid bin Ibrahim Al Ibrahim. I am familiar with that family, and their names stood out. Between 1979-1985 I lived variously in Riyadh, Bahrain, Amman, and Cairo. I was employed in finance by Arthur Andersen and the Al Ibrahim family was well known as a prominent Saudi business family. When I returned to England in January 1985, I took a position with Saudi International Bank in London, where I was involved in corporate finance. I worked for that bank for five years. Thus when Sheikh Mohamed referred to the Defendants, I recognised their names instantly, both from my time in Saudi Arabia, and from my prior employment with Saudi International Bank."

273. As regards Mr Lawrence's evidence, Mr Brook said he recalled there having been a file of transfer instructions, and that it included the File Copy Transfer Instruction along with other transfer instructions from the same week. Mr Lawrence was wrong to say it belonged to Mr Khoury: Mr Brook himself prepared and kept it, though he did not know what happened to it between 2008 and 2015. Mr Brook did not recall the encounter with Mr Lawrence that Mr Lawrence described, but would certainly not have referred to the Defendants as 'Kuwaiti traders', as he knew very well who they were. Mr Brook could not say whether Mr Lawrence created the File Copy Transfer Instruction in 2014, but maintained his recollection *"that the transfer instruction which I created in January 2002 was, at least to my eyes, the same as the copy to which I referred in my first Witness Statement [i.e. the File Copy Transfer Instruction]"*.

274. Sheikh Mohamed, in his seventh witness statement dated 13 January 2023, in substance maintained his earlier evidence about the transfer, adding the following details:

> "22. During the first week in January 2002, my private banker from the Bank attended my office, which he often did to discuss various payments and investments I was planning to make. He told me that after the terrorist attack of September 11th 2001, the Bank had imposed very strict rules on large international transfers. The Bank had to confirm the ultimate beneficiaries of the account to which the $30 million was to be paid, which was owned by a company, Durango Management Limited ("Durango"). I recall that he told me that the transfer instruction would be rejected if the transfer instruction did not have the names of the beneficiaries and it was for that reason that the names of Sheikh Walid and Sheikh Majid were entered. I personally did not care whose name was on the transfer.
>
> …
>
> 24. The details for the recipient bank account were sent to me by fax as I have explained in my first witness statement. I spoke to someone on behalf of the brothers- it may have been Mr Osman Ali, or Sheikh Walid himself - and explained to him that the bank needed to know the ultimate beneficiaries. Soon after, the names of the two Defendants were identified to me either by telephone or fax as the beneficiaries. I cannot now recall which.
>
> 25. I am aware that an allegation has been made in these proceedings that the file copy of the transfer instruction was forged by a former employee Russell Lawrence at my direction. This is untrue. The transfer instruction is a genuine document and I have sought disclosure from the Bank to obtain the original, which I would not have done if it were fabricated. The two Defendants and their bank, Credit Suisse, confirmed receiving the money. I do not know why Mr Lawrence has given this evidence and all I recall about him was that he was a book keeper in the accounts department who left in bad circumstances, made an employment claim and apparently harbours a grudge against me and so seeks to attack my credibility. He had only been employed from around 2015 to 2018, i.e. more than 12 years after the transaction. …"

(3) Discovery of the HSBC Transfer Instruction

275. There is evidence that the Defendants had pressed Sheikh Mohamed for bank records in relation to the Payment from an early stage of the litigation, and Mr Brook's third witness statement dated 14 July 2016 set out certain enquiries that had been made of HSBC. After further correspondence, it was eventually agreed in January 2022 that Sheikh Mohamed's solicitors, Zaiwalla, would ask HSBC Geneva for a copy of the transfer request for the Payment, a bank statement covering the period and copies of transfer documents mentioning Sheikh Walid or Sheikh Majid.

276. After a long delay, after the Defendants made an application in October 2022, Mr Ralleigh of Sheikh Mohamed's new solicitors, Axiom DWFM, said in a witness statement of 18 November 2022 that a request had been made to HSBC Private Bank Geneva (the successor bank to HSBC Republic Bank) for the original transfer instruction as well as other banking documents. On 10 January 2023, the Claimant provided a letter of response from HSBC Geneva, dated 28 December 2022. That letter referred to (i) a letter from Axiom dated 17 November 2022 (i.e. the day before service of the witness statement), and (ii) the application of an administrative charge of CHF 1,000 which would be levied to cover the cost of searches.

277. Then, on 23 March 2023, the day before the Pre Trial Review, Axiom served a series of HSBC Geneva documents on the Defendants. The documents had been stamped by Axiom's mail room with "*RECEIVED – 02 Feb 2023*", though no explanation was provided for the delay in providing them to the Defendants.

278. The documents included a transfer request for the Payment which was markedly different from the File Copy Transfer Instruction that Sheikh Mohamed had disclosed. I shall refer to it as the "***HSBC Transfer Instruction***".

279. The HSBC Transfer Instruction, like the File Copy Transfer Instruction, was headed "*MBI International*", but its header stated an MBI & Partners Limited fax number ending 4486, the same number as stated on the other instructions dating from 2002 to which Mr Lawrence referred. The addressees of the instruction were the same as in the File Copy Transfer Instruction. The instruction bore a stamp and annotation ("*OK SIGN*") suggesting that the bank had accepted it. The body of the HSBC Transfer Instruction read:

> "Dear John,
>
> **Re: MBI International US Dollar Account with HSBC Republic Geneva**
>
> Please transfer the sum of US $30,000,000 (US Dollars Thirty Million)
>
> | | |
> |---|---|
> | Value date: | January 4th 2002 |
> | Bank Client Reference: | Durango Management Limited |
> | Bank: | Credit Suisse Bank, Private Banking. |
> | Bank Address: | PO Box 1211, Geneva 70 Switzerland |
> | SWIFT CODE: | CRESCHZZ12A |
> | Bank Account No: | [account number stated] (USD A/c) |
>
> I would appreciate your sending a copy of the transfer to me by Fax to +44 […] 4486.
> Thanking you for your assistance.

> Yours sincerely,
>
> [signature]
>
> Mohamed bin Issa al Jaber"

(I have in this judgment redacted parts of bank account and fax numbers in the interests of privacy.)

280. Notable differences from the File Copy Transfer Instruction were:

i) The "Bank Client Reference" was stated as Durango Management Limited, i.e. the name of the bank's customer, rather than "Sheikh Walid and Majed Al Ibrahim".

ii) The line "Reference: Durango Management Limited" did not appear.

iii) The heading referred to MBI International, not merely "MBI".

iv) The bank account number was followed by the words *"(US$ A/c)"*.

v) The bank's address was stated more fully.

vi) The letterhead stated the sender's fax number as the number ending 4486.

vii) The instruction asked the bank to fax a copy of the transfer to Sheikh Mohamed at the fax number ending 4486.

viii) The words "*FAX 0207 […] 4486 JJUK*" were printed at the top of the document, apparently indicating that the document had been faxed from (or possibly faxed back to) that fax number.

ix) The font was different from that in the File Copy Transfer Instruction.

281. HSBC also provided a copy of a debit advice confirming execution of the payment instruction, which listed the beneficiary details for Durango as the account number followed by the words *"(US$ A/c)"*, i.e. as stated on the HSBC Transfer Instruction but not the File Copy Transfer Instruction.

(4) Evidence given after disclosure of the HSBC Transfer Instruction

282. The disclosure of the further transfer instruction gave rise to a number of questions. One of these was how it came about, on Sheikh Mohamed's case, that there were two transfer instructions for the same payment. Sheikh Mohamed in his tenth witness statement, dated 31 March 2023, said this:

> "5. I mentioned in my first witness statement that this large transfer occurred just some months after 9-11 and that Banks at that time were on high alert and underwent a higher level of due diligence for US Dollar transactions in particular. My recollection is that the Bank blocked the first transfer and asked for a further instruction which clearly showed the names of the

beneficial owners. The Bank's reason for this was that the company was an offshore company in the Bahamas and the shareholders of the company were not shown and proper Know Your Client ("KYC") checks could not be carried out. The Bank wanted to be clear on who the beneficial owner was and asked for a second signed transfer instruction. The second transfer instruction was subsequently found in our files. The Bank cannot produce all its documents as it does not keep a full record after 10 years. This transaction is now 20 years old, and the Bank may have destroyed its records. It is my experience that from that time to this day, there is no way that any bank would transfer US$30 million - or even US$1 million - to an offshore company or account without knowledge of and Due diligence on the beneficial owners of the account.

6. I understand that the Defendants also argue that the File Copy is a forgery, and they refer to various minor differences in the font and wording of the document, as well as the different fax number on the letterhead. The probable explanation is that the second transfer instruction was prepared by someone else at my office whereas the first was prepared by Richard Brook. Mr Brook's office was on the 4th floor, whereas the second transfer was sent from the second floor where my office was located. In those days we had at least one fax on each floor of the building and there were no strict controls over the use of these fax numbers in letters. As a result of the allegations made by the defendants my solicitors instructed a search of our electronic archives for the fax number ending -0996 and the search results revealed a number of emails and an internal directory showing that number was in use at least in the period 2002-2006 by a number of employees. Accordingly, Mr Russell Lawrence is wrong when he suggests that this number was not in use in 2002. He would have no direct knowledge of such facts since he joined the company over 10 years later.

7. I cannot now recall who in my office prepared the second transfer instruction. It could have been anyone, there were at least five to six people, if not more, working from the second floor where my office is located.

