



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 203 OF 2020 (NSJ)

BETWEEN:

ABDULHAMEED DHIA JAFAR

PLAINTIFF

AND

(1) ABRAAJ HOLDINGS
(in official liquidation)

(2) GHF GENERAL PARTNER LIMITED
(in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

(3) THE GHF GROUP LIMITED
(formerly The Abraaj Healthcare Group Limited)

(4) ABRAAJ GENERAL PARTNER VIII LIMITED
(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))

DEFENDANTS

HEADNOTE

Security for costs – applications by the Second-Fourth Defendants for additional security - evidence as to whether there was a real risk of non-enforcement in the UAE of a costs order made by this Court and whether it was just to award further security to these Defendants – review of disputed evidence as to UAE law – quantification of the further security

Before: **The Hon. Mr Justice Segal**

Appearances: **Mr Stephen Atherton KC instructed by Matthew Goucke and Shelley White of Walkers for the Second and Third Defendants**

Mr Andrew Ayres KC and Henry Phillips instructed by Ogier for the Fourth Defendant

Lord Falconer and Luka Krsljanin instructed by Sarah McLennan of Forbes Hare for the Plaintiff

Heard: 28-29 June 2023

Further submissions: 6 and 13 July 2023

Draft judgment circulated: 22 September 2023

Judgment delivered: 2 October 2023

**JUDGMENT ON THE GHF PARTIES' AND FUND IV'S APPLICATION
FOR ADDITIONAL SECURITY**

Introduction

1. By summonses issued in April 2021, the Second and Third Defendants (the *GHF Parties*) and the Fourth Defendant (*Fund IV* who with the GHF Parties I refer to as the *Fund Parties*) each applied for security for costs against the Plaintiff (the *SFC Summonses*). The SFC Summonses were heard on 1 and 2 July 2021 (the *SFC Hearing*) and on 10 August 2021 I handed down my judgment granting the applications (the *SFC Judgment*). The order giving effect to the SFC Judgment was dated 19 October 2021 (the *SFC Order*). The background to the security for costs applications can be found in the SFC Judgment (and I use the definitions in the SFC Judgment in this judgment).
2. Security was ordered up to discovery, with liberty for (i) the Fund Parties to apply for further security to cover the period up to and after the trial and (ii) for all parties to apply for an adjustment to the costs allocated to discovery.
3. The Plaintiff was ordered to give security for the GHF Parties' costs up to the conclusion of the discovery process in the sum of US\$4,147,951.59 (the *GHF Parties' Initial Security*) comprising (a) 70% of the GHF Parties' recoverable costs and disbursements up to the date of the SFC Hearing being US\$1,596,885.36; (b) 70% of the GHF Parties' estimated future recoverable costs to the conclusion of the discovery process being US\$1,134,670.95 and (c) estimated future disbursements of US\$1,416,395.28, which included a reduction of US\$250,000 to the initial amount sought by the GHF Parties in respect of disbursements relating to FFP's forensic advice.
4. The Plaintiff was ordered to give security for Fund IV's costs up to the conclusion of the discovery process in the sum of US\$3,561,319.24 (*Fund IV's Initial Security*) comprising (a) US\$1,099,733.39 representing 70% of costs already incurred by Fund IV up to 30 June 2021 and

- (b) US\$2,461,585.84, representing 70% of Fund IV's estimated legal costs and 100% of its estimated disbursements from 30 June 2021 up to the completion of discovery.
5. By a summons dated 3 February 2023 (the *GHF Parties Top-Up Summons*) and a summons dated 6 February 2023 (the *Fund IV Top-Up Summons*, together with the GHF Parties Top-Up Summons, the *Top-Up Summonses*) the GHF Parties and Fund IV respectively applied, pursuant to the liberty to apply that I had previously granted, for further security to cover the costs actually incurred in the discovery stage of the proceedings and the additional estimated costs to be incurred in the further stages in the proceedings.
 6. By the GHF Parties Top-Up Summons, the GHF Parties applied for additional security in the aggregate sum of US\$5,470,023.46 (the *GHF Parties Additional Security*). This comprises further security (a) for the discovery phase in the sum of US\$975,531.01 (the *GHF Parties' Discovery Security*) and (b) for their future recoverable costs to the end of the trial in FSD 203 of 2020 (the *Jafar Proceedings*) in the sum of US\$4,494,492.45 (the *Future Security*). At the time that the GHF Parties Top-Up Summons was filed this figure represented the GHF Parties' best estimate of their recoverable costs until the conclusion of the trial in the Jafar Proceedings: see Mr Lewis' Thirteenth Affidavit (*Lewis 13*) sworn on 3 February 2023 and his Fifteenth Affidavit sworn on 21 June 2023 (*Lewis 15*) at [6]. The GHF Parties said that since the swearing of Lewis 13 a considerable period of time had elapsed (Lewis 13 was sworn at a time when the GHF Parties anticipated that the GHF Parties Top-Up Summons would be heard within a short period of time but in fact the hearing of the summons was delayed) and there had been a number of significant developments so that it was necessary and convenient to update the figures contained in Lewis 13 which had been done in Lewis 15.
 7. By the Fund IV Top-Up Summons, Fund IV now seeks by way of further security the sum of (a) US\$1,666,964.69 in respect of costs incurred to date in excess of the existing security and (b) US\$4,300,937.40 in respect of estimated future costs to trial. As regards the first element, Fund IV's total incurred fees from the start of the Jafar Proceedings up to 30 April 2023, on the basis of 70% of its legal fees and 100% of its disbursements, amounted to US\$5,464,828.05. Of this sum, it had received an interim costs payment from the Plaintiff of US\$236,544.13 in relation to the costs order made in Fund IV's favour following the Plaintiff's application for leave to amend his statement of claim (Fund IV being granted its costs of and occasioned by those amendments) and once this interim payment was taken into account the total incurred costs up to 30 April 2023 had exceeded Fund IV's Initial Security of US\$3,561,319.24 by US\$1,666,964.69. When the Fund IV Top-Up Summons was issued Fund IV had provided in Mr Hayward's Seventh Affidavit

(*Hayward 7*) sworn on 6 February 2023 evidence as to its incurred costs to the end of December 2022 along with Fund IV's estimates of future costs. Once again, in view of the delay in the hearing of the Fund IV Top-Up Summons and developments since it was issued, Fund IV filed the Sixteenth Affidavit (*Hayward 16*) and the Seventeenth Affidavit (*Hayward 17*) of Mr Hayward to update its evidence as to incurred and estimate future costs. Hayward 16 was sworn on 19 June 2023 and Hayward 17 was sworn on 21 June 2023.

8. The hearing of the Top-Up Summonses took place on 28 and 29 June 2023. Once again, the GHF Parties were represented by Mr Atherton KC, Fund IV was represented by Mr Ayres KC and the Plaintiff was represented by Lord Falconer.
9. The Plaintiff objected to what he regarded as the late filing of the further evidence by the Fund Parties, which he said he had not had sufficient time to consider before the hearing. I considered that the Plaintiff was justified and needed further time to review and respond to this further evidence. Accordingly, I directed that he be permitted to file further written submissions dealing with this further evidence within seven days of the hearing (which he did on 6 July) and that the GHF Parties and Fund IV be permitted to file further submissions in response seven days after that (which they did on 13 July).
10. I have concluded that the Fund Parties have established that there remains a real risk that a costs order against the Plaintiff would not be enforced in the UAE and that, having regard to the terms of the SFC Order and the basis on which it was made (as explained in the SFC Judgment) and exercising my discretion to order the Plaintiff to provide security for costs, that the Plaintiff should be required to provide further security. I have carefully reviewed the Fund Parties' evidence as to quantum and the Plaintiff's extensive and detailed challenges thereto, and concluded that some but not substantial reductions should be made to the amounts claimed by the Fund Parties. I have explained those reductions in my discussion of the Fund Parties' quantification of their claims, which appears below. I will invite the parties to seek to agree the amounts of the further security to be provided based on the decisions I have set out.

The issues

11. In addition to the question of the proper quantum of the further security claimed by the Fund Parties, the Fund Parties' entitlement to any further security for costs was challenged by the Plaintiff on the basis of what he claimed to be new developments in the UAE since the SFC Judgment. These developments, the Plaintiff argued, showed that there was now no real and

serious risk that a costs order against him might not be enforced in the UAE (so that the jurisdictional pre-condition to an order for security for costs was no longer satisfied).

12. Accordingly, I need first to consider the Plaintiff's opposition based on the change of circumstances and the asserted absence of a real and serious risk that a costs order against him might not be enforced. Since, as I explain below, I have concluded that the Fund Parties have established that such a risk remains, I need to, and shall then, consider the dispute as to quantum.

The evidence on UAE law

13. Directions were made permitting the parties to file expert evidence as to applicable federal UAE law (and the law of the relevant Emirates).
14. The Plaintiff relied on a report (the *Ahnish Report*) prepared by Dr Faraj Abdullah Ahnish Saleh Ahnish (*Dr Ahnish*). Dr Ahnish is a legal advisor and a UAE national advocate. He is one of the founding partners of Hadeef & Partners LLC (*Hadeef*) and the Managing Partner of its Abu Dhabi office. Hadeef is a full-service law firm and among the oldest and largest firms in the UAE, with offices in Abu Dhabi and Dubai. Dr Ahnish has rights of audience before all Federal Courts in the UAE, including the Federal Supreme Court. He holds a law degree from the University of Benghazi and following professional practice as a judge in the Libyan Courts obtained an LLM in international law at Hull University. He also completed a PhD in International Law at the University of Cambridge. He is a native Arabic speaker (and is therefore, competent to review and consider legal statutes, UAE court judgments and other legal materials drafted in Arabic). He is also fluent in English.
15. The GHF Parties relied on a further affidavit, the Second Affidavit (*Dagher 2*) sworn by Mr Wissam Dagher (*Mr Dagher*). Mr Dagher is a partner of DLA Piper Middle East LLP (*DLA*). DLA is advising the GHF Parties. Mr Dagher is registered as a legal consultant with the Dubai Legal Affairs Department and is a qualified English solicitor. He is the head of the onshore UAE litigation practice in DLA and has 15 years' experience practising in the UAE. He is a native Arabic speaker. Mr Dagher said that despite acting for the GHF Parties he had been instructed to and had complied with the duties of an expert appointed in proceedings before the Grand Court as set out in Section B5.2 Financial Services Division Guide. As noted at [6] of the SFC Judgment, DLA previously provided two letters (dated 7 April 2021 and 16 June 2021 respectively) dealing with matters of UAE law relevant to the SFC (together the *DLA Opinion Letters*). In four affidavits, each dated 30 June 2021, three members of DLA (Mr Dagher, Mr

Henry Quinlan and Mr Ahmed Hammadi) and Mr Ahmed Ramadhan, formerly the managing partner of Ahmed Ramadhan & Haleema Al Marzooqi Advocates & Legal Consultants (an onshore UAE law firm), confirmed that they agreed with the contents of the DLA Opinion Letters. In preparing Dagher 2, Mr Dagher received assistance from his DLA colleagues Mr Quinlan, Mr Rawan El Osmani, a senior associate at DLA and Ms Rosy Loutfi, a legal manager at DLA. Mr El Osmani and Ms Loutfi are native Arabic speakers.