8. I do not know Mr Lawrence personally. I do not know the reason why he has given evidence in these proceedings. I recall that he was recruited by and worked closely with a dishonest solicitor Mr Amjad Salfiti who was formerly my in-house legal counsel. Sadly, I have been let down by a number of former employees who worked under Mr Salfiti. Mr Salfiti and other employees were caught receiving secret commissions to companies they owned or family members. After they were sacked, they have spent the last few years attempting to undermine me in various legal proceedings. ”

283. In addition, Re-Re-Amended Particulars of Claim served on 19 May 2023 stated that:

> "HSBC was informed of the same both orally and in writing, namely: (i) the beneficiaries were orally identified to Mr Collier-Wright at a meeting at the offices of MBI; and (ii) the same information was recorded in a further signed version of the bank instruction, which identified the "Bank Client Reference" to be "Sheikh Walid and Majed Al Ibrahim."

284. Sheikh Mohamed was asked why, in all his previous evidence, he had not stated that HSBC 'blocked' the first transfer instruction and required a second one, instead saying (in his seventh witness statement) that he was told the bank would block it unless information were provided about the beneficiaries. He put the difference down to a matter of language:

> "You know, again, my native language is Arabic. Now, between "will be blocked", or "be block" that, for us, it has the same meaning if we translate it to Arabic."

Sheikh Mohamed quoted in his written closing a passage a few transcript pages later:

> "So when did your bankers make that very clear to you?
>
> A. The same day. The same day. You know, today, when you send the transfer and the bank, the KYC of the bank, they don't -- they block it or they stop it, they will ask a questions, and it will be for a question. And their question was: where is the beneficial owner? This company, it is an offshore, it has no tracing to know who own it."

That passage does not in my view assist Sheikh Mohamed. It is unclear whether he was there backtracking on the suggestion that the bank initially blocked the Payment, but either way it was inconsistent with the evidence in his seventh or his tenth witness statement.

285. Asked whether, when he signed his seventh witness statement, he recalled that there had been two transfer instructions, Sheikh Mohamed said *"Yes, and I think I mention it, that this was the second transfer instruction".* In fact he had not previously mentioned it. Pressed on the point, Sheikh Mohamed said:

> "A. … What I recall, the bank has stop -- when the transfer -- when we sent without ultimate beneficiary, and he requests that we have to send both the beneficial -- the ultimate beneficiary, for them to execute this transfer. We sent the other one immediately after.
>
> Q. It is your evidence to this court, when you wrote this document you recalled all that, but you mentioned none of it?

> A. No, if I don't mention all -- I don't know. I don't remember. But this is what the fact is. Now, you bring me -- you bring flash in my memory, and this is what happened.""

That version of events, i.e. that his memory had just been refreshed, was inconsistent with his suggestion in the same cross-examination that he had previously mentioned the existence of two transfers.

286. The discovery of the HSBC Transfer Instruction also gave rise to the question of how it was that MBI had retained the File Copy Transfer Instruction but not the HSBC Transfer Instruction, whereas HSBC had retained the HSBC Transfer Instruction but not the File Copy Transfer Instruction. Sheikh Mohamed said in cross-examination:

> "… we will not keep two -- on our filing system, we will not keep two transfer instruction. We keep only one and the other one will be destroyed. Why we will make such confusion and keep two transfer instructions? As well as the bank, he will keep only one transfer instruction. He will not keep two transfer instructions if it is the same details, the same amount, the same bank account."
>
> and:
>
> "A. You know I ask about -- you know, just for my own knowledge, I ask. Bank will not keep two instructions; will throw one and keep one. The one, he will keep the one the process has start with, and the other, if there are a second transfer, if he will acknowledge it he will make a duplication. He just take the information out of it."

287. I find that evidence unconvincing. On Sheikh Mohamed's case, the bank had been so concerned to know the names of Sheikh Walid and Sheikh Majid, as beneficial owners of Durango, that it blocked the Payment until it received a second transfer instruction bearing their names. In those circumstances, it is highly unlikely that the bank would have kept the HSBC Transfer Instruction yet destroyed the File Copy Transfer Instruction (quite apart from any question of why a bank might selectively destroy one of a set of transfer instructions).

288. There was also a lack of clarity about the circumstances in which on Sheikh Mohamed's case the File Copy Transfer Instruction, now apparently the second of two transfer instructions for the Payment, was created. His original evidence, before discovery of the HSBC Transfer Instruction, had been that Mr Collier-Wright had visited MBI's office in person; and that bank transfer was physically handed to Mr Collier-Wright (per Mr Brook's first witness statement and Mr Ralleigh's first witness statement). In his oral evidence, Sheikh Mohamed said he believed one of the transfer instructions was delivered in person and one by fax, but he could not remember which. He said after the Payment was blocked ("*they blocked it*"), Mr Collier-Wright telephoned him, and he (Sheikh Mohamed) then called Mr Ali: *"I call Osman Ali, who send me the bank details. I say: who is the beneficial owner?"* Sheikh Mohamed suggested that one of his four PAs on the second floor of the office prepared the File Copy Transfer Instruction. However, he was unable to give the PA the HSBC Transfer Instruction to

copy, because he did not have it: the template was on Mr Brook's computer and he was out of the office. Asked about this in cross-examination, Mr Brook said *"Perhaps I went out and got a sandwich"*. It also remained unclear how the second transfer instruction, the File Copy Transfer Instruction, was provided to HSBC.

289. The whole of this evidence about the Payment having initially been blocked, resulting in the need for a second instruction, was new. In addition, Sheikh Mohamed's oral evidence about speaking to Mr Ali was hard to square with his case that he already knew that Sheikh Walid and Sheikh Majid were the people to whom he had agreed to lend the money. Moreover, given that the account opening forms for Durango's account at Credit Suisse recorded Sheikh Majid (only) as the beneficial owner (see § 53 above), it seems unlikely that Mr Ali would have named both Sheikh Walid and Sheikh Majid.

290. A further question arising was what had happened to MBI's copy of the File Copy Transfer Instruction, i.e. the original of the document it had disclosed. Sheikh Mohamed said he had given it to Ms Reddy, a partner in his then solicitors, Zaiwalla, for *"safe-keeping"*. In oral evidence he even claimed that Mr Ralleigh of Axiom, formerly of Zaiwalla, had said something must have been lost when they moved offices. Mr Ralleigh's witness statement, however, stated in terms that Zaiwalla never had possession at any time of the original of the File Copy Transfer Instruction.

291. Sheikh Mohamed in his written closing argued that his evidence about the File Copy Transfer Instruction was consistent with there having been a heightened degree of scrutiny imposed on banks at the end of 2001.

    i) In October 2001, the Financial Action Task Force on Money Laundering ("***FATF***") (which had been established by the G7 countries in 1989) decided to expand its mandate to include terrorist financing. It published Eight Special Recommendations on terrorist financing, and the member jurisdictions (including the UK and Switzerland) self-assessed their compliance during January 2002. The recommendations included a requirement to 'report suspicious transactions linked to terrorism' (recommendation IV) and to 'strengthen customer identification measures in international and domestic wire transfers' (recommendation VII).

    ii) On 27 December 2001, the EU Council published a Common Position on the application of specific measures to combat terrorism. This imposed sanctions on a number of Saudi Arabian individuals (see [3-4]). On the same day, the EU issued a parallel Regulation on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. This applied, among other matters, to banking, including "all payment and money transmission services" (Art 1(3)). Article 2(1)(b) provided that "no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3". Under Article 4, banks were obliged to "provide immediately any information which would facilitate compliance with this Regulation".

292. However, none of that material explained why it would have been necessary to produce a second transfer instruction, as opposed to providing information (or preferably

evidence) to HSBC about Durango's beneficial ownership. Nor does it explain the serious inconsistencies referred to in §§ 282-290 above. The same is true of the internal fax directory which Sheikh Mohamed produced, showing that the fax number on the File Copy Transfer Instruction was attributable to the second floor, where Sheikh Mohamed was based. That information at most supports the view that more than one fax number may have been in use. It does nothing to dispel the key problems with his new evidence on this matter.

293. The disclosure of the HSBC Transfer Instruction also called into question the reliability of Mr Brook's evidence. He made a sixth witness statement, dated 31 March 2023, in which he said that, having seen the HSBC Transfer Instruction, he recognised it as the one he prepared on 3 January 2002. He said he now saw he had been mistaken to say he prepared the File Copy Transfer Instruction: that must have prepared by someone on the 2nd floor (whereas his office was on the 4th floor), because the fax number was that of a fax machine on the second floor according to an internal telephone directory which he had now seen. Mr Brook added:

> "10. I maintain that I was told at the time by Sheikh Mohamed that the Defendants were the beneficiaries of the USD $30 million payment and that the Bank needed to know the names of the beneficiaries due to heightened due diligence in the period following the events of September 11 2001.
>
> 11. I have also seen a bank statement from HSBC confirming that the name of the account from which the US$30 million was sent was "M.B.I. International Inc.". I realise I have previously stated in my second witness statement that the US$30 million came from Sheikh Mohameds personal account. I realise now having seen the bank statement and transfer instruction that the money came from the bank account with that name. However I am clear that Sheikh Mohamed was for all purposes the Bank's client since all instructions in relation to that account emanated from him, and the Bank complied only with his instructions which had to be signed by him and confirmed by him orally over the telephone or in person to an officer of the bank."

294. Paragraph 11, quoted above, referred to § 10 of Mr Brook's second witness statement, where he had said:

> "Paragraph 43 of Sheikh Majid's skeleton argument suggests, inter alia, that there should be some corporate record of the loan because "the money was coming out of MBI's dollar account" …. However, the name of the account "MBI US Dollar Account" in fact refers to the personal US dollar account of Sheikh Mohamed, those being his initials: Mohamed Bin Issa, and not to the corporate entity MBI. As I have said at paragraph 10 of my First Statement, I prepared the letter of instruction for the payment of US$30 million to come from Sheikh Mohamed's personal account."