16. Fund IV relied on a further affidavit, the Third Affidavit (**Fox 3**), of Mr James Paul Fox (**Mr Fox**). Mr Fox is a partner in DWF (Middle East) LLP, an English qualified solicitor and a practitioner registered by the Dubai Legal Affairs Department and a Part I and Part II registered practitioner in the DIFC Courts, who has practised in the UAE both in the DIFC and onshore courts for more than fifteen years. DWF are the UAE attorneys acting for Fund IV and Mr Fox is the responsible partner. Mr Fox noted that only UAE nationals with rights of audience were entitled to represent parties before the onshore UAE Courts and therefore in matters before these courts he always acted with a UAE registered advocate. Sultan Hadif Al Owais was a UAE national with such rights of audience and he had reviewed an advanced draft of Fox 3 and confirmed his agreement with the legal views expressed therein.

Dr Ahnish's evidence

The new legislation

17. As I noted at [(14(a))] of the SFC Judgment, at the time of the SFC Hearing foreign judgments and orders could be enforced in the UAE Courts, in the absence of a relevant treaty as in the case of the Cayman Islands, pursuant to the terms of UAE Federal Law No. 11 of 1992 (as amended) (the **Old Civil Procedure Law**) and the Executive Regulations issued pursuant to the Cabinet Decision No. 57/2018 (as amended) by Cabinet Decision No. 33 of 2020 (the **Regulations**).
18. Dr Ahnish explained that the law governing the enforcement of foreign court judgments in the UAE was now contained in the New Civil Procedure Law which came into force in the UAE on 2 January 2023. The New Civil Procedure Law repealed the entire Old Civil Procedure Law (as amended by the Regulations). While the Old Civil Procedure Law had been amended several times in the past it had now been consolidated and embodied into one compendious new federal law incorporating all prior associated regulations into the body of the new law itself.

19. The enforcement of foreign judgments in the onshore UAE courts was now covered by Chapter IV (Articles 222 to 225) of the New Civil Procedure Law. Article 222 mirrored *verbatim* the requirements for enforcement of foreign judgments which were previously set out in Article 85 of the Regulations. In Dr Ahnish's opinion the fact that these rules have now been reinstated in the form of a federal law rather than as Regulations was significant because it meant that the rules had superiority in application in the event of a conflict with any other statute of a lower degree. This was explicitly provided for under Article 151 of the UAE Constitution. Dr Ahnish considered that the fact that the more permissive regime reflected in the Regulations had now been adopted in the New Civil Procedure Law was further evidence of a more permissive approach to the enforcement of foreign judgments and that the UAE legislature wanted the UAE to be, and to be seen to be, receptive to the enforcement of foreign judgments.

20. Article 222 is in the following terms (in English translation):

- "1 *An order may be made for the enforcement in the State of Judgments and orders made in a foreign country on the same conditions laid down in the law of that country for the execution of judgments and orders issued in the State.*
2. *An order for execution shall be applied for by means of a petition submitted by the concerned party including the data specified in Article [44] of this Code to the Execution Judge. The Judge shall issue their order within (5) five working days from the date of its submission, and the order shall be subject to appeal by direct appeal in accordance with the rules and procedures prescribed for appealing Judgments. An execution order may not be made until after the following matters have been verified:*
- (a) *The Courts of the State have no exclusive Jurisdiction to try the dispute in which the order or Judgment was made, and that the foreign Courts which issued it have Jurisdiction over the matter in accordance with the rules governing international Judicial Jurisdiction laid down in their law,*
 - (b) *The Judgment or order was issued by a Court having Jurisdiction in accordance with the law of the country in which it was issued and duly endorsed;*
 - (c) *The parties to the action in which the foreign Judgment was issued were summoned to attend, and were duly represented,*
 - (d) *The Judgment or order has acquired the force of res judicata in accordance with the law of the Court that issued it, provided that the applicant submits a certificate that the Judgment has acquired the force of a final order or the same was stipulated in the judgment itself, e) It does not conflict with a Judgment or order already made by a Court in the State, and contains nothing that conflicts with morals or public order in the State.*
- 3 *The Execution Judge shall have the right to collect the documents supporting the request before issuing their decision."*

21. Dr Ahnish said that the powers of a UAE Execution Court in respect of each matter brought before it (for the enforcement of a foreign judgment) was limited to deciding whether the conditions in Article 222 had been satisfied. In other words, the Execution Court cannot go into the merits of the foreign judgment. If the conditions in Article 222 are satisfied then in the absence of anything in contravention of morality or public policy the UAE Execution Court is bound to order the enforcement of the foreign judgment.

Recent developments relating to the reciprocity requirement

22. Dr Ahnish's opinion was that (see [5.4] of the Ahnish Report) (underlining added):

“... in my view decisions of the UAE Courts since the time of the [SFC Hearing] demonstrate that the courts in the UAE are perfectly willing to recognise and enforce judgments of foreign courts irrespective of the existence of a treaty or ad hoc legislation. As these cases show, the key question which the UAE courts will consider is whether the court of the jurisdiction which has issued the judgment in question would enforce a like decision of the UAE courts. This principle of reciprocity does not require, under UAE Law, that a UAE Court judgment must actually have been enforced in the foreign jurisdiction.”

23. Dr Ahnish cited a number of recent and illustrative examples of judgments of the UAE Courts which in his opinion demonstrated the UAE Courts' willingness to enforce foreign judgments and which gave guidance on the UAE Courts' approach to the reciprocity requirement. He dealt with these in the Ahnish Report as follows (underlining added):

*“5.8. I attach as [Exhibit 5] to this report, a judgment of the Dubai Court of Cassation dated 30 December 2021 (the **Singapore Judgment Case**), affirming the order of the Court of First Instance to enforce a Singaporean Court judgment in the UAE (**Singaporean Court Judgment**) and obliging the Defendant to pay the Applicant's legal costs and fees.*

5.9. I note that in this case the appellant raised a number of jurisdictional objections to the enforcement of the Singaporean Court Judgment, including that the Singaporean court lacked jurisdiction because the appellant had its headquarters in Dubai and therefore, the appellant said, the Dubai Court had exclusive jurisdiction. I return to this point in my discussion of exclusive jurisdiction' below but note, for the moment, that those arguments were rejected by the Court of Appeal and the Court of Cassation. ...

*5.10. On 27 October 2022, the Dubai Court of First Instance ordered the enforcement of a judgment issued by the Polish Court (the **Polish Court Judgment**). This order is attached ...*

5.11. Prior to issuing its order, the Dubai Court requested the claimant to provide evidence on the following: (a) Confirmation whether there is a treaty on enforcement of judgments between Poland and UAE. The claimant clarified that

there was no such treaty. (b) In the absence of such treaty, a statement clarifying the conditions of enforcement of foreign judgments in Poland; and (c) A certificate that the judgment issued from the Polish court is officially final in accordance with Article 85 of the Executive Regulations.

5.12. *Despite the Court's finding that there was no treaty between the UAE and Poland, the court went ahead and enforced the Polish judgment because it was satisfied, based on the applicant's evidence of the conditions by which UAE judgments would be enforced in Poland, of the existence of reciprocity under Polish law.*

5.13. *The Dubai Court of Appeal has also recently issued a judgment on 21 September 2022 [in Case No 14 of 2022] agreeing to overturn the judgment of the Dubai Execution Court refusing the enforcement of an English Court judgment (Case 14).*

5.14. *In summary, the Claimant in these proceedings filed a case before the Dubai Execution Court requesting it to enforce an English Court judgment. That case was initially rejected by the Execution Court. However, the Claimant then filed an appeal to the Dubai Court of Appeal challenging the Execution Court's judgment. The Court considered the various requirements set out in Article 85 of the Executive Regulations and concluded that they were satisfied, including that the courts of the UAE were not "exclusively competent" in relation to the subject matter of the dispute... The Court therefore permitted the appeal and required the respondent to pay the successful appellants expenses, including attorneys' fees."*

.....

5.17. *Finally, my firm recently enforced a judgment delivered in the Netherlands before the Abu Dhabi Execution Court (**Dutch Court Judgment**). The said judgment is attached hereto as [Exhibit 10]. The Abu Dhabi Execution Court delivered its execution order on 19 May 2021, and confirmed the following: (a) that UAE Law does not require a treaty to be in place between the UAE and the foreign country as a prerequisite for a foreign judgment to be enforced in the UAE; and (b) the conditions set out in Dutch Law for enforcing foreign judgments are the same or less onerous than those of the UAE, which establishes reciprocity between the UAE and the Netherlands."*

24. Dr Ahnish referred to the letter issued by the Ministry of Justice on 13 September 2022 (the **MOJ Letter**) and said this:

"5.15 Of particular significance to the enforcement of English judgments in the UAE, I note that on 13 September 2022, the Ministry of Justice of the UAE (the "MOJ") issued a letter to the Director General of the Dubai Courts confirming that, in the view of the MOJ, the principle of reciprocity was satisfied in the case of English court judgments. The MOJ Letter is headed "Enforcement of judgments rendered by English Courts on the principle of Reciprocity" and is enclosed as [Exhibit 9] with this report. In summary, the MOJ Letter states the following: (i) the Treaty between the UAE and United Kingdom does not address the mutual enforcement of judgments between these two countries and therefore by default the mechanisms for enforcement of judgments issued by the UAE and the UK are to be determined by the domestic law of each respective country; (ii) Article 85(1) of the Executive Regulations states that foreign judgments may be enforced under the principles of

reciprocity between the UAE and the UK and (iii) the MOJ found that the principle of reciprocity is met under UAE Law, given that the English Court has enforced a UAE Court judgment in Lenkor Energy Trading DMCC v Puri [2021] EWCA Civ 770.

5.16. The MOJ Letter clearly confirms the principle of reciprocity between the UAE and the UK (as required under Article 222(1) of the New Civil Procedure Law). However, in my view the MOJ Letter is more broadly significant in the sense that it conveys the decision of the highest executive branch of the UAE Government responsible for the administration of justice in the UAE and clearly demonstrates the UAE government's commitment to the enforcement of foreign judgments. It is relevant and worth noting in this regard that the UAE and the United Kingdom, including its overseas territories, enjoy very strong diplomatic and judicial relations, not least given the history of British extraterritorial jurisdiction applying English law in Anglo-Gulf courts in the Trucial States between 1820 and 1971."

25. Dr Ahnish said that he was not aware of any previous attempt to enforce a judgment of the Cayman Islands Courts in the UAE. Although any party seeking to enforce a Cayman Islands judgment in the UAE would have to adduce evidence to demonstrate that the requirements of Article 222 had been satisfied, as explained in the UAE Court decisions which he had cited, in his view it was unlikely that there would be substantial obstacles to demonstrating reciprocity between the Cayman Islands and the UAE for the purposes of Article 222.

Recent developments relating to the meaning of exclusive jurisdiction

26. Dr Ahnish explained that the term "exclusive" was first inserted in Article 85(2)(A) of the Regulations in 2018, by way of amendment, specifically to restrict the UAE Courts' ability to enquire into matters which were already the subject of foreign judgments. In his opinion the word "exclusive" was included in the legislation specifically to address the concerns described at [63] to [65] of the SFC Judgment. In his opinion, there would only be exclusive jurisdiction so as to bar enforcement in the UAE where the UAE Court concluded that it alone had jurisdiction in relation to the dispute in question. He cited a number of judgments which in his opinion showed that this was the position (see [5.41] of the Ahnish Report) (underlining added):

"UAE Courts are willing to enforce foreign judgments, even where a defendant in the foreign proceedings was domiciled or resident in the UAE at the time of the foreign proceedings and therefore when the foreign Court and the UAE Court had, or could be said to have had, concurrent jurisdiction. In my view these decisions, including the decision of the Court of Cassation in relation to the Singaporean Court Judgment, now represent a settled and unanimous understanding by UAE Courts on the interpretation of the condition. These decisions show that a judgment delivered by a foreign court against a defendant who is resident in the UAE or a UAE national, at the time of foreign proceedings, would be enforceable in the UAE, notwithstanding the broad and unqualified provisions of Article 20 of the [Old Law on Civil Procedure] (now Article 19 of the New Civil Procedure), which lays down the general rule for conferring (non-exclusive)

jurisdiction on UAE courts. Provided that the foreign court has concurrent jurisdiction to adjudicate on the subject matter of the case, there exists no conflict with Article 20 of the repealed [Old Law of Civil Procedure (now Article 19 of the New Civil Law of Procedure) and, therefore, a foreign judgment in respect of a matter over which UAE courts and the foreign court have concurrent jurisdiction will be executable in the UAE."

27. Dr Ahnish considered that recent decisions of the UAE Courts in the context of the Riyadh Convention demonstrated that the UAE Courts were well aware of the concept of exclusive jurisdiction and gave the term its ordinary and natural meaning. In a recent judgment of the Abu Dhabi Court of Appeal, Judgment No. 1391/2022 (**Case 1391**), the Court of Appeal had dismissed the appellant's plea that the foreign judgment could not be executed in the UAE because the judgment was issued on a matter that was within the jurisdiction of the UAE Courts pursuant to Article 20 of the Old Civil Procedure Law (which is now Article 19 of the New Civil Procedure Law). The Court of Appeal dismissed the appellant's plea on the ground that: "*it is established [under UAE Law] that in case of concurrent jurisdiction between the courts of the State [i.e. UAE Courts] and foreign courts, this shall not preclude an order to execute the foreign judgment, which means the plea of the Appellant that he is a resident of the United Arab Emirates and that the Courts of the State have the jurisdiction to decide on the dispute, will not affect the validity of the Judgment appealed, since the court of Jordan, which issued the appealed judgment, is found competent to hear the dispute*"
28. Dr Ahnish also referred to the Dubai Court of Appeal's judgment in Case 14. The judgment creditor filed a case before the Dubai Execution Court requesting it to enforce an English Court judgment (of Andrew Hochhauser KC, whose judgment was delivered in February 2021) against Mr and Mrs Sethi who were both resident in Dubai. Mr Sethi was the borrower and Mrs Sethi was the guarantor under a loan agreement governed by English law. There was a side agreement governed by Dubai law which obliged Mr Sethi to transfer a property in Dubai to the lender if he failed to repay the loan. The Dubai Execution Court refused to enforce the judgment but an appeal to the Court of Appeal was allowed. The Dubai Court of Appeal referred to the MOJ Letter and noted that the English Court had jurisdiction to hear the claim (there was a submission to jurisdiction clause in the loan agreement) and that the side letter had not affected this. It said that "*the state's [i.e. the UAE's] courts [were] not exclusively competent*" in relation to the dispute. The Court of Appeal considered the various requirements set out in Article 85 of the Regulations and concluded that they were satisfied.

Recent developments relating to the DIFC conduit jurisdiction

29. Dr Ahnish also considered that a foreign judgment (including an English – and presumably a Cayman Islands - court order for costs) could also be enforced through the DIFC Courts as an alternative option to enforcement through the relevant onshore UAE Courts. He referred to the DIFC Court of Appeal decision in *DNB Bank ASA v. Gulf Eyadah Corporation and Gulf Navigation Holding PJSC* (Case No CA-007- 2015) in which it was held that the DIFC Court could be used as a conduit court/jurisdiction for the recognition and/or enforcement of foreign judgments (even in cases where the subject matter of the judgment had no nexus with the DIFC). This was not a decision that had been referred to or relied on by Mr Al Aidarous for the purpose of the SFC Hearing (see section I of his report dated 26 May 2021). Dr Ahnish set out the statutory basis for the conduit jurisdiction. He said that, in accordance with common law principles, a foreign money judgment was treated as a debt and a judgment could be obtained in the DIFC Courts on and to enforce that debt. When enforcing a foreign judgment, the DIFC Courts relied on (a) article 5(A)(1)(e) of DIFC Law No. 12 of 2004 (the **Judicial Authority Law**) which conferred exclusive jurisdiction on the DIFC Court to hear and determine "[a]ny claim or action over which the [DIFC] Courts have jurisdiction" and (b) article 7(6) of the Judicial Authority Law, which states that "*The judgments, decisions, orders and ratified Arbitral Awards rendered outside DIFC by any court other than Dubai Courts shall be executed within DIFC in accordance with the procedure prescribed in the Rules of the Courts*" and (c) article 24(1)(a) of DIFC Law No. 10 of 2004 which conferred jurisdiction on the DIFC Court to ratify any foreign court judgments of any recognised foreign court. Dr Ahnish noted that the DIFC Court had entered into various memoranda of understanding with other Emirates for facilitating enforcement of judgments and court orders issued by the DIFC Court. He referred to the reliance by Mr Fox for the purpose of the SFC Hearing (see [33(m)] of the SFC Judgment) on *dicta* from the judgment of Sir Richard Field (sitting as a Justice of the DIFC Court) in *Tavira v Re-Point Ventures* [2017] DIFC CFI 026, 17 December 2017, at [55] when he had said that the Joint Judicial Committee (**JJC**) was "*hostile to conduit enforcement.*" Dr Ahnish said that in his view the JJC "*had, overall, shown itself to be impartial as between the two. In fact, in three recently published decisions concerning the enforcement of arbitral awards, the JJC determined that the DIFC Courts had jurisdiction, rather than the courts in Dubai and Abu Dhabi.*" He did not consider that there would be substantial obstacles to the enforcement of a DIFC Court judgment based on a Cayman Islands costs order against the Plaintiff in the courts of any of the Emirates.

Mr Fox's evidence

30. In Mr Fox's view "*there remain significant and probably very significant hurdles to enforcement of a Cayman Costs Judgment in the UAE*" (see Fox 3 at [8.1]). He did not consider that the

statutory regime in respect of the enforcement of foreign judgments had changed since the SFC Hearing (Article 222 did not result in any change to the law as set out in Article 85 of the Regulations); there continued to be uncertainty as to the interpretation that will be given by the UAE Courts to Article 222 and very limited case law addressing either Article 85 or Article 222; the decisions relied on by Dr Ahnish did not establish that it was settled as a matter of UAE law and sufficient in order to satisfy the requirement of reciprocity in Article 222(1) that an applicant only had to produce to the UAE Court evidence of the law governing the recognition of foreign judgments in the jurisdiction in which the foreign judgment was obtained; summary decisions made on the basis of an *ex parte* application were insufficient evidence of UAE law on these issues since it was only at the *inter partes* stage that opposition and counter-arguments will be raised and considered by the UAE Court; the MOJ Letter had no bearing on the question of whether a judgment of a Cayman Islands Court will satisfy the reciprocity requirement; he was not aware of any UAE Court judgment (including a judgment of the Sharjah Courts where a judgment against the Plaintiff was, on the limited available evidence, likely to have to be enforced) in which a standalone costs judgment of a common law court had been enforced and none of the recent decisions of the JJC relied on by Dr Ahnish expressly dealt with the conduit jurisdiction (rather they involved the enforcement of arbitration awards including one case involving a local DIFC seated arbitration and did not signal any change of approach regarding the use of the DIFC conduit jurisdiction to enforce a foreign judgment in the onshore UAE Court).