295. Mr Brook was willing to accept in cross-examination that it was "*legally*" misleading to have given that evidence in relation to an account in the name of MBI International Incorporated, a corporate entity.

296. Mr Brook disclosed in cross-examination that, having retired in September 2019, he was in March 2023 offered, and accepted, an ongoing role as adviser to Sheikh Mohamed. He said he had nothing in writing about this position. Asked whether he was being paid for the hours he was spending in relation to this case, Mr Brook replied *"I am sure that [Sheikh Mohamed] will look after me"*, though he denied there was any pre-arrangement.

297. It is unnecessary to decide whether or not Mr Brook may have been influenced by a wish to try to help Sheikh Mohamed. It is sufficient to note that the disclosure of the HSBC Transfer Instruction showed that, as he accepted, he was mistaken to have asserted that he himself prepared the File Copy Transfer Instruction in 2002. The long passage of time since 2002 would of itself be reason to question the accuracy of pure recollection of conversations, unaided by contemporary documents. Having seen and heard his written and oral evidence, I do not consider that I can place reliance on Mr Brook's recollections of the events of 3 January 2002. Given that the File Copy Transfer Instruction is no longer a document that Mr Brook claims to have prepared or even to have seen at the time, it would be remarkable for Mr Brook simply to have remembered over so many years a particular conversation about the beneficial owners of Durango in which the names of both Sheikh Walid and Sheikh Majid were mentioned. I consider there to be a significant risk that that claimed recollection has been contaminated by his involvement in this case, including his claimed recollection from 2015 to 2023 of having himself prepared the File Copy Transfer Instruction, which of course names both Sheikh Walid and Sheikh Majid.

298. Sheikh Mohamed criticised Mr Lawrence's evidence, making the following points in particular:

i) Mr Lawrence's witness statement about the File Copy Transfer Instruction was first drawn up on 9 July 2019. Only six days later, Mr Lawrence provided his third successive written evidence against Sheikh Mohamed, namely his 15 July 2019 affidavit in support of Mr Salfiti in proceedings BL-2019-000160, providing confidential 'details' from his employment about bank accounts held by companies in the JJW group. Mr Lawrence had also made an affidavit in earlier proceedings in October 2018, again in support of Mr Salfiti and the provision of loans to a Mr Bosheh, who was alleged to have been defrauding Sheikh Mohamed's company of substantial sums of money. Mr Lawrence did not accept the suggestion that there was *"a degree of synchronicity"* in these pieces of evidence against Sheikh Mohamed.

ii) Mr Lawrence gave these three statements, on various matters, against Sheikh Mohamed because he was aggrieved about his dismissal and its manner. He agreed in cross-examination that he was rather upset and angry:

> "A. Immediately, yes, I did. I can't say I -- to put some perspective on that, I had -- prior to being dismissed, I had worked a Bank Holiday and two weekends at the Sheikh's request, so I was on my third consecutive week. I was feeling

tired and I wasn't in the best of tempers at the time, so ... And that didn't help my temper, my mood at all."

iii) Mr Lawrence wanted revenge, and was happy to be a 'witness for hire' to do so, and had somebody (unnamed, though Sheikh Mohamed infers it was Mr Salfiti), to make enquiries and contact Sheikh Majid's solicitors.

"Q. It seems all very mysterious, doesn't it?

A. I am a very mysterious man."

iv) Mr Lawrence has an ongoing friendship with Mr Salfiti, having last contacted him in February 2023 for a friendly call.

v) Mr Lawrence claimed to have been prompted to embark on this because of something said to him by Mr Javed about litigation with the Defendants, saying that Mr Javed had been standing behind him when a prepared the File Copy Transfer Instruction. That was new evidence. Moreover, Mr Lawrence had previously said Mr Javed left in January 2014, after which he reported direct to Mr Yussouf. Asked about this in cross-examination, Mr Lawrence asserted that Mr Javed came back as a consultant.

vi) There was an unexplained delay of about two years between Mr Lawrence's first witness statement being drafted in 2019 and served in 2021.

vii) Mr Lawrence denied that he was being paid to provide evidence, but, curiously, said he did not know who was paying for his solicitor to attend this trial: "*I don't know any more about it. I am not really that interested"*.

viii) Mr Lawrence's 2019 draft witness statement said he did not recall what had happened to the handwritten note given to him with the details to insert into the File Copy Transfer Instruction, but "*but I imagine that I would have thrown it into the waste paper basket …"*. However, in his witness statement as served he said did not recall what happened to the note "*but I imagine that I would have left it on my desk with other papers, as was my habit at the time"*. His explanation in cross-examination was that it was *"just a different recollection at a different time"*, and that he may have thrown it in the bin later but it certainly ended up in the bin. Sheikh Mohamed submits that this evidence is obviously untrue, and invites the inference that Mr Lawrence had been told it would be helpful if his evidence could instead indicate that there were likely to be some documents relevant to his account in the MBI offices – and he was only too happy to oblige and change his evidence accordingly.

ix) Following full disclosure searches, no trace could be found in Mr Lawrence's user folder or elsewhere to indicate that the document he alleged he created could be found. The searches were applied to incoming and outgoing emails and attachments including deleted items as well as user directories.

x) Mr Lawrence said he was told to create a bank transfer that looked *"exactly like the other transfer instructions in the file"*, yet the File Copy Transfer Instruction differs from the other instructions in numerous respects, including the font, the

name of the payor bank account and failure to use capitals in the words 'Swift Code' were not copied. Mr Lawrence accepted that *"it is a shoddy copy"*.

xi) Mr Lawrence (seemingly in an attempt to support his story) also made up differences which did not exist, suggesting that the header should have contained the bank account number (which is incorrect); that he was surprised to be producing a document using MBI International letterhead (a BVI entity) given that the company had been in liquidation since October 2010 (when in fact the letterhead stated "*MBI International & Partners*", an umbrella term not referring to any particular entity, and the letter also identified the actual corporate entity, namely "*MBI & Partners UK Limited*"); and that the logo and symbols were less clear in the File Copy Transfer Instruction than in the other 2002 instructions;

xii) Mr Lawrence provided two different stories as to how he was instructed to copy the 2002 transfer instruction. One was that he was given the 2002 transfer instructions in a file by Sheikh Mohamed to copy. Another was that there were no 2002 transfer instructions, and so he was having to create a document from scratch. Paragraphs 12 and 13 of his first statement were inconsistent about this, as was his oral evidence:

"MR JUSTICE HENSHAW: You say you cannot remember precisely, but you think they were from about 2000 to 2004.

A. Yes.

MR JUSTICE HENSHAW: Just so I am clear about it: you are saying that Sheikh Mohamed didn't give you -- lend you that file or give you any of those transfers to copy from?

A. No. He just gave me a file full of transfers, which I think covered the period 2000 to 2004.

MR JUSTICE HENSHAW: So, in paragraph 13, you say: "By the time I was asked to prepare the bank transfer instruction [about four lines down] the bank transfer letters from 2002 were not available to me in the office." You say you copied the lay out from another transfer addressed to John Collier-Wright, contained in the file. I just want to be clear about what file it is you are referring to there, whether it was --

A. It is still the black plastic binder.

MR JUSTICE HENSHAW: Right.

A. There were no documents from 2002 on -- left on our floor.

MR JUSTICE HENSHAW: Right. So do you mean that the file which Sheikh Mohamed showed you, you didn't take that away with you?

A. Yes, I did take that with me.

> MR JUSTICE HENSHAW: You did take it with you, right. You are saying that was the file from which you copied something to prepare the transfer you prepared.
>
> A. Yes."

xiii) Mr Lawrence wrongly suggested that it was odd that the File Copy Transfer Instruction gave the bank client reference "*Sheikh Walid and Sheikh Majid Al Ibrahim*" on the incorrect ground that it is rare for accounts to be held in joint names. Sheikh Mohamed submits that Mr Lawrence *"appears not to have remembered why he was supposed to say this was odd"*;

xiv) His evidence was confusing about whether he took the details for the File Copy Transfer Instruction from a handwritten note or from a spreadsheet listing each of the transfers made in the period including 2002. The closing submissions served on behalf of Sheikh Mohamed contained the following further submission:

> "Mr Lawrence appears again to have forgotten his script at this point. He was presumably supposed to say that this piece of paper said "*Make sure you write the account to look like MBI US Dollar Account, rather than MBI International US Dollar Account*" (even though this was never something that had been in his evidence at all, and it is a bad point because the logo at the top of the paper says "MBI International"). This was the theory the Defendants had been peddling in cross-examination that it was an attempt to hide the 'corporate nature' of the bank account: e.g. Day 3 p.92 ln 3-8. However, Mr Lawrence accepted that on his account he had been trying to copy this very line from another transfer instruction: Day 8 p. 137 ln 4-12. The Defendants' Counsel had another attempt with him in re-examination, but Mr Lawrence did not get the hint (Day 8 p.158 ln 10 – p.159 ln 3):
>
> Q. I think you covered a lot of this, but can you assist the court with precisely with a details [sic] were brought to you?
>
> A. It is the body of the transfer.
>
> Q. Can we go to the body of the transfer? We have had it up at -- can we go back to the split screen you were shown -- I am very grateful. You see the one on the left-hand side is --
>
> A. So it is bank-client reference down to reference. That is what I would have received.
>
> Q. I see. Can you just tell me: on the left-hand side, what information is there about the payer account?
>
> A. There is no information on the payer account. It is the MBI US dollar account on the top, on the top right.

> Q. That information, MBI US dollars account; can you assist the court one way or the other whether that was one of the details you were provided with or not?
>
> A. No. No. It was just from value date to reference was what I was given."

xv) Mr Lawrence was clearly wrong to have suggested that Mr Brook told him the Defendants were *"Kuwaiti traders who had a dispute with Sheikh Mohamed"*, given that Mr Brook knew who the Defendants were.

299. Dealing with these points in groups:

i) Points (i)-(vii) and (x) above are in my view not matters from which any clear conclusions can be drawn, though they suggest that some caution needs to be exercised when considering Mr Lawrence's evidence. They do not, though, allow the suggested conclusion properly to be drawn that Mr Lawrence was a "*witness for hire*".

ii) Point (viii) does not show inconsistency to the extent Sheikh Mohamed contends: Mr Lawrence's position throughout was that he could not actually remember what happened to the handwritten note, and was reconstructing what he thought must have happened. It does not support the inference that Mr Lawrence was dishonestly changing his position in order to assist the Defendants, which is in substance the accusation made in Sheikh Mohamed's written closing.

iii) Point (ix) is of some note, though of slightly lesser force in circumstances where Sheikh Mohamed too has produced no electronic record of the creation of the File Copy Transfer Instruction.

iv) There is some force in point (xi), that Mr Lawrence was overstating the discrepancies, though again I am not convinced that he was doing so in order to support a false account of events.

v) Points (xii) and (xv) suggest unreliability of recollection on matters of detail, though given the passage of time that is unsurprising.

vi) Points (xiii) and (xiv) are matters where, in formulating his criticism, Sheikh Mohamed in his written closing proceeds from the assumption that Mr Lawrence had set out to give untrue evidence, but forgot his 'lines'. Point (xiv) also appears to suggest, entirely without justification, that the Defendants' counsel was seeking to elicit 'lines' which Mr Lawrence was supposed to have learned. In reality, though, all that has happened is that Mr Lawrence has given evidence that does not fully support the Defendants. If anything, that is to his credit.

300. Viewing the matter in the round, Mr Lawrence's evidence included some unsatisfactory or concerning features that would have led me to include that I should not rely on it in the absence of corroboration. However, Mr Lawrence's evidence is consistent with the fact that, particularly following the very late disclosure of the HSBC Transfer

Instruction, no satisfactory explanation has been provided by Sheikh Mohamed for the circumstances in which the File Copy Transfer Instruction was created and why it formed no part of the documents disclosed by HSBC.

(5) Overall assessment

301. Drawing these strands together, the Defendants invite me to make a positive finding that the File Copy Transfer Instruction was a forgery, prepared after the event in an attempt to manufacture contemporaneous evidence that the Payment was made for a purpose involving both Sheikh Walid and Sheikh Majid, and, by inference, was a loan for the Al Arabiya project.

302. It is not necessary to go so far in order to decide the present case, bearing in mind that (a) the contents of the File Copy Transfer Instruction, though of evidential relevance, are not themselves central to the case and (b) Sheikh Mohamed no longer seeks to rely on the File Copy Transfer Instruction in support of his case, stating in his written closing that *"[i]n terms of the documents available, Sheikh Mohamed now has the Original Transfer Request, and so has no need to rely on the File Copy Transfer Request, and does not do so (as was made clear in C Skel §191)."*

303. However, it is pertinent to go this far. Based on the evidence as a whole, I am entirely unpersuaded that the File Copy Transfer Instruction was produced in 2002 or, therefore, reflected Sheikh Mohamed's understanding of the ultimate destination or purpose of the Payment. For the reasons already given, there is no plausible documentary or other evidential support for the suggestion that it was produced or used in 2002. Its absence from the bank's own records, and the lack of cogent explanations for how it was produced and transmitted to the bank, the significant inconsistencies in Sheikh Mohamed's evidence about the two transfer instructions, Mr Brook's change of heart, and Mr Lawrence's evidence, all point towards the File Copy Transfer Instruction having been produced at some later stage. The unsatisfactory, shifting nature of Sheikh Mohamed's evidence on this part of the case counts as a factor tending to reduce the credibility of his case in general, heavily reliant as it is on his own assertions as to the dealings between the parties.

(I) OTHER MATTERS RELIED ON BY THE DEFENDANTS

304. On 1 May 2023, the day before trial, the Claimant produced a new document purporting to be a transfer request dated 13 July 2001 (the "*July 2001 Transfer Request*"). The Defendants suggested to Sheikh Mohamed that he had fabricated it in an attempt to shore up his case that Prince Abdulaziz had been fully paid in July 2001, as opposed to there remaining a sum outstanding which was paid in January 2002; and for various reasons invited me to conclude that it was a forgery. However, the point effectively fell away after the bank produced a document matching the transfer request.

305. The Defendants also cross-examined Sheikh Mohamed about certain events which formed part of the subject matter of the case *Mitchell and Krys (Joint Liquidators of MBI International & Partners Inc. v Sheikh Mohamed bin Issa al Jaber and others*, in which Joanna Smith J gave judgment on 24 February 2023 ([2023] EWHC 364 (Ch)). In that case, the liquidators of MBI BVI alleged that he had been guilty of forging, by back-dating to 6 July 2010, two share transfer forms. That conduct was alleged to have taken place in or around February 2016. The share transfer forms were signed by

Sheikh Mohamed and purported to transfer shares in JJW from MBI BVI to JJW Ltd in Guernsey.

306. By a written resolution of JJW dated 29 February 2016, also signed by Sheikh Mohamed, he confirmed that he had "*ascertained that the instruments of transfer were signed for and on behalf of the transferor on the 6th day of July 2010*", albeit the transfer itself was not perfected until March 2016. The question in *Mitchell* was whether the share transfer forms had in fact been executed on 6 July 2010, and so before the liquidation of MBI BVI on 11 October 2011, or in 2016, long after the liquidation had commenced.

307. Asked about this in the present case, Sheikh Mohamed stood by his evidence in the MBI Proceedings that the share transfer forms were executed on 6 July 2010. However, in the *Standard Bank* proceedings referred to earlier, Sheikh Mohamed had served an affidavit and a schedule of assets in response to a freezing injunction dated 29 July 2011, including a corporate organogram indicating that JJW was owned 89% by the Claimant and 11% by MBI BVI. Sheikh Mohamed suggested that that may have been a lawyer's mistake. Yet in his subsequent affidavit of 10 October 2013 in the BVI liquidation proceedings, he stated that MBI BVI should not be placed into liquidation because "*The importance of the companies lies in the fact that it is the 11 per cent shareholder of JJW Hotels Inc*". Sheikh Mohamed responded that his lawyers told him to put it this way because the share transfer had not yet been registered, therefore MBI BVI remained the owner (i.e. a different answer from the one he gave in relation to his affidavit in the Standard Bank proceedings).

308. The Defendants submit that this episode shows Sheikh Mohamed giving diametrically opposed evidence on different occasions, and being ready to lie whenever it suits his purpose. Sheikh Mohamed counters that the issues in the *Mitchell* litigation were far more complex than the Defendants attempt to portray. The claimant liquidators confirmed to the court that they *"were not making out a positive case of forgery in respect of any documents"* (judgment § 148) and Joanna Smith J held at § 280(xv), in respect of the Demand Letters and the June 2010 Letter, "*I should make clear, however, that I make no finding as to the circumstances in which these documents were created and no finding of forgery or fraud in relation to them*". Sheikh Mohamed's evidence was that he signed the documents in 2010, and had been unable to be a witness in the MBI proceedings due to health problems.

309. Overall, I do not consider that it would be appropriate to attempt to draw firm conclusions about this matter, or about Sheikh Mohamed's evidence in the MBI proceedings and the Standard Bank proceedings. It certainly appears arguable that he gave inconsistent evidence, but I make no definitive findings about the position and do not find it of assistance in resolving the present dispute.

310. The Defendants also made submissions, at some length, about failings on the part of Sheikh Mohamed in giving disclosure in the present proceedings. I have already referred, earlier in this judgment, to areas where important evidence has emerged late. Beyond that, I find it unnecessary to revisit the history of disclosure in this long-running litigation.

(J) OVERALL FACTUAL CONCLUSION

311. The fundamental factual question is whether Sheikh Mohamed has established, on the balance of probabilities, that the Payment represented a loan to the Defendants in connection with the Al Arabiya project. I reach the very clear conclusion that he has not. For the reasons given in section (G) above, Sheikh Mohamed's case in that regard lacks any real support from the available documents, the inherent probabilities or plausible witness evidence. Conversely, as set out in section (F) above, Sheikh Majid's account of the reason for the Payment is plausible and has significant documentary support. Those considerations are themselves sufficient to dispose of the case. In addition, the evidence about the File Copy Transfer Instruction counts as a further factor against Sheikh Mohamed. My overall conclusion is that the Payment was not a loan, but was very probably an advisory fee as alleged by Sheikh Majid.

(K) LAW APPLICABLE TO ALLEGED LOAN AGREEMENT

312. Given my conclusion on the facts, it is not strictly necessary to consider the legal issues arising. I do so for completeness only.

313. The legal issues were (a) which law governs the putative loan agreement, (b) if Saudi law, whether an oral loan agreement would be binding and whether the claim would be time barred, and (c) whichever law applies, whether the loan agreement was binding on Sheikh Walid as principal (in addition to Sheikh Majid). I address issue (a) in this section.