31. As regards the question of whether UAE law and the attitude of the UAE Courts were sufficiently settled regarding the interpretation and effect of Article 222 to be able to form a view that there was only a limited or no material risk that a costs judgment of this Court would not be enforced, Mr Fox considered that they were not. He also remained of the view that while the Cabinet Decision No. 57/2018 (as amended by Cabinet Decision No. 33 of 2020), which was now enacted as Article 222, may signal a more permissive approach to the enforcement of foreign judgments by the UAE Courts, the paucity of *inter partes* decisions meant that a change of approach and new trend could not be confirmed. It was necessary to remember that there had been a history of refusals to recognise foreign judgments including the judgments of the English Courts (going back to the Dubai Court of Cassation decision case no. 269/2005 (*Case 269*) where the relevant English rules had been presented to the Dubai Court).
32. On the issue of the test of reciprocity now in Article 222(1), while he accepted that it was theoretically possible to satisfy the test by proving by expert evidence that Cayman Islands law regarding the recognition of UAE judgments was the same and no more onerous than that of UAE law, he was not aware of that approach having been successful in any disputed (as opposed

to *ex parte*) proceedings. The Polish Court Judgment was an *ex parte* decision and the judgment does not explain how the judgment creditor established that the reciprocity requirement had been satisfied. As regards the Dutch Court Judgment delivered by the Abu Dhabi Execution Court, that was another *ex parte* decision and Dr Ahnish had not provided details of what had happened at the *inter partes* stage. The Singapore Judgment Case was, Mr Fox said, clearly not decided on the basis that reciprocity had been established but on the basis of a different point. The judgment debtor (in respect of the Singaporean Court Judgment) had prior to the action in Dubai to enforce the judgment, defended a separate claim made by the judgment creditor in the Dubai onshore Court and had relied on the Singaporean Court Judgment to resist that claim, which the Dubai Court dismissed. The Dubai Court of Cassation declined to allow the judgment debtor at the judgment enforcement stage to change its position and deny that the Singaporean Court Judgment should not be enforced (and thereby given effect) in Dubai. It relied on article 70 of the Civil Code which stated that “*if a person seeks to set aside what he has (conclusively) performed his attempt shall be rejected.*”

33. On the issue of the uncertainty as to the interpretation of exclusivity adopted under UAE law and by the UAE Courts, Mr Fox considered that the Singapore Judgment Case was not authority as to the meaning of exclusive jurisdiction. For the reasons I have just noted, Mr Fox argued that the Singapore Judgment Case was decided on the basis of a different legal rule. He also continued to rely on the Dubai Court of Cassation case 3/2018 (a relatively recent judgment of the JJC), in which there had been a strong disagreement between the DIFC judges on the JJC and the other local judges, as showing that enforcement of a common law judgment could be difficult and prevented by the filing of a local claim to which the local courts would give deference and priority. In that case, Mrs A had sought to have recognised in the DIFC a judgment of the English Court against Mr A (made by the Family Division in a divorce case) and to obtain a freezing injunction against him. Mr A had created a jurisdictional conflict by filing parallel proceedings before the onshore Dubai Court. Mr A argued that the Dubai Court had original and exclusive jurisdiction over the matter and the Dubai Court of Cassation decided that the dispute must be dealt with by the Dubai Court. Mr Fox said that it appeared from the dissenting judgments (delivered by the common law judges) that the Dubai Court of Cassation had taken the view that since the judgment involved family matters its enforcement in the UAE would be inconsistent with local law and public order, morals and Sharia law. Mr Fox said that the case showed that “*where the Dubai Court of Cassation (the JJC is a tribunal that sits under the Dubai Court of Cassation) considered [that] a matter had strayed into matters over which it had exclusive jurisdiction, enforcement procedures before the DIFC Court were unsustainable.*”

34. As regards the effect of the MOJ Letter, Mr Fox considered that it was confined to the application of the reciprocity test in relation to judgments of the English Courts and it was very unlikely that a UAE Court (which was in any event not bound by the MOJ Letter) would treat the MOJ Letter as going further even to a British Overseas Territory such as the Cayman Islands. The MOJ Letter followed and was based on the judgment of the English High court in *Lenkor Energy Trading v Puri* [2020] EWHC 75 (QB) in which the court had enforced a Dubai Court judgment. Mr Fox said that he was aware that even after the *Lenkor* judgment had been handed down, the Dubai courts had taken divergent approaches as to whether the reciprocity condition had been satisfied in cases involving English judgments and therefore in his view it was likely that the MOJ Letter was written in order to align the approaches of the Dubai Courts. In his opinion the MOJ Letter was evidence that UAE Courts may not be satisfied that one judgment of a foreign court recognising a UAE judgment was sufficient to establish reciprocity.
35. As regards the availability of the conduit jurisdiction, Mr Fox noted that the cases relied on by Dr Ahnish did not demonstrate that conduit jurisdiction would be available in this case and he reiterated his earlier opinion as set out at Fox 1 at [5.6]-[5.11] (in which Mr Fox had referred to the Memorandum of Understanding and Protocol for Enforcement between the DIFC Courts and the onshore Dubai Courts and expressed the view, supported he said by four decisions of the JJC including the *Endofa* case in 2017 in which the JJC had refused to enforce an English judgment, that the JJC had historically been hostile to conduit enforcement claims) and Fox 2 at [8.1]-[8.4] (in which Mr Fox had quoted from the judgment of Sir Richard Field in *Tavira v Re-Point Ventures*). Cassation No 5/2020 was a case which was clearly within the remit of the DIFC Courts and in which there was no conflict of jurisdiction which the JJC needed to resolve. Cassation No 8/2020 was also a case in which there was no conflict of jurisdiction between the DIFC Courts and the Dubai Courts. In Cassation No 11/2020 the JJC determined that the DIFC courts were the appropriate forum for proceedings concerning the validity of an arbitral award issued in a DIFC seated arbitration under the DIFC-LCIA Rules of Arbitration. It was self-evident in view of the DIFC Arbitration Law No 1 of 2008 that any challenge to a DIFC seated arbitration had to be brought in the DIFC Courts.

Mr Dagher's evidence

36. Mr Dagher agreed that the effect of the New Civil Procedure Law was not to amend any part of the existing laws and regulations in relation to enforcement of foreign court judgments but simply to restate the existing laws in a consolidated piece of legislation. It was true he said that the fact that Article 85 of the Regulations had become Article 222 of the New Civil Procedure Law meant

that this provision would take precedence if there were a conflict with any statute of lower degree but Mr Dagher said that he was not aware of any such statute, nor had Dr Ahnish identified one.

37. Mr Dagher disagreed with Dr Ahnish's opinion that it is "*certainly the case*" that the Regulations signalled a shift to a more permissive enforcement regime in the UAE and that the consolidation of Article 85 into the New Civil Procedure Law was "*further evidence of that direction of travel.*" In his opinion, the issuance of the New Civil Procedure Law was simply a consolidation exercise and while there did appear to be a direction of travel towards enforcement of the judgments of some foreign courts, and while there may be some shift in the approach of the UAE Courts (or at least the Dubai and Abu Dhabi Courts) on this issue, it was very early days and the cases cited in the Ahnish Report did not on close analysis signal the shift for which Dr Ahnish argued in the Ahnish Report. They may be, he said, the first step along that road but the reality was that the only clear change which had emerged since the SFC Judgment was the MOJ Letter which only related to the enforcement of English Court judgments.
38. As regards the reciprocity requirement, Mr Dagher challenged Dr Ahnish's opinion (set out in [5.4] of the Ahnish Report and quoted above) that there was no requirement that a UAE Court judgment must have been enforced in the relevant foreign jurisdiction. He noted that Dr Ahnish had (at [5.5]) cited a 2005 judgment of the Dubai Court of Cassation in support of this statement and (at [5.6]) a 2012 judgment of the Federal Supreme Court in which the court stated that the foreign judgment should be enforced in the same manner as a judgment issued by a UAE Court was enforced in the foreign country. But he had failed to address the decision of the Dubai Court of Cassation in Case 269 where the Court reviewed the provisions of English civil procedure in relation to the enforcement of foreign judgments but did not permit enforcement. This case suggested that evidence of a foreign court's procedure may not be sufficient to satisfy the UAE Courts as to reciprocity.
39. In Mr Dagher's opinion, based on Case 14 (cited at [5.13] and [5.14] of Ahnish Report) and the MOJ Letter, it appeared that the present approach of the senior UAE Courts (or at least of the Dubai courts) in practice may be that, (a) it was insufficient for an applicant to adduce evidence of the enforcement rules and procedures of the relevant foreign court in order to satisfy the reciprocity requirement; and (b) what was required was, (i) the actual existence of a foreign court judgment enforcing a UAE Court judgment ;(ii) that this judgment acted as a binding precedent which must be followed by the relevant foreign court in the future; and (iii) potentially (though this could not presently be verified) that the UAE Ministry of Justice had issued a letter to the relevant UAE Courts confirming that the relevant jurisdiction has met the reciprocity principle.

40. Mr Dagher noted that he and DLA had previously opined that they did not agree that the example of the English High Court enforcing a Dubai Court judgment in *Lenkor* would be determinative of reciprocity. Mr Dagher considered that the MOJ Letter supported this view. In practice, what had been required in order for the Dubai Courts to accept that the reciprocity principle had been satisfied in respect of the English Courts and for *Lenkor* to be regarded as determinative of the fact that the English Courts had satisfied the reciprocity requirement was for the UAE Ministry of Justice to issue a letter to the Dubai Courts confirming this.
41. Mr Dagher agreed with Mr Fox's view in relation to the Singapore Judgment Case. The UAE Court did not allow the appellant to run an entirely contradictory argument in the proceedings before it and instead held the appellant to its previous position. In reality, therefore, the Dubai Court of Cassation was saying nothing about whether the criteria for enforcement of a foreign court judgment had been met. He also agreed with Mr Fox in relation to the Polish Court Judgment. Mr Dagher considered that Dr Ahnish had speculated about the background that led to this decision (at [5.12]) where he said that "*the court went ahead and enforced the Polish judgment because it was satisfied, based on the applicant's evidence of the conditions by which UAE judgments would be enforced in Poland, of the existence of reciprocity under Polish law*". The decision mentioned that the Court had authorised the execution of the Polish Court Judgment but did not provide any explanation for this decision. As was usual with first instance decisions of the Dubai Execution Court the judgment was only a few lines long and contained no analysis, either of the law or of the materials submitted by the applicant. It was therefore not possible to know the basis on which the judge made his decision. But he accepted that it may be possible that this case could be considered as a precedent in due course if it is subsequently confirmed by the Dubai Court of Cassation.
42. Mr Dagher regarded the MOJ Letter as the one clear development in the enforcement of English Court judgments in the UAE since the SFC Judgment and considered that it may also suggest what the UAE Courts' approach to such applications may be in practice. In his view, it was highly significant that the MOJ Letter had been required at all. If Dr Ahnish were correct, and the UAE Courts had since 2005 (which was the earliest case Dr Ahnish had cited) applied the law in the manner for which he contended there would be no need for such a letter. If an explanation of the rules and procedures applicable to enforcement in the English Courts was sufficient (and they had not been in Case 269) or if the existence of an English Court judgment enforcing a UAE Court judgment was sufficient (and the *Lenkor* decision was published long before the Dubai Execution Court had refused enforcement of the English Court judgment in Case 14, which may

suggest that this was not sufficient) then there would have been no need for the MOJ Letter. He also noted that the MOJ Letter quoted Article 85 but then did not refer to the rules and procedures of the English Courts applicable to enforcement in order to conclude that the reciprocity principle was satisfied. Instead, in concluding that the reciprocity principle was satisfied, the MOJ Letter had relied only on two facts. First, that the English Court had delivered a final judgment in *Lenkor* and secondly that this decision “*is considered a precedent and a binding principle that shall be adhered to by all English courts in accordance with their respective judicial systems.*” As a result, and despite the wording of Article 85, the MOJ Letter appeared to suggest that in order to conclude that the reciprocity requirement was satisfied in respect of any given jurisdiction there must not only be a final judgment enforcing a UAE Court judgment but also that this judgment must have the status of a binding precedent. Mr Dagher said that it remained to be seen whether the MOJ Letter had set a precedent to the effect that the UAE Courts should not be satisfied that a jurisdiction with which there is no enforcement treaty had met the reciprocity requirement unless and until the MOJ issued a similar letter in respect of that jurisdiction. While the MOJ Letter demonstrated the commitment of the UAE to enforce English Court judgments and probably reflected the importance to the UAE of UK-UAE relations, it did not extend to the Cayman Islands (and no similar letter appeared to have been issued in relation to the Cayman Islands).

43. As regards the Dutch Court Judgment, while the decision concluded that the conditions for enforcement of judgments in the Netherlands were equivalent to the conditions for enforcement of foreign judgments in the UAE, being a decision of the Court of First Instance, the decision would not be cited in any superior court of the Emirates as authority for any such proposition and since cases on this issue will be decided on a case-by-case basis it was not appropriate to rely upon this case as demonstrating any change in approach by the Abu Dhabi Courts in general.
44. As regards the meaning of exclusive jurisdiction, Mr Dagher reiterated the views he had expressed at [5.8] of the 16 June 2021 DLA Opinion Letter (subject to the possibility of a change in the Courts’ approach to jurisdiction clauses which he had discussed in relation to Case 14). The term exclusive jurisdiction did not have the same meaning as that term was understood in common law jurisdictions. The meaning of that term (as it appeared in Article 222) had not yet been established by UAE jurisprudence and the cases on which Dr Ahnish relied turned on their own facts and (with one possible exception) do not support Dr Ahnish’s view. In Mr Dagher’s opinion there was a very real risk that the relevant UAE Court will consider that it had jurisdiction to hear any claims made against the Plaintiff and that any other court (including the Cayman Islands Court) did not have jurisdiction.

45. As regards Case 14, Mr Dagher argued that Dr Ahnish had failed to draw the Court's attention to what was in his view the reason for the Dubai Court of Appeal's decision. The Dubai Court of Appeal had carefully considered the effect of the jurisdiction clauses and appeared to have had regard to the fact that in the loan agreement the parties had granted jurisdiction to the English Courts (and it appeared that there had been detailed argument about whether the jurisdiction clause was in some way affected by the side agreement). Mr Dagher considered that in light of this decision the UAE Courts may when considering whether they have exclusive jurisdiction over the relevant claim have regard to the fact that the parties had agreed in their contract to grant jurisdiction to the relevant foreign court (although since this decision may still be appealed to the Dubai Court of Cassation it was probably too early to say whether this will be the Dubai Courts' approach). In any event, in this case there is no contract containing any agreement to confer jurisdiction on the Cayman Islands Courts so that Case 14 did not assist any analysis of the enforceability of a standalone costs order rendered by this Court. Mr Dagher concluded that *"To put it another way, if there had not been a contract containing an English Court jurisdiction clause in the Dubai Court of Appeal enforcement case, the arguments put forward by the judgment debtors as to residence and property ownership would, in my view, probably have succeeded, and enforcement would have been refused."*
46. Mr Dagher did not consider that the Riyadh and GCC Convention cases relied on by Dr Ahnish were relevant. Cases involving an enforcement treaty were not useful precedents for the UAE Courts' application of Article 222.
47. Mr Dagher noted that Dr Ahnish had referred to Article 222(2)(e) (formerly Article 85(2)(E) of the Regulations) to the effect that a foreign judgment must not conflict with a judgment or order already made by a UAE Court (see [5.51] and [5.52] of the Ahnish Report) and to the Plaintiff having previously commenced proceedings in the UAE against Mr Naqvi in relation to some of the factual matters that are in issue in these proceedings. Dr Ahnish had said that he was not aware of any judgment or order arising from those proceedings which might be said to conflict with a costs order against the Plaintiff made by this Court. However, Mr Dagher (referring to section 7 of the second of the DLA Opinion Letters in which DLA had expressed the view that if the judgment containing a cost order or on which a subsequent costs order was based was appealed that would affect the judgment creditor's ability to enforce that order) considered that unless and until the status of the Plaintiff's UAE's proceedings was confirmed and clarified the risk assessment to be made by this Court must assume that existence of these prior (and potentially continuing) proceedings concerning the same or similar subject matter, which may or

may not already have resulted in judgments or orders of the UAE Courts, presented a clear risk to the enforcement of any costs order of this Court in the UAE.

48. Mr Dagher said that he understood that any application for the enforcement of any costs order against the Plaintiff may have to be made in the Sharjah Courts, as the Plaintiff and/or his assets (or the majority of them) may be in the Emirate of Sharjah. He considered that it was important to note that the Abu Dhabi and Dubai Courts were usually at the forefront of any change in practice in the onshore UAE Courts. The Sharjah Courts however were often reluctant to follow suit without adopting their own interpretation and were generally more conservative in their interpretation of UAE law. As a result, even if there had been a change in the Dubai or Abu Dhabi Courts' policy or application of legislation, it did not follow that the Sharjah Courts would also change their approach or that they would do so at the same rate of change as the other Emirates' Courts.

The Plaintiff's submissions

The two issues – liability and quantum

49. First, the Plaintiff submitted that the Top-Up Summonses should be dismissed because the Fund Parties had failed to establish an entitlement to an order for security for costs having regard to current UAE law (which had changed materially since the SFC Hearing). Secondly, he argued that even if further security could and should be granted the sums claimed by the Fund Parties were excessive and unjustified.
50. The Plaintiff argued that the issue of security for costs ought properly to have fallen away since the Fund Parties had already been substantially secured and, in light of the legislative, judicial and other developments discussed in Dr Ahnish's evidence, could and should now take comfort in knowing they will be able to enforce any costs order they may obtain against the Plaintiff.

The conditions for making further orders for security are not satisfied

51. The Plaintiff noted that Cayman Islands law did not discriminate against foreign plaintiffs. It was not therefore just to order security simply because a plaintiff was a foreign resident (*Caribbean Islands Devs. Ltd. v. First Caribbean Intl. Bank* [2014 (2) CILR 220] (Smellie CJ) and *Xie v XIO GP* [2018 (2) CILR 508] (Rix JA)). In order to establish that it was just to order security for costs the applicant must prove, (a) that he is likely to incur additional enforcement costs to enforce

(and then claim only those by way of security), or (b) that there is a real risk of non-enforcement of, a Cayman Islands costs order against the plaintiff (*Nasser v United Bank of Kuwait* [2002] 1 W.L.R. 1868, CA at [61] and *Bestfort Developments LLP v Ras Al Khaimah Investment Authority* [2016] EWCA Civ 1099 (*Bestfort*) at [51] and [77] per Gloster LJ). The Plaintiff submitted that the authorities showed that an applicant for security for costs must show “*objectively justified grounds relating to obstacles to or the burden of enforcement in the context of the particular foreign claimant or country concerned*”, in particular, that there is a “*a real risk of ‘substantial obstacles to enforcement’*” citing the judgment of Hamblen LJ (as he then was) in *Danilina v Chernukhin* [2018] EWCA Civ 1802 at [51(4)].

52. The Plaintiff argued that for the reasons given by Dr Ahnish in the Ahnish Report this test was not (or was no longer) satisfied. He submitted that the Fund Parties were unable, in view of the legislative changes made, the further decisions of the UAE Courts and the action taken by Dubai’s Ministry of Justice in issuing the MOJ Letter, to show that there was a real risk that any costs order of this Court against the Plaintiff would not be enforced in the UAE Courts.
53. The Plaintiff’s case was that the UAE law evidence showed that there was a clear and obvious direct onshore route to enforcement of a costs order made by this Court against him. He did not rely on the offshore route although he submitted that Dr Ahnish’s analysis at [7.1]-[7.6] of the Ahnish Report was to be preferred to that of Mr Fox and Mr Dagher. Dr Ahnish’s analysis was consistent with that of Mr Justice Bryan in *Invest Bank v El-Husseini and Others* [2022] EWHC 3008 (Comm) (*Invest Bank*), discussed below (see [43]-[57] of his judgment).
54. There had been material changes in UAE law and in the practice of the UAE Courts since the SFC Hearing. These important developments meant that the uncertainties as to UAE law and the result of an application to enforce a costs order of this Court in the UAE that I had, in the SFC Judgment, identified and treated as requiring the conclusion that there was real risk of non-enforcement, no longer existed or were substantially reduced. The Plaintiff submitted that the Court should accept Dr Ahnish’s evidence on these matters. His conclusion, set out at [8.1(c)] of the Ahnish Report, was unequivocal. He said that “[t]here is no basis on which a costs award, if made against the Plaintiff by [this Court] would be deemed to be unenforceable against him in the UAE.”
55. The Plaintiff noted that there were three issues in particular relating to the risk of non-enforcement that I had identified in the SFC Judgment (at [63] and [64]) and submitted that the

assessment of the risk of non-enforcement in light of these issues now needed to be revisited and reassessed. The Plaintiff referred to the following extracts from the SFC Judgment:

(a). *the general absence of decisions on Article 85 and the Regulations:*

“There [was] no clear decision of a UAE court or a particularised example of a case in which a UAE court has recognised and enforced a costs judgment of a common law court pursuant to the Regulations.”

(b). *the reciprocity issue:*

“There are also serious doubts as to whether the reciprocity test in article 85(1) of the Regulations will be treated as satisfied by the UAE courts.”

(c). *the exclusive jurisdiction issue:*

“There [was] no decision of a UAE court in which the court’s approach to the interpretation of the Regulations, in particular as to the meaning of “exclusive jurisdiction” in article 85(2), is set out and explained. There is no other authoritative guidance as to the proper approach to the construction of the Regulations and that term.”

56. The developments referred to by Dr Ahnish demonstrated that the position under UAE law and of the UAE Courts had been clarified and confirmed so that there were no longer material doubts as to the law or the decisions which the UAE Courts were likely to reach:

(a). *the general absence of decisions on Article 85 and the Regulations:* Dr Ahnish had shown that there are now numerous instances of the UAE Courts enforcing judgments from different jurisdictions with whom the UAE does not have a treaty providing for mutual enforcement and more generally demonstrating that the signal change towards a more permissive enforcement regime (that was anticipated by the experts at the SFC Hearing) had in fact occurred.

(b). *the reciprocity issue:* the MOJ Letter confirmed that the Dubai Courts (and by extension all UAE Courts) were required or at least expected to enforce English judgments on grounds of reciprocity. Further, Dr Ahnish had identified helpful UAE decisions in which judgments from courts of numerous states (with whom the UAE have no enforcement treaties) have been enforced.