314. It is common ground that the governing law of the loan agreement alleged to have been concluded in January 2002 is to be determined by reference to Article 4 of the Rome Convention, as incorporated into domestic law in the Contracts (Applicable Law) Act 1990:

    i) Article 4(1) provides that *"To the extent that the law applicable to the contract has not been chosen in accordance with Article 3, the contract shall be governed by the law of the country with which it is most closely connected".*

    ii) Article 4(2) provides that "*Subject to the provisions of paragraph 5 of this Article, it shall be presumed that the contract is most closely connected with the country where the party who is to effect the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence".*

    iii) Article 4(5) provides that: "*Paragraph 2 shall not apply if the characteristic performance cannot be determined, and the presumptions in paragraphs 2, 3 and 4 shall be disregarded if it appears from the circumstances as a whole that the contract is more closely connected with another country"*.

315. The party who is to effect the performance which is characteristic of a contract of loan was recognised in *Sax v Tchernoy* [2014] EWHC 795 (Comm) § 118 to be the lender.

316. Habitual residence for these purposes denotes "*an element of continuity, order, or settled purpose*" (*Dicey, Morris & Collins, "The Conflict of Laws"* (16th ed.) at § 6-127). An international person may have no habitual residence (ibid., § 6-152).

317. *Chitty on Contracts* (34th ed.) notes (in the commentary on Rome I Regulation) that, in respect of a natural person not acting in the course of business:

> "English case law has not attributed a consistent meaning to this concept of habitual residence. Outside the context of commercial law, it has been said that habitual residence refers to a person's abode in a particular country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being whether of short or long duration. It seems possible that, on this basis, a person may have more than one habitual residence, in which case, it has been suggested, the relevant habitual residence should be that of the place having the closest relationship to the contract and its performance, having regard to the circumstances known to, or contemplated by, the parties at any time before or at the conclusion of the contract. It is conceivable, also, that a person may be without any habitual residence." (§ 33-064, footnotes omitted)

The Defendants do not accept this, contending that if an individual has multiple habitual residences of which one is closely connected to the contract, the assessment is a mirror image of that which would be applicable in any event under Article 4(5), and if there are multiple but inconclusive contenders for a person's habitual residence, and given the requirement of permanence, the better approach is for the court to conclude that such a person has no habitual residence for the purposes of Article 4(2).

318. The Defendants contend that: (i) Sheikh Mohamed's habitual residence was Saudi Arabia, and in any event (ii) the alleged contract was manifestly more closely connected with Saudi Arabia than any other country. The governing law would govern not only the law applicable to the loan agreement itself, but also issues of agency and authority in entering it (*Dicey, supra, §§ 32R-318 and 32-326).*

319. As to habitual residence, Sheikh Mohamed said in his witness statement that, in the period 2001-2002, *"I divided my time between London, Paris, Portugal, Austria and Saudi Arabia"* but that he spent *"approximately 1/3 of the year in London*" and considered that his principal residence and the location of his family. He also stated that *"I am generally regarded by my peers – including by business magnates in the Middle East – more as an international businessman rather than a Saudi businessman".* He accepted that he chose not to be tax resident in the UK, and said in oral evidence that he gave a Saudi address in filings because that was where he was tax resident. The address most commonly given was a floor of an office block. Regarding his children, he said in a witness statement:

> "When my children were at school in Saudi Arabia, I saw them only during the school holidays, when they would normally come home to England. In any event, my children were living at home in England in the late 1990s and were only at school in Saudi Arabia for four years, until around 2004, after which time they came back to England. For my part, I lived in England throughout."

320. Sheikh Mohamed bought a large house in London in 1992. MBI's headquarters were in London at the time of the Payment. Mr Brook said in a witness statement:

> "In 2001-2002 I was living in Kent and worked at the office in Wigmore Street. Sheikh Mohamed had a house in Winnington Road, Hampstead, and I would estimate that he spent on average circa 10 days a month living in London. The balance of his time would be spent travelling between his offices and homes in Paris, Vienna and the Algarve, with occasional trips to Saudi Arabia. His children were educated in England, and he had a driver in London called Ugo, who had been with Sheikh Mohamed since his daughters were born and who used to drive him to work every day when he was in London. Generally, he came to work in a gold Jaguar XJ v12, and sometimes in his Rolls Royce."

321. The Defendants relied on Sheikh Mohamed having stated a Saudi residence since 1991 in filings relating to seven UK companies; having given a Saudi address in the New York proceedings; having accepted that he was not tax resident in the UK; having had a large house built in Saudi Arabia in 1996-1999 (and another in 2007); having educated his children in Saudi Arabia; having stated that he met the Defendants in Saudi Arabia on multiple occasions in late 2001; and having companies whose main operations (despite the location of MBI's headquarters) were in Saudi Arabia. In oral evidence about the house in Saudi Arabia, Sheikh Mohamed said:

> "Q. Are you able to help us at all with the number of days of the year in that period, when you moved in, 1999, 2000, 2001, 2002? Approximately how many days --
>
> A. You know, I used to go there after 1999. From 1999 to 2009, 10 years. I count it one day and I mention it on my proceed[ings] in New York. I think, if I remember. But the total was six months on this 10 years.
>
> Q. Six months over the 10 years?
>
> A. On the 10 years. I was busy with Europe, travelling, try to sort the Middle East issues."

322. The Defendants also relied on Sheikh Mohamed's failure to disclose documents evidencing his whereabouts in the relevant period, despite Model C disclosure requests, including his passport.

323. In all the circumstances, had it been necessary to decide the matter, I would have concluded on balance that Sheikh Mohamed was habitually resident in England. On balance, the evidence indicates a greater degree of continuous settled life there in terms of actual residence, family life and regular working life.

324. However, it would then have been necessary to consider whether the alleged loan was more closely connected with Saudi Arabia, within Article 4(5). In my view it was:

i) Sheikh Majid was habitually resident in Saudi Arabia at the time of the alleged contract, and so probably was Sheikh Walid (whose evidence was that he moved to Dubai later);

ii) all three parties were Saudi nationals;

iii) even if not habitually resident there, Sheikh Mohamed had a very strong Saudi connection in his most substantial businesses;

iv) the key alleged telephone call came from Sheikh Majid, who was in Saudi Arabia; and

v) some of the earlier meetings relating to the loan also took place in Saudi Arabia.

325. Conversely, the alleged loan had little connection to England. The Payment was sent from a Swiss bank account in the name of a BVI company, to another Swiss bank account in the name of another offshore company. The purpose was to help set up the Al Arabiya project, but it remained uncertain at the time whether that would be based in London or Dubai.

326. In my view, those factors outweigh the points that Sheikh Mohamed was in London at the time the alleged loan was agreed and made, that MBC was headquartered in London, and that some of the discussions leading up to the loan took place in London.

327. On that basis, I would have concluded on balance that the loan was governed by Saudi law.

(L) SAUDI LAW ISSUES

328. I heard expert evidence from:

i) Dr Ahmad Alkhamees (called by Sheikh Mohamed). Dr Alkhamees is the managing partner of a law firm in Riyadh, and has been in practice for 15 years. He has academic qualifications in Islamic law studies comprising of a BA, an MA, an LLM in Advanced Legal Studies from the University of Warwick and a PhD in Islamic law subjects. He has been a judge of the General Court in Riyadh and sits as an arbitrator in commercial disputes involving the law of the KSA, being certified by the KSA government, by the Saudi Center for Commercial Arbitration and by the GCC Commercial Arbitration Center. He has previously acted as an expert witness in Saudi law, and has written numerous articles on Saudi law and on the Shari'ah.

ii) Ms Reema Ali (called by the Defendants). She holds an English law degree (in English law) and a further law degree from a university in Dallas, though no academic qualification in Islamic law. Ms Ali is the managing partner of a law firm that is based in Washington D.C. but focussed solely on the laws of Arab countries. She has many years of experience, was based originally in Kuwait, and then spent time travelling in some other countries in the Middle East. She is a fluent Arab speaker. She has appeared as an expert witness in a range of leading cases before courts and arbitral tribunals in England and the United States.

329. Each of the experts was, in my view, trying to do their best to assist the court. The main differences between them arose from divisions of opinion between scholars, as well as the fact that there is no doctrine of precedent and that the primary source of law is the Qur'an, and its interpretation over the centuries, rather than (for example) a Civil Code or other legislation. Having read and heard their evidence, I do not accept the generalised criticisms made by the parties of each other's experts.

(1) Whether loan agreements must be in writing

330. The first question is whether an oral loan agreement is enforceable under Saudi law. Dr Alkhamees explained (and I did not understand it to be disputed) that as regards a loan contract, the courts of the Kingdom of Saudi Arabia (the "***KSA***") will apply Shar'iah principles as set out in the religious teachings contained in the Book of God (the Qur'an) and the Sunnah (customary actions or norms) of his Messenger (consisting of the acts and sayings of the Prophet Muhammed), as interpreted principally according to the Hanbali school of Islamic juridical scholars. Legislation in the KSA must be compliant with Shari'ah. (Articles 1, 7 and 48 of the Basic Law).

331. Islamic jurists have considered over hundreds of years the meaning of the verses of the Qur'an which affect matters on which legal rights and obligations may arise. The starting point for a judge is the interpretation of a verse, in its whole context, and the judge may resort to the consensus of past and/or present scholars ("*imja*") and use a form of analytical deduction ("*qiyas*"), to arrive at principles that can be applied to the realities of the modern world. Judgments should take into account the public good and the prevailing customs in the Saudi community ("*urf*"). Precedents do not have any legally binding effect, but are treated as a useful, albeit not formally binding, tool by Saudi judges.

332. Saudi law looks to "*fiqh*", the scholarly comprehension of the law based on scholarly studies and interpretations of the Qur'an and the Sunnah. Out of the four schools of jurists, each of which each take its name from a scholar of ancient times, the KSA applies predominantly the scholarly rules and principles of the Hanbali jurists. In the early days of the KSA, a collection of rules relating to Islamic jurisprudence, according to the Hanbali school, was made by Ahmed Al-Qari in the Al-Majallah Alshareia.

333. The verses of the Qur'an that refer to loans are Verses 282 and 283 of Chapter 2 Surat Al Baqarah. The main issue in the present case was whether, on the proper interpretation of Verse 282, it was a requirement of Saudi law that a loan had to be made in writing.

334. The relevant portions of Verses 282 and 283 were provided to the court in translation, as follows:

> Verse 282
>
> "O believers! When you exchange debt for a known period write it. Let a scribe document it for you. No scribe shall refuse to write as he was taught by God and let the debtor dictate the right fearing Allah in doing so, he shall not diminish anything of it. If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with fairness. Call upon two of your

men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her. The witnesses must not refuse when they are summoned. Do not feel burdened by writing ˹contracts˺ for its term—whether the sum is small or great for Allah sees this as fair, and more convenient to establish evidence and remove doubts. Unless it is an immediate transaction among yourselves, then there is no need for you to write it but call upon witnesses as you trade. No scribe or witnesses shall be harmed. If you do, then you are the transgressors. Be mindful of Allah, for Allah ˹is the One Who˺ teaches you. And Allah is all-knowing of all things."

(translation provided by Ms Ali)

alternatively:

"O believers! When you contract a loan for a fixed period of time, commit it to writing. Let the scribe maintain justice between the parties. The scribe should not refuse to write as Allah has taught them to write. They will write what the debtor dictates, bearing Allah in mind and not defrauding the debt. If the debtor is incompetent, weak, or unable to dictate, let their guardian dictate for them with justice. Call upon two of your men to witness. If two men cannot be found, then one man and two women of your choice will witness—so if one of the women forgets the other may remind her.1 The witnesses must not refuse when they are summoned. You must not be against writing ˹contracts˺ for a fixed period—whether the sum is small or great. This is more just ˹for you˺ in the sight of Allah, and more convenient to establish evidence and remove doubts. However, if you conduct an immediate transaction among yourselves, then there is no need for you to record it, but call upon witnesses when a deal is finalized. Let no harm come to the scribe or witnesses. If you do, then you have gravely exceeded ˹your limits˺. Be mindful of Allah, for Allah ˹is the One Who˺ teaches you. And Allah has ˹perfect˺ knowledge of all things."

(translation at https://quran.com/2/282 cited by Dr Alkhamees)

Verse 283

"If you are on a journey and a scribe cannot be found, then a security can be taken. If you trust one another, then ˹there is no need for a security, but˺ the debtor should honour this trust ˹by repaying the debt˺—and let them fear Allah, their Lord. And do not conceal the testimony, for whoever conceals it, their hearts are indeed sinful. And Allah ˹fully˺ knows what you do."

(translation at https://quran.com/2/283 cited by Dr Alkhamees)

335. Dr Alkhamees' evidence was that a loan contract ("*Qard*") is formed by offer and acceptance ("*sigha*"), like any other contract. He stated that it is agreed by the majority of jurists that the original form of *sigha* in any contract is the oral form, with the written form being seen merely as a 'registration tool' that should reflect the intention of the parties but does not add any more validation to the contract or affect its validity. He continued (in his report):

> "The majority of jurists (including the Ḥanbalī School) are of the opinion that documenting debt in writing is recommended (*mastaḥab*) but not but not obligatory (*wājib*). A minority of jurists believe the documenting debt in writing is obligatory. I agree with of the opinion of the majority, which is also enforced by Saudi courts as referenced in the cases cited below. In my view, even scholars who says that documenting debt in writing is obligatory will not render oral loan agreements unenforceable but rather believe that a Muslim will be committing a sin by not following the command of Allah." (footnotes omitted)

336. Dr Alkhamees considered the majority view to be consistent also with Verse 283, which he said makes plain that there is no obligation for a written agreement, by way of alternative examples. He regarded Verse 283 as providing for alternatives, such as taking security, and as establishing the principle of good faith. In oral evidence, he said Verse 283 was not limited to people travelling: that was just an example.

337. Ms Ali's opinion was that Verse 282 contained "*mandatory rules*" and that, to be enforceable in a Saudi court, a valid loan had to be in writing, or it had to be notarised or it had to be witnessed. She made *inter alia* the following observations about scholarly opinion:

> "Not only -- do you think that Hanbali sat there and wrote a treatise and analysed it or any of them? They sat in the mosque and they actually -- they're anecdotes, I told you, and people recorded what they remembered from these stories and therefore you get so much contradiction. But when you have a verse in the Quran that's very clear, then you actually have the thing."

A difficulty with that approach is that it appears to assume the whole of the Qur'an to have a single plain meaning, whereas it is evident that eminent scholars have differed over the centuries about the meaning of particular passages, including Verse 282.

338. In oral cross-examination, Dr Alkhamees agreed that a debt obligation has been regarded as an extremely serious obligation in Islamic law, and that at least until fairly recently non-payment of a debt was an imprisonable offence. Further, in his report he said that one of the main objectives of Shariah is to limit disputes and misunderstandings between individuals. However, he did not accept that the language of the beginning of Verse 282 was the language of command. Indeed, the approach put to Dr Alkhamees there, which reflects Ms Ali's approach, resembles English statutory interpretation rather than the approach outlined in §§ 330-332 above.

339. Dr Alkhamees was taken to an extract from Part 21 of the "*Encyclopaedia of Jurisprudence*" published by the Ministry of Awqaf and Islamic Affairs, a text cited by

Ms Ali. Paragraphs 42ff consider the subject of *"Tawthiq Addain (Debt Documentation)"*. This is defined in § 42 as follows:

> "First: Strengthening and affirming the creditor's right to what the debtor's owes them in terms of money using reliable means- such as written instruments and testimony - to prevent the debtor from denying it, reminding him when he forgets, and preventing him from claiming less than the debt, or preventing the creditor from claiming more than the debt, or its maturity or the expiry of the term, etc. so that if a dispute or disagreement occurs between debtors, this documentation shall be considered a means to prove the disputed debt before the courts.
>
> Second: Establishing and solidifying the creditor's right to what the debtor owes in terms of money, so that when the debtor refuses to pay - for any reason whatsoever - he can collect his debt from a third person who guarantees the debtor with his money, or from a financial property to which the creditor's right is related and is a subject to debt repayment."

340. Paragraph 43 of this section refers to Verse 282 as proving the *"permissibility of debt documentation by writing"*, and discusses differing views of scholars about whether an executed debt document is evidence in itself (the majority view) or whether it is unreliable unless supported by witness testimony. It was suggested to Dr Alkhamees that this passage showed that, either way, writing was required. Dr Alkhamees disagreed, pointing out that the passage concerned the weight to be given to debt documentation with or without witness testimony: it did not concern the question of whether writing was obligatory for the validity of a loan: "*It does not discuss whether writing is obligatory or recommended. It only talks about the mean[s], the weight of evidence …"*. That view appears entirely consistent with the passage quoted in § 339 above.

341. Moreover, § 50 of the same work makes clear that the majority of jurists regarded writing as recommended but not obligatory:

> "The jurists differed in the rule of documenting debts in writing on two sayings:
>
> 50. One of them: To the [majority] of jurists, which is that the writing of debts is recommended but not obligatory"
>
> (citing in the footnote the sources "The provisions of the Koran for Al-Gasas (Istanbul) 1/482, the provisions of the Koran for the Shafi 'i 1/137, the mother (Dar al-Ma 'arefa 393a. E) 3/89 and beyond, Al-Mughani of Ibn Qudamah 4/362, Gamaa Al-Bayan for Al-Tabari 3/77, Tafsir Al-Qurtubi 3/383")
>
> (It was agreed that the word rendered as 'audience' in the translation meant 'majority'.)

> "The order in the words of the Almighty: 'Write it down' is to guide those who fear the loss of their debts by forgetting or denying it, where the debtor is not fully trusted by his creditor. This is evidenced by the words of the Almighty: (If you entrust one another, let him who was entrusted fulfill his trust) (fn.) which indicates that writing is not required if there is confidence and trust among dealers. People from the era of the Companions to this day have not written debts as long as confidence exists among traders. This behavior was not reported to be rebuked by their jurists despite being very common."
>
> (citing in the footnote Verse 283 to the Qur'an)

342. It was suggested to Dr Alkhamees in cross-examination that the views expressed there were premised on a reading of Verse 282 as indicated by the second footnote quoted above. However, Dr Alkhamees did not accept that proposition, and it is evident from the passage as a whole that it is based on a majority view of jurists, and longstanding practice, rather than merely on verse 283. Although Al Tabari was a great scholar, as Dr Alkhamees agreed, he was in the minority on this issue.