(c). *the exclusive jurisdiction issue:* there were now further recent decisions which evidenced the UAE Courts’ interpretation and understanding of the reference in Article 212 (2) to “exclusive jurisdiction” and which demonstrated that the UAE Courts will not refuse to permit enforcement of a costs order in this case on the ground that they have exclusive

jurisdiction in relation to the dispute. These decisions showed that the Fund Parties' cases in this regard were fundamentally contrived and artificial.

57. The Plaintiff also noted that at [69] of the SFC Judgment I had said that *“The outcome of proceedings like these may well change when the UAE courts have the opportunity to give judgments interpreting and expressing their views on the Regulations and the new regime so as to make the position in the UAE clear.”*
58. The Plaintiff argued that when interpreting foreign law the Court must have regard to the evidence as to how it was interpreted and applied by the local courts. In *Yukos Capital SARL v OJSC Oil Company Rosneft* [2014] EWHC 2188 Simon J had noted at [26] that *“[i]f the law is contained in a code or written form, the question is not as to the language of the written law, but what the law is as shown by its exposition, interpretation and adjudication.”* Materials such as the MOJ Letter (which operated as a circular/instruction to the UAE courts) and decisions of UAE Courts were compelling evidence of what the law is in this sense and of how it will be applied.
59. The Plaintiff argued that the cases cited by Dr Ahnish supported his opinion. The Plaintiff in his submissions discussed each of the main cases referred to by Dr Ahnish. I would note in particular the following submissions:
- (a). as regards the Singapore Judgment Case, he argued (based on, but I think going beyond Dr Ahnish's opinion as set out in the Ahnish Report) that since in that case the Dubai Court of Cassation had not permitted a litigant to advance a position that was diametrically opposed to (and mutually inconsistent with) a position advanced by that litigant previously, it appeared to be overwhelmingly unlikely that the UAE Courts would permit a claimant (that is the Plaintiff), who had elected to pursue proceedings in a particular state, subsequently to deny that that state had jurisdiction to entertain the dispute. Such a position would be entirely inconsistent with the claimant's position adopted when commencing the proceedings in that other state, which was necessarily premised on the claimant considering that the state in question had jurisdiction.
 - (b). the Plaintiff noted that in Case 1391 the Abu Dhabi Court of Appeal had held that *“the plea of the Appellant that he is a resident of the United Arab Emirates and that the Courts of the State have the jurisdiction to decide on the dispute... will not affect the validity of the judgment appealed.”*

60. As regards the MOJ Letter, the Plaintiff relied on the following extract:

“...Legislation does not require that a treaty on legal assistance be in place for enforcement of foreign judgments, and these judgments may be enforced in the State [namely, within the UAE] on the Principle of Reciprocity.

We find that this principle is met given that English courts have enforced a judgment rendered by Dubai Courts under a final judgment handed down by the High Court of Justice in UK in [Lenkor], which is a judicial precedent and a binding principle for all English courts according to their judicial system.

Accordingly, we kindly hope that, in the event of requests for the enforcement of judgments and orders rendered by the English courts, the requisite legal steps are taken in accordance with the laws in force in both countries, in order to consolidate the principle of reciprocity initiated by the English courts, and to ensure its continuity between the English courts and the UAE courts.”

61. The Plaintiff submitted that the cases relied on by Dr Ahnish, the MOJ Letter and the fact that this Court had previously enforced a judgment of the UAE (in the unreported case of *Credit Agricole v AHAB* discussed at [15] of the SFC Judgment) justified and supported his conclusion (at [5.24] of the Ahnish Report) that “*it is unlikely that there would be substantial obstacles to demonstrating reciprocity between the UAE and the Cayman Islands for the purposes of Article 222 of the New Civil Procedure Law.*” The Plaintiff argued that cumulatively these decisions and action confirm that (a) reciprocity does not require a treaty or agreement; (b) reciprocity was likely to be satisfied where the foreign state has enforced a judgment of the UAE Courts; and (c) in the specific case of England and Wales judgments, there can be no doubt that (as a result of *Lenkor*) the UAE Courts will enforce (and they were required to do so by the Ministry of Justice and a straightforward application of the New Civil Procedure Law).
62. As regards the exclusive jurisdiction issue, the Plaintiff submitted that Dr Ahnish must be right in his common-sense, and logical, conclusion (at [5.43] of the Ahnish Report) that “*the ‘exclusive jurisdiction’ test could [not] conceivably prevent enforcement of any costs award against [the Plaintiff].*”
63. The Plaintiff argued that the cases relied on by Dr Ahnish (in particular the Singapore Judgment Case) demonstrated that even where the UAE Courts might have had jurisdiction to hear a dispute, for example because of the UAE nationality or domicile of the claimant, they will not decline to enforce on grounds of exclusive jurisdiction. These cases and Dr Ahnish’s opinion show that the exclusive jurisdiction requirement will be satisfied only where the UAE Court is the only court that has jurisdiction in relation to a particular matter. The introduction of the word

“exclusive” in Article 85 was intended to restrict the circumstances in which the UAE Courts (Dr Ahnish had provided credible supportive sources for his analysis including the academic/juristic commentary cited at [5.27] footnote 13). The term “exclusive jurisdiction” had historical usage and was a concept with which the UAE Courts are familiar in the context of enforcement, and recent decisions had clarified that the historical usage was consistent with the real practices of the UAE courts now and that the approach to that term was such that, on the facts of this case, there was no real risk that a UAE Court would consider that it would have exclusive jurisdiction over the proceedings. As had been demonstrated by the Abu Dhabi Court of Appeal judgment in Case 1391, the UAE Courts will not conclude that they have exclusive jurisdiction simply because of the residence of the claimant.

64. The Plaintiff said that a recurring theme in the post-July-2021 judgments was that where the judgment which was sought to be enforced was one issued by a competent court pursuant to the rules of international jurisdiction applicable in the place of enforcement then there will be no bar to enforcement on exclusive jurisdiction grounds (relying on the reference in an order in 2020 of the Dubai Execution Court referred to at [5.36] of the Ahnish Report, to the Saudi court being “*a competent court pursuant to the rules of international jurisdiction of the UAE*”). The Plaintiff noted that in the Singapore Case Judgment, the Dubai Court had rejected an argument that there should be no enforcement on the ground that the appellant was headquartered in Dubai such that the Dubai Courts ought to be treated as having exclusive jurisdiction.
65. The Plaintiff also relied on the reasoning of Mr Justice Bryan in *Invest Bank*. He said that the critical passages of Bryan J’s judgment were those concerning the onshore enforcement route (although I note that Bryan J was satisfied in that case that it had not been established that there was any real risk of obstacles to enforcement via the offshore route followed by enforcement of that judgment through the onshore courts).
66. This was a case in which I, a bank based in Sharjah, had issued proceedings against E in Dubai and obtained judgments for the equivalent of £20 million. I subsequently brought English proceedings against E and others for relief relating to assets against which it asserted an entitlement to enforce E’s alleged liability. I had obtained a freezing injunction and provided a cross-undertaking in damages. E applied for security for costs. E argued that there was a real risk that (a) a UAE Court would find that there was no reciprocity between the English Courts and the UAE Courts; (b) the UAE courts will refuse enforcement on the basis that they have exclusive jurisdiction over the subject matter of the dispute; and (c) enforcement of a costs order would be considered contrary to UAE public policy. Mr Justice Bryan dismissed E’s application. He

concluded that based on the evidence before him E had not established that there were objectively justified grounds of obstacles to enforcement such that there was a real risk that E may not be in a position to enforce an order for costs against I.

67. The Plaintiff relied in particular on the following:

- (a). at [61]-[68], Bryan J considered the MOJ Letter and confirmed that this must be taken as evidence sufficient to show reciprocity as between the UAE and English Courts;
- (b). at [69]-[82], Bryan J considered the exclusive jurisdiction issue. He found (at [79]) that *“The UAE Court jurisdiction must be in nature exclusive, for example, jurisdiction for a dispute about rectifying a UAE share or a trademark register as Mr Taylor opines at para.31 of his second report, to reflect the express language of Art.85(2)(a) and its reference to “exclusive jurisdiction”.*” At [80] Bryan J rejected an argument that exclusive jurisdiction meant the same as jurisdiction. The learned judge accepted evidence that the word exclusive had been added to restrict the prior position under legislation. This corroborated Dr Ahnish’ opinion; and
- (c). at [83]-[104] Bryan J rejected the applicant’s case that a UAE Court would refuse to enforce an English costs order on grounds of public policy.

68. The Plaintiff submitted that the significance of *Lenkor* and *Invest Bank* could not be understated. It was trite that decisions of the English Courts are strongly persuasive (and perhaps even binding where Cayman Islands law is silent on a matter of procedure or practice). As such, there was every reason to believe that if this Court was asked to enforce a judgment issued by the UAE Courts it would follow *Lenkor* and do so. Further, the reasoning and decision in *Invest Bank* should be followed by this Court. Not only was it by its status highly persuasive but Bryan J’s reasoning was detailed and sound. Moreover, given the Cayman Islands’ status as a British Overseas Territory, over which the UK exercises control of foreign relations, it would be expected that, without prejudice to the principle of judicial independence, a unified approach to enforcement would be adopted. Given the clear, unified position as between the UK and UAE Courts as one of mutual enforcement, it would be surprising for this Court to conclude (inconsistently with *Invest Bank*) that there is a real risk of substantial obstacles to enforcement in the UAE and therefore (in effect) that security for costs should be ordered as a matter of course against UAE-domiciled claimants.

Dr Ahnish' evidence was to be preferred and he was the only independent expert witness

69. The Plaintiff argued that when weighing up the evidence of competing experts at an interlocutory hearing the Court should adopt the approach taken by Murphy J in *Allied Investment Fund v Johnson* [1999 CILR 237] at 248 (which I refer to at [43] of the SFC Judgment).
70. The Plaintiff submitted that Dr Ahnish's evidence was to be preferred. He compared the experts' evidence by reference to three criteria: expertise, impartiality and the substance and cogency of the analysis.
71. As regards expertise, Dr Ahnish was the founding partner of one of the oldest and largest law firms in the UAE and had been practising as a UAE lawyer for over 40 years; he has native Arabic, which meant that he was capable of reading and interpreting UAE legislation and UAE Court judgments without the need to rely on inapplicable foreign language translations (the UAE Courts refer only to the official Arabic text of statutes and as Dr Ahnish had said, mastery of the Arabic language, and its usage in the legal context is of the utmost importance when construing and interpreting statutes and/or judgments in the UAE); he had full rights of audience and appears before all UAE Federal and Emirate Courts on a regular basis; he has judicial experience; he had drafted UAE federal and local legislation and he had particular expertise and experience in enforcement in the UAE Courts.
72. Mr Fox, by contrast, was an English solicitor who had only been practising as a foreign lawyer in Dubai for approximately 15 years; he was not a native Arabic speaker and he did not disclose his level of proficiency in the Arabic language (Mr Fox cites Arabic language script in Fox 3 and it was unclear whether he was fully familiar with the meaning of that text); whilst Mr Fox was licensed as a foreign legal consultant in the Emirate of Dubai he was not authorised to plead and represent parties before the Courts of Dubai or any other Emirate; he had no judicial experience and he had felt it necessary to have his evidence reviewed and approved by a local lawyer, which was not standard practice, given that an expert should be appointed precisely because of their own expertise.
73. Mr Dagher, also by contrast, had also only been practising in the UAE for 15 years; had previously demonstrated flawed reasoning in his approach to the key questions of UAE law (see [66] of the SFC Judgment); does not have judicial experience and he does not have rights of audience to appear before any UAE Federal or Emirate Courts.

74. As regards impartiality, he was the only independent and impartial expert.
75. The Plaintiff submitted that independence or impartiality was an essential quality of expert evidence and referred to the judgment of Irwin LJ in *EXP v Charles Barker* [2017] EWCA Civ 63 at [51]:

“Our adversarial system depends heavily on the independence of expert witnesses, on the primacy of their duty to the Court over any other loyalty or obligation, and on the rigour with which experts make known any associations or loyalties which might give rise to a conflict.”

76. A foreign lawyer who acted for the instructing party was inapt to be an independent, impartial expert on foreign law. The Plaintiff relied on the judgment of Miles J in *PetroSaudi Oil Services (Venezuela) LLP v Clyde & Co LLP* [2021] EWHC 444 (Ch) at [54] which was a case in which expert evidence of foreign law was given for the purposes of an interlocutory application by a (US) lawyer who was at the time acting for the instructing party in US proceedings:

“Mr Rivkin has no doubt sought to provide a sincere and genuine legal opinion, but experience shows that it is extremely hard for a lawyer engaged in current litigation to provide the detachment and objectivity expected of expert evidence.”

77. The Plaintiff said that the crucial observation was that it is not sufficient for an expert to assert that notwithstanding their ties to the instructing party they believed themselves to be providing an independent and objective opinion. Whilst they may subjectively believe themselves to be doing so, their judgment will inevitably be clouded. For much the same reason, it was a fundamental duty of an expert to identify to the Court potential conflicts of interest rather than self-determining whether or not such a conflict inhibits their ability to give independent evidence.
78. It was material that Mr Dagher had confirmed (at [87] of Dagher 2) that DLA remained retained as counsel for the GHF Parties in this matter. It was, on the other hand, immaterial that Mr Dagher had self-servingly said (in the same paragraph) that he had *“complied with the duties of an expert appointed in proceedings before the Grand Court as set out in Section B5.2 Financial Services Division Guide.”* In light of the guidance given by Miles J in *PetroSaudi* that was not an objective certification that Mr Dagher can properly provide. At most he could state that he had done his best to act independently but that was nothing to the point. The position was on all fours with *PetroSaudi*.
79. The same issues arose in relation to Mr Fox. He had confirmed (in [1.1] of Fox 3) that DWF (his firm) remained the attorneys acting for Fund IV in this matter.

80. The Plaintiff submitted that what he described as the very strategic decision taken by the Fund Parties only to use and rely on attorneys already acting for them (and in concert) reeked of orchestrated advocacy as opposed to independent expertise.
81. As regards the substance and quality of the evidence adduced by Dr Ahnish, Mr Dagher and Mr Fox, the Plaintiff argued that the Ahnish Report was logical, internally consistent and supported by appropriate references to (and reliance upon) supplementary material.
82. Mr Fox's evidence was weak and unsatisfactory. The Plaintiff identified a substantial number of problems with Mr Fox's evidence. The main points he made were these:
- (a). Mr Fox had said that there had been a "*paucity*" of judgments regarding the Regulations (and the New Civil Procedure Law) but had failed to take into account or address the numerous cases cited by Dr Ahnish which included *an order* with a legal costs component (for example the Singapore Judgment Case) and the *Invest Bank* decision which corroborated Dr Ahnish's conclusion that the UAE Courts are willing to enforce costs orders;
 - (b). Mr Fox's assessment of the significance and effect of the MOJ Letter was perverse. The MOJ Letter publicly demonstrated that the UAE Courts will adopt a more permissive approach with respect to the enforcement of foreign judgments but Mr Fox had claimed that it had the opposite meaning and effect. There was nothing in the MOJ Letter which supported his view that outside of the UAE-England context the UAE Courts will take a more rigid approach to enforcement. It was also inconsistent with the publicly available international law firm responses to the MOJ Letter which showed its positive reception among the international legal community based in the UAE. Mr Fox had failed to provide a convincing response to Dr Ahnish's position that the strong diplomatic relations between the UK and the British Overseas Territories was a reason for thinking that the UAE Courts would adopt a similar approach to a Cayman Islands judgment as they would to an English Court judgment. Mr Fox's view that such matters were wholly irrelevant to the question of reciprocity lacked common sense;
 - (c). Mr Fox had failed adequately to distinguish the cases relied on by Dr Ahnish;

- (d). some of Mr Fox's assertions were unsupported by adequate materials or evidence or were inconsistent with the materials or evidence. An example was his description of the decision of the Dubai Court of Cassation in Case 269 (at [5.5] of Fox 3). Mr Fox had said that the decision was reached "*notwithstanding that the relevant English law on enforcement of foreign judgments had been presented to the Court*" but this was not a complete or accurate summary of the judgment in question. The judgment indicated that the applicants had failed to provide the court with copies of all the relevant English legislation and so unsurprisingly, solely as a result of a failure in the applicant's presentation of its case, the Court decided to refuse the application. Mr Fox's argument that this was an example of a case where the Dubai/UAE Courts had refused enforcement even when presented with evidence of English law was therefore flawed. He had also (at [5.4] of Fox 3) suggested that even though there was evidence that this Court had previously enforced a judgment of the Dubai Courts, because there was no written judgment it was not possible to provide the UAE Courts with sufficient evidence of the decision. But he had not given any authority for the proposition that the UAE Courts would require a written judgment in order to accept reciprocity. The Plaintiff argued that it was doubtful that if there was evidence of a UAE judgment having been enforced here that the UAE Courts would nonetheless proceed on the basis that there has previously never been such enforcement;
- (e). at [3.6] of Fox 3, Mr Fox had referred to Dr Ahnish's discussion of decisions of the Sharjah Courts in relation to an order of the Uzbekistan Court. Mr Fox had said that he understood that enforcement had initially been refused on the basis that there was no treaty with Uzbekistan but that the Union Supreme Court (which acts as the Court of Cassation for cases in Sharjah) had returned the case to the Court of Appeal for reconsideration stating that an enforcement treaty was not strictly necessary to establish reciprocity, but that he had been unable to establish the outcome of the further Court of Appeal proceedings. However, the Plaintiff had obtained a copy of the Court of Appeal's judgment (simply by making a request to the UAE Courts) and established that the Court of Appeal, in its judgment of 4 December 2013, had ordered enforcement of the Uzbek order. The Court concluded that the reciprocity requirement was satisfied by reference to a newsletter which indicated that foreign judgments were enforceable in the Republic of Uzbekistan albeit that it did not refer to UAE judgments. The Plaintiff argued that this was a decision which demonstrated a pro-enforcement approach and, in particular, that reciprocity is a low bar, which did not even necessarily require evidence that the foreign state court had enforced a UAE court order; and

- (f). for the most part Mr Fox had relied on English translations of Arabic text and this had inhibited his ability to give evidence as to how the provisions would actually be applied by UAE Courts. Despite this, Mr Fox had on occasions sought to rely on, and draw conclusions from, an analysis of Arabic text (see [4.6] of Fox 3) and absent evidence of his proficiency in the Arabic language this approach strayed beyond his expertise.
83. The Plaintiff submitted that Mr Dagher's evidence was also unsatisfactory and identified a number of criticisms of it, the main criticisms being as follows:
- (a). his statement that the New Civil Procedure Law had changed nothing with respect to enforcement in the UAE Courts and that it represented no more than a consolidation exercise was an overstatement which was inconsistent with Mr Fox's evidence (who had accepted that the new legislation must represent a signal change towards greater permissiveness in enforcement in the UAE). Where two of the three experts seemed to accept that there had been some form of signal change, the Court should be slow to accept Mr Dagher's more dismissive approach;
 - (b). his assertion that the UAE Courts would not treat the fact that the Plaintiff is the claimant in these proceedings as evidencing a submission to this Court's jurisdiction was unsupported and inconsistent with the Singapore Judgment Case;
 - (c). his assertion that the UAE Courts regularly refused enforcement of foreign court judgments where as a matter of necessary inference the foreign court will have taken jurisdiction over the claims being made was also unsupported;
 - (d). he had failed to engage fully with, or provide a sufficiently persuasive answer to, many of Dr Ahnish's arguments. For example, he had avoided dealing with the effect of this Court's judgment in *Credit Agricole v AHAB* (Unreported) (see Dagher 2 at [32(b)]). He had suggested that a reasoned decision appeared to be what the MOJ required in order to consider that the reciprocity requirement had been satisfied but this missed the point since the issue was not what the MOJ required but what the UAE Courts required;
 - (e). he had also failed to engage with the status of the Cayman Islands as a British Overseas Territory, and the relevance of the MOJ Letter in this regard. He had given no explanation and had provided no corroborative evidence as to why the UAE Courts might view the Courts in this jurisdiction in a meaningfully different manner from the English Courts; and

- (f). like Mr Fox, he had on occasions acted as an advocate for his client's position.
84. The Plaintiff argued that there was no basis for saying that a standalone costs order would be treated differently by the UAE Courts from a money judgment. The Singapore Judgment Case demonstrated that there were instances of the UAE Courts enforcing judgments which included a costs component. It was inherently unlikely that the UAE Courts would enforce an order with a substantial costs component but not an order solely for costs. Further the wording of Article 222 referred to "...foreign judgments and orders..." which was intended to capture broadly the forms of relief that might be issued by a foreign court and that breadth was also indicated by Article 224 of the New Civil Procedure Law which authorised enforcement of foreign "*notarised documents and memoranda of composition certified by the courts of a foreign country.*"
85. The Plaintiff said that it would be expected that in order for the Fund Parties to maintain that there was a real risk of non-enforcement they would have to adduce evidence of a trend of cases – or at least some cases – in which the UAE Courts had refused to enforce a foreign judgment in circumstances similar to the present case. However, they had not done so. Rather than providing decisions or commentary that suggested that Dr Ahnish's analysis was wrong they had confined themselves to attempts at differentiating the many decisions referred to by Dr Ahnish, which amounted to a contrived set of nit-picks which did not undermine the substantive force of Dr Ahnish's analysis.

Fund IV's submissions

86. Fund IV noted that it was important to keep the dispute relating to the risk of a costs order being unenforceable in the UAE in general (and Sharjah in particular) in context. The Plaintiff had refused to disclose details of the location of his assets and so it may turn out that this dispute is entirely beside the point. The Plaintiff's circumspection about the location of his assets was of itself a factor showing significant risk and had to be taken into account by the Court when deciding whether to grant the further security sought.
87. Fund IV also submitted that it was abusive and impermissible for the Plaintiff to rely on evidence which could and should have been placed before the Court at the SFC Hearing (this, for example, applied to the Polish Court Judgment). Fund IV said that the Plaintiff had accepted this timing point when it noted in its skeleton argument (at [21(c)]) that the Dutch Court Judgment had

predated the SFC Hearing but could be referred to since it did not appear that the experts had been aware of it.

88. Fund IV submitted that the approach to be adopted by the Court for dealing with the disputes between the expert witnesses was correctly stated at [62] of the SFC Judgment. The approach of Murphy J in *Allied Investment Fund v Johnson* [1999 CILR 237] at 248, to the effect that the Court must choose between the experts and decide whose view to follow (to which I had referred at [43] of the SFC Judgment when summarising the Plaintiff's submissions), was not the proper approach on an application like this. The question for the Court was whether the evidence adduced by the applicant for security for costs, in the round and taking into account the Plaintiff's evidence, demonstrate a real risk that a costs order of this Court will not be paid and that this Court's judgment will not be enforced in the UAE. Fund IV argued that critically Dr Ahnish's evidence did not show that the affidavit evidence from Mr Fox (and Mr Dagher) confirming the continued risk of non-enforcement could simply be disregarded.
89. Fund IV argued that the so-called developments referred to by Dr Ahnish provided at best limited and marginal assistance in relation to the various matters identified in the SFC Judgment as giving rise to a real risk that a costs order would not be enforced in the UAE. Dr Ahnish's evidence provided no proper basis for the Court to revisit its previous ruling still less to reach a different conclusion on the question of whether there is such a real risk. Dr Ahnish had put forward a view that enforcement may not be problematic but what he did not do was identify any direct and concrete evidence that a Cayman Islands costs judgment would be enforced in the UAE. In those circumstances, the Plaintiff's attempt to re-open the issues determined in the SFC Judgment must fail.
90. As regards the New Civil Procedure Law, it was common ground that the new law uses the same wording as the old law. In those circumstances, the new law did not represent any material development in UAE law for the purposes of this application. It provides for the same test, framed in the same language as the test considered by the Court at the SFC Hearing. What had happened was that material that was contained in a Regulation was now stated in Federal Law. Dr Ahnish had suggested that this was significant because it meant that the rules had superiority in application in the event of a conflict with any other statute of lower degree. But that was not a material change for the purposes of this application. The Fund Parties had never relied on the proposition that the possibility of a conflict between the Regulations and some other statute gave rise to a real risk that a costs order would not be enforced in the UAE. No such possibility had any bearing on the conclusions reached by the Court at the SFC Hearing.

91. As regards the reciprocity requirement, the law and the test remained unchanged. Dr Ahnish had claimed that the decisions of the UAE Courts on which he relied showed that the UAE Courts were perfectly willing to recognise and enforce judgments of foreign courts irrespective of the existence of a treaty or ad hoc legislation and this view was supported by the MOJ Letter. The question for the Court was whether those decisions in combination with the MOJ Letter laid to rest the serious doubts expressed by the Court in the SFC Judgment. Fund IV's position was that they plainly cannot:
- (a). Fund IV had always accepted that, in principle at least, a party could try to show reciprocity irrespective of the existence of a treaty or ad hoc legislation. The issue at the SFC Hearing, as it is now, was the circumstances in which that may occur and whether reciprocity exists between the UAE and the Cayman Islands in a manner which would permit enforcement of a Cayman Islands costs award;
 - (b). it remained the case (as it was at the time of the SFC Hearing) that Mr Fox (see Fox 3 at [3.3(c)]) was not aware of any decision of a UAE Court which had recognised and enforced a costs judgment of a common law court pursuant to the Regulations (or the New Civil Procedure Code);
 - (c). Dr Ahnish had accepted that he was not aware of any prior attempt to enforce a judgment of the Cayman Islands Courts in the UAE. Nor was he aware of any enforcement of a UAE judgment in the Cayman Islands, save to the extent referred to in the SFC Judgment. The position remains unchanged from the SFC Hearing;
 - (d). the cases identified and relied on by Dr Ahnish did not take matters any further. As Mr Fox explained, they provided only limited support for Dr Ahnish's view that the UAE Courts were willing to recognise and enforce judgments of foreign courts irrespective of the existence of a treaty or ad hoc legislation. The Polish Court Judgment and the Dutch Court Judgment were decisions on *ex parte* applications and Mr Fox's reasons for distinguishing the Singapore Judgment Case were completely convincing. It was only supportive of the proposition that a party before the Dubai Courts could not rely on a foreign judgment (from Singapore) on the basis of *res judicata* and then subsequently resist its enforcement in Dubai;

- (e). Mr Fox's view of the MOJ Letter was also convincing. The very fact that the MOJ had seen fit to issue the MOJ Letter, self-evidently for the purpose of authoritatively settling the question of whether the reciprocity requirement was to be treated as satisfied in relation to England and Wales, showed that such a confirmation was needed in order to remove doubts and difficulties. No such letter had been written covering the Cayman Islands and there was no proper basis for saying, as the Plaintiff had sought to do, that the MOJ Letter could be interpreted as applying to or affecting the approach of the UAE Courts to judgments of this Court. It was in any event a letter addressed to the Dubai Courts and not to the courts of Sharjah, which was the relevant jurisdiction for the purpose of this application;
- (f). the cases relating to the enforcement of judgments from the courts of the Gulf Cooperation Council countries did not concern reciprocity absent a treaty and so were of no relevance in this case; and
- (g). Mr Fox remained of the view that there was real uncertainty as to whether the reciprocity requirement will be taken as satisfied where there is no written judgment of this Court enforcing a UAE Court judgment and no judgment of a UAE Court that has concluded that reciprocity exists with the Cayman Islands so as to permit enforcement. There had been no clear binding authority addressing the reciprocity requirement following the SFC Judgment. None of the cases relied on by Dr Ahnish (some of which post-date the SFC Judgment) concern a Cayman Islands judgment. It followed that there was very little (if anything at all) in the matters referred to by Dr Ahnish to dispel the serious doubts concerning the satisfaction of the reciprocity requirement identified by the Court in the SFC Judgment. Mr Fox's concerns could not be substantially discounted or ignored and the factual findings in the SFC Judgment were and remained dispositive.

92. As regards the exclusive jurisdiction issue:

- (a). Fund IV argued that Dr Ahnish had not identified any case setting out a UAE Court's approach to the meaning of the term exclusive jurisdiction as contained in Article 222(2)(A) of the New Civil Procedure Code (or in the context of Article 85(2)(A)). Mr Fox was not aware of any such decision. Accordingly, the position had not moved from the date of the SFC Judgment. There was still no clear and authoritative guidance as to what the position would be on enforcement of a Cayman Islands costs order in favour of Fund IV, being a very substantial costs and interest only order against a UAE national

arising out of a claim relating to loan agreements concluded in the UAE said to have been induced by fraud and alleged associated non-contractual obligations supposedly governed by UAE law. Indeed, Mr Fox was not aware of any case in which a standalone costs order from a common law court had been enforced by a UAE Court (and Dr Ahnish has not identified such a case). The short point was that Dr Ahnish's evidence did not answer the particular matters identified by the Court in the SFC Judgment as giving rise to a substantial uncertainty as to the interpretation that will be given by the UAE Courts to what is now Article 222(2)(A) of the New Civil Procedure Code; and

- (b). furthermore, Dr Ahnish, like Mr Al Aidarous, had been unable to provide a convincing explanation as to how exclusive jurisdiction was to be understood or would be interpreted. The same was true of Dr Ahnish's opinion. He had not provided a satisfactory justification for his view or adequate supporting reasoning. Dr Ahnish said that the term exclusive jurisdiction was one with which the UAE Courts were familiar (referring to the UAE Constitution, the Civil Procedure Law, the Riyadh Convention and the GCC convention). However, none of that material related to the New Civil Procedure Code (or the Regulations that preceded it) and in any event to the extent it was relevant all of it could and should have been adduced and relied on by the Plaintiff at the SFC Hearing. That material was not relevant to the issue before the Court on this application which was whether matters have changed since the SFC Judgment such that Mr Fox's concerns – found by the Court to be legitimate – were no longer valid, such that his view can be entirely disregarded. Mr Fox believed that Dr Ahnish's position (that if the foreign Court has jurisdiction in relation to the matters in dispute the UAE Court does not have exclusive jurisdiction) was wrong. Taken to its logical conclusion, Dr Ahnish's interpretation would mean that if a foreign court accepted jurisdiction in relation to matters in dispute there was absolutely no basis on which a UAE Court could ever refuse enforcement on the basis it considered it had exclusive jurisdiction. In other words, in Mr Fox's view, Dr Ahnish's interpretation would end up rendering Article 222(2)(A) functionally redundant.
93. As regards enforcement through the offshore route, Fund IV noted that Dr Ahnish had dealt with this issue although the Plaintiff did not appear to rely on it. Fund IV said that while the SFC Judgment had referred to the experts' evidence as to offshore enforcement (including Mr Fox's evidence in reliance on what had been said by Sir Richard Field, sitting as a Justice of the DIFC Court, in *Tavira* that the JJC was "*hostile to conduit enforcement*") and the Court was clearly not persuaded that the availability of offshore enforcement prevented there being a real risk that a costs order against the Plaintiff would not be enforced, the Court's reasons for granting the Fund

Parties' applications had not referred to or relied on it. Dr Ahnish had now relied on three decisions of the JJC to suggest that the JJC was not (or was no longer) hostile to conduit enforcement. However, all of those cases concerned arbitration awards and attempts to enforce or invalidate those awards. They concerned the JJC resolving jurisdictional disputes between the DIFC courts and the onshore UAE courts. They did not concern attempts to take a DIFC judgment recognising a foreign judgment and to seek to enforce that DIFC judgment onshore. They did not consider whether that course of action could be used (in effect) to circumvent the pre-conditions for the recognition of the foreign judgment in the UAE