343. Dr Alkhamees was also shown an extract from a comparative study by Dr Alae'ddinn Kharofa on "*Loan Contract in Islamic Law (Sharia) and Positive Law (Romanian – French – Egyptian*"), which cited the opinion of Ibn Hazm expressed approximately 1,300 years ago. It noted that whereas the majority of scholars believed the order to record to be a recommendation, Ibn Hazm disagreed with the majority and regarded it as obligatory. Dr Alkhamees responded that Ibn Hazm was in the minority, and went on to set up his own literalist school. He did not accept that that led to the majority view changing. Dr Alkhamees was shown a passage in which Ibn Hazm's reasoning was expressed in this way:

> "Allah's commandment must always be obeyed. He who says it is only recommendation: Falsehood and God Almighty' would not say: Write it down, and someone says: I do not write if I wish, and God Almighty says; "And bear witness", a person would say:
>
> I do not bring a witness and it is not permissible to transfer the commands of God Almighty from obligation to recommendation except with another text, and all of this falls under the opinion of Abu Suleiman and all of our companions and a group of the predecessors" (citing Almahally 8/80)

I observe, though, that this passage appears to start from the assumption that the contents of Verse 282 constitute a commandment unless 'converted' into a mere recommendation by some further text. The majority view, as I understand it, is not to make an *a priori* assumption of that kind but, rather, to decide whether any given passage, read in context and in the light of scholarly opinion, falls within one category or the other.

344. Dr Alkhamees also explained in cross-examination that scholars have cited the fact that the Prophet and his Companions had taken and given loans without documenting them, supporting the view that Verse 282 is advisory only.

345. Reference was made to an extract from the script of an undated televised advice session with Abd al Aziz ibn Abdullah ibn Baz, who was the Grand Mufti of Saudi Arabia from 1993 to 1999. The session included what may have been a *fatwa* regarding a situation where a husband wished money to go to his wife on his death, but had not written it down. A *fatwa* is a form of religious advisory ruling, or, in Dr Alkhamees' words, the statement of what the mufti or scholar believes God intended or ruled in a particular situation. The question and answer were as follows:

> "[Q] A man invested his wife's money with his own money, and she was almost satisfied. His wife was asking him to register a share in her favour in the property in proportion to her money to ensure that her money is not inherited by the heirs after her husband's death, but her husband used to say to her: This money -i.e., both his money and her money will be transferred to you and your children after my death. He died before registering a share in her favour in proportion to her money, so will he be accountable (before God) for that? What should the heirs have to do with this issue?"
>
> "[A] If the husband has money for his wife, he should write it down, and clarify that in an official document to be handed over to her after his death, and this must be clarified during his lifetime to acquit himself of the obligation laid on him (before Allah). If he dies without evidencing that [in an official document], the heirs must pay her share from the estate, like the rest of creditors, if this is proven by evidence, or they allow her to do so, and believe in her words, if they are adult and legally competent."

This passage does not, however, appear to support the proposition that a debt must be written down in order to be legally enforceable, being concerned rather with the question of whether the husband would be *"accountable (before God)"* and the duties of the heirs. Moreover, Dr Alkhamees explained, a *fatwa* does not apply to a wider audience but is intended as guidance on a particular situation.

346. Dr Alkhamees also referred to cases in which the claimant successfully recovered in respect of a loan which was not made in writing (nor evidenced in any of the other ways referred to in Verses 282 or 283). These were cases 3454409 (Court of Appeal), 431997863 (General Court and Court of Appeal), 439140477 (General Court) and 2829098 (General Court). Although not binding as precedents, previous cases are considered and used by judges in the KSA to inform themselves of the relevant principles.

i) In case 3454409, no defence of lack of writing was taken or considered, and the case was brought to an end by the claimant taking an oath (a matter of important evidential significance in Saudi law which can be considered as conclusive in the absence of contrary evidence).

ii) In case 431997863, the defendant did refer to the absence of writing, albeit without mentioning verse 282, yet the claim was upheld. Ms Ali questioned the

outcome of the case on the merits, but that does not in my view alter the analysis. (On appeal it appears the case was concluded by the claimant taking an oath.)

iii) In case 439140477, money was paid to a taxi driver who claimed that the money was a gift. The court treated the payments as advances to the defendant, which he was liable to repay. It found evidence in text messages to support the view that it was a loan. Although the claimant also took an oath, that was in circumstances where the court had found her to have the stronger case:

> "It appears from this text that there is an intention to return on the defendant. It proves that it is a loan in his hands and not a gift as mentioned. As the decision is for the owner of the money. In light of these strong evidences that support the plaintiff's side and her swearing the oath required for what is decided in jurisprudence and that the oath is performed by the party with the stronger argument according to Article (93) of the system of proof, "the oath shall be on the side of the strongest disputing parties.""

iv) In case 2829098, a son lent money to his father, and later sued his estate for repayment. Absence of writing was mentioned, but the court ruled in favour of the claimant.

347. Ms Ali was somewhat disparaging about these decisions (despite never herself having visited Saudi Arabia), describing judges of the General Courts as new graduates, fresh out of law school and Shari'ah school, who were serving as judges for two years in order to gain experience, and indicating that their decisions did not constitute binding authority. Nonetheless, if the need for writing were a fundamental requirement of the kind Ms Ali suggested, it seems surprising that the point was not taken either by the court or by the parties. It is true that the cases mentioned above did not explicitly consider the issue arising from Verse 282. However, Dr Alkhamees said he had been unable to find a case in which a claim based on a loan had failed on the ground that lack of writing made the alleged loan invalid; and Ms Ali did not refer to any such case either.

348. Dr Alkhamees also cited, in support of his opinion, the Accounting and Auditing Organisation for Islamic Financial Institutions, Shari'ah Standards 2017 page 518, which contain no reference at all to a requirement for a loan agreement to be made in writing.

349. Having carefully considered the expert evidence on both sides, in the light of the materials presented, I have formed the view that Dr Alkhamees' opinion on this point is to be preferred. The balance of opinion, consistently with such evidence of court decisions and general practice as could be found, support the view that the statement in Verse 282 that a loan should be recorded in writing is a recommendation but not a mandatory pre-condition of the loan's validity.

(2) Authority

350. Secondly, there is an issue as to how an agent's authority can be established under Saudi law, relevant to the question of whether Sheikh Majid could have bound Sheikh Walid to the alleged loan agreement.

351. Ms Ali expressed the view that an agent "*may not borrow on behalf of a principal because loans must be declared to be on behalf of the principal and attributed to the principal to avoid doubt*"; however, if there were a "*written and notarized power of attorney which specifically includes the right to apply for loans on behalf of the principal*", then the person acting on behalf of the lender would be regarded as a messenger and the transaction would be valid.

352. Mr Alkhamees' view was that there is no requirement for authority to act as an agent to be in writing: it is simply necessary to adduce evidence to prove that the principal has granted his agent authority to act on his behalf. Further, although Saudi law does not have a clear doctrine of apparent authority, the Saudi courts adopted a similar approach in Case No. 2969/2/Q (authority sufficiently apparent from outward circumstances, and transaction entered into with the principal's knowledge). In addition, a principal can subsequently ratify the act of a *fodooli* or uncommissioned agent, i.e. an individual who acts on behalf of another person before being appointed as an agent. Failing that, the act remains binding on the putative agent.

353. Ms Ali recognised a similar concept of "*agency by conduct*", but expressed the view that it does not apply to a loan, because of her earlier conclusions that "*an agency is not permissible in the context of a loan agreement*". In addition, she said the Hanbali school of thought takes a very narrow view of the *fodooli*. The Hanbali position was that a contract purportedly concluded by a *fodooli* would be void in relation to sale and purchase as no-one can sell what they do not own, and *"the Hanbali school would also declare a sale, purchase, donation, or rental void – and the same would hold for an oral loan agreement."*

354. Ms Ali exhibited the following, from Hussein, *Agency in the Islam Sharia*:

> … The agency shall be established by all matters that indicate the same by custom. It is not required for concluding an agency contract a specific wording that indicates agency. Accordingly, if a party says "I appoint you as my agent" or "you are my agent", such agency shall be valid. Likewise, if a party says "act on my behalf", such agency shall also be valid. … Agency contract may be established in the customary course of things. For example, if two brothers jointly own a plot of vacant land and it is customary for one of both brothers to rent it out and collect its rent, then this brother is deemed an agent on behalf of his brother. This brother's claim is valid that he gave him his share of the rent.

and:

> "agency may not be concluded for the purpose of taking out loans, as whatever taken as loan may not be established as property of the principal unless the agent delivers such agency

> as a message. In other words, the agent declares that "so and so has instructed me to reach out to you to take so and so as a loan". In this case the item subject of the loan is established to be a property of the borrower. Otherwise, the subject of the loan becomes a property of the agent, and the agent will be entitled to withheld such item from the principal, and if such item is damaged, the damage will be applied against the agent's property.

It appears from this passage that an agent can in effect conclude a loan acting as a messenger on behalf of the third party, or else the subject-matter of the loan becomes the property of the agent himself.

355. As to authority by conduct the experts differed over the proper interpretation of *Case 4961-1-Q*, where employees were held to have entered into contracts on behalf of their employer, even though it exceeded their technical authority to do so. The court stated *"[a]ccordingly, it is not acceptable for the defendant to say that he did not authorize his workers to deal with the plaintiff and others in the past and present, because such a statement denies the evidences that appeared to him, as were previously mentioned."* Dr Alkhamees explained in oral evidence:

> "One of the main arguments that was made by the defendant was that there was no written agency agreement. So if you go to the reasoning of this case, it says - - you conclude that the court has concluded this based on the outward circumstances. So the point I'm trying to make is that, although the theory of apparent authority is not there in Saudi Arabia, but from these cases and from the reasoning of the court, you can tell that the court can find such actual authority from these circumstances, outward circumstances, of the case."

356. Ms Ali sought to explain this case as being one of vicarious liability (which Dr Alkhamees stated does not apply in contract):

> "Q. What I'm going to suggest to you is that vicarious liability is not a concept so far as contract is concerned which is recognised in Saudi law. It's all to do with contractual authority or not. Do you agree?
>
> A. When he exceeds his authority and permits crime by taking the money and running away with it, you departed from the realm of contracts. You are now in the realm of torts. And in this situation he is asking for the money or the materials which were actually used by or misappropriated by the employees and so he is liable for them because he gave them authority in the first place to order and, two, to withdraw money."

I am unable to accept that view. The claim in *Case 4961-I-Q* was clearly a contractual one, not brought against the employees for wrongdoing, but rather brought by the counterparty against the employer seeking the price payable for the goods.

357. As to the consequences where someone enters into a contract without authority, Ms Ali's report described a *fodooli* as *"someone who, out of necessity or with a judge's permission, undertakes an act on behalf of another without pay"*. She cited Dr Mousa, *Sources of Obligation in Islamic Jurisprudence and Saudi Laws*:

> "A [*fodooli* / *fudhuli*] also applies if he continues to contract in the name of the principal after the expiry of the power of attorney, in which case he will be considered a fudhuli in all the acts performed after the expiry of the power of attorney. Sometimes a fudhuli is not originally an attorney but may perform a legal act for the benefit of the employer or pay a tax imposed on the employer, to avoid administrative attachment against the employer's property."

Dr Alkhamees cited the statement in Accounting and Auditing Organisation for Islamic Financial Institutions, Shari'ah Standards 2017, p.620, that:

> "An uncommissioned agent (Fodooli) is a person who discharges in the absence of any need or urgency the affairs of others without being an agent or having a right to do so by virtue of Shari'ah".

Both passages suggest that the *fodooli* concept is therefore not restricted to persons acting out of necessity or with a judge's permission.

358. In the light of this evidence, I would agree with Sheikh Mohamed that there is no requirement for an agency contract to be in writing. Actual authority can be conferred by words or by customary dealing. Actions of an unauthorised agent can be ratified by the principal.

(3) Limitation

359. Ms Ali set out the following evidence in her report:

> "(i) Statutory law
>
> 4.33. There is no general or single codified or statutory law in Saudi that provides for a limitation period for claims. However, there are several statutes that expressly provide for limitation periods that the Saudi government has enacted. For example:
>
> …
>
> 4.34. The Commercial law of 1931 Decree No. M32 Article 429, which applied to those engaging in commerce had a statute of limitations of three years for obligations not evidenced in writing unless acknowledged. This provision was repealed in 2018.
>
> 4.35. The Civil Procedure Law for proceedings before the Board of Grievances (Ministerial Resolution No. 190 of 1989) also fixes a general time frame of 5 years, calculated from the moment of coming into existence of a right to file an

administrative claim before the Board. The Board, for many decades, acted as a commercial court in disputes not assigned to the semi-judicial committees, but no longer does so since the establishment of the commercial courts in 2020: ...

4.36. Under the Board of the Grievance procedural law Decision 190 of 1409 as repealed by Law M 3 of 1435, if there were any commercial dealings between the parties, then any dispute between them would have been subject to the Board of Grievance jurisdiction (because it would be considered a commercial dispute). If so, the statute of limitations for a claim, even if the agreement was in writing, would be five years.

4.37. The Commercial Court law M 93 of 1441 (8th of April 2020) codified the trend in courts and established a 5-year statute of limitation as of the day the right arose. see Article 2418.

(ii) Sharia law

4.38. Apart from the above specific statutory provisions, and as a matter of Sharia Law, rights do not extinguish by the passage of time but the ability to litigate them can become barred, if a person does not pursue a claim for a right for a long period of time, without any justification or impediment. This is due to the evidentiary problems that the passage of time places on witness testimony which constitutes the highest credible source of evidence in Sharia Law. Whereas a delay in bringing a claim for an alleged right for an extended period,

without justification or impediment, is taken as a clear indication to the judge that there was no such right because if there was a right, a claim for it should have been pursued, as people should be diligent in pursuing their rights.

4.39. The period required to amount to a forfeiture of litigating a right is at the judge's discretion based on the facts of the case. However, the Board of Grievance limitation of 5 years indicates what would be considered a reasonable time in this context, especially for commercial dealings amongst businesspeople.

4.40. These are supposed to be courts of equity (to use a Western expression), so discretion depends on the circumstances. The claimant will have to have an acceptable justification for not advancing his claim earlier and for allowing doubt or "*Gharar*" to arise.

(b) The principles applicable to loan agreements

…

> 4.42. In terms of the significance of delay, the judge would look at the facts and inquire as to why there was a delay in bringing an action to ask for repayment or restitution of the amount transferred. Additionally, the judge would inquire from the defendants as to what other purpose was for the amount transferred. Once the judge collects the information, the judge may order restitution under an unjust enrichment theory if a delay in claiming is justifiable for some reason.
>
> 4.43. However, if the delay is not justifiable and is for an extended period (beyond the periods I have set out at paragraphs 4.33 to 4.39 above) then that will mean the claimant will have caused a delay that prejudices the court's ability to assess the evidence. This is contrary to the principles of Sharia that I have explained, such that allowing the claimant to enforce the alleged right may be contrary to those principles and what is, in effect, public policy. 4.44. This is a matter of the court's discretion. However, when there is a long and unexplained delay in asserting a right, the court may deem the alleged right unenforceable. In a commercial context, the longer the delay beyond the 5-year period outlined above (and for an oral contract, beyond the 3-year period in force before 2018), the more likely a court will consider that the right is unenforceable for the policy reasons I have given. A delay or more than ten years on a claim under an oral contract would be particularly difficult to justify, and so such a claim is particularly likely to be held unenforceable."

360. Ms Ali did not cite any authority for the propositions set out in quoted §§ 4.38 to 4.44. above.

361. Dr Alkhamees' evidence was:

> "71. Judicial Principle No. 2153 issued by the Supreme Judicial Authority of the Supreme Judicial Council prescribes that: "*the length of time does not extinguish a right.*" This is one of the matters established and confirmed in Shariah. It is established that "al haq qadeem" or "right or truth does not become an obsolete with the passage of time" and does not lapse in any case by a statute of limitations.
>
> 72. In some Saudi codes, however, such as the Labor Law and the Commercial Court Procedural Law, there is a specified period of time for hearing cases in general. This is considered as procedural limitations that does not affect the right itself. Evidently, the same codes provide for that if the defendant acknowledges a debt, even after the hearing period has elapsed, the court must hear the case.
>
> …

> 74. Similarly, Article (24) of the Commercial Court Procedural Law reads as follows: "*Where no special provision is provided for, the cases (that the Court has jurisdiction over) shall not be heard after the lapse of (five) years from the date on which the claimed right arises, unless the defendant acknowledges the right or the plaintiff submits an excuse acceptable to the Court*".
>
> 75. It is also worth noting that such limitations are nonexistent in the General Procedural Law of Litigation which is procedural law that applies to the General Court. All loan cases are exclusively heard in the General Courts in terms of jurisdiction.
>
> 76. In addition, where the parties have not agreed on any date for the repayment for a loan, then it is repayable on demand. Muslims, however, are encouraged to clear their debts as soon as possible. This is supported by case law. An example is the ruling in case No. 2829098, in which the Court ruled in favour of the claimant for a loan he had given to the late father of the defendants 31 years before the case was brought to the Court." (footnotes omitted)

362. In reply, Ms Ali explained that under Shari'ah law, the right does not expire but the right to pursue a claim for it becomes time-barred. Time bar must be raised as a defence by the defendant. She suggested that no time bar defence was raised in case 28209098 cited by Dr Alkhamees: in fact, though, the report indicates that the defendant did draw specific attention to the fact that *"no claim is made for more than thirty years for a debt of this magnitude …"*.

363. Dr Alkhamees agreed, in cross-examination, that the judge might use the passage of time as an indication and circumstantial evidence of the nonexistence of a loan. However, that is a matter of evidence, and does not in my view form part of the law of limitation for the purposes of the Foreign Limitation Periods Act 1984.

364. There was some debate about whether, if the present case were issued or could in some way have been brought in the Board of Grievances (being a possible Court in 2015, before instigation of the Commercial Court), the five-year limitation period would apply. However, (a) that would still not assist the Defendants if the loan were repayable on demand, and (b) I accept Dr Alkhamees' evidence that all loan cases are subject to the jurisdiction of the General Courts (citing Case 5875 before the Commercial Court of Habil), that the jurisdiction of the Board of Grievances was focussed on administrative law and that, if even a case such as this could have been heard in the Board of Grievances before 2020, it would not apply the administrative law time bar to a commercial case.

365. In the light of the evidence, I conclude that a claim for the loan would not be subject to a time bar under Saudi law, and, even if it were, there is no reason to believe that time would run from the date of the loan rather than the date of the demand for repayment.

(4) Consequences of conclusions on Saudi law

366. In the light of the conclusions I reach above about Saudi law, had I concluded that the Payment did reflect a loan agreed between Sheikh Majid and Sheikh Mohamed by telephone in December 2001, then the consequences would have been as follows.

367. I would not have concluded that the loan was invalid for lack of writing.

368. I would have rejected Sheikh Mohamed's case that Sheikh Walid was bound by the loan. There was no evidence of Sheikh Walid having given actual authority to Sheikh Majid in that regard, nor any course of dealing whereby Sheikh Walid had allowed Sheikh Majid to conclude personal loans on his behalf. The contract of loan would therefore have bound only Sheikh Majid.

369. I would have concluded that the claim for the loan was not time-barred.

(M) CONCLUSION

370. For the reasons given in sections (F) to (J) above, Sheikh Mohamed's claim fails and must be dismissed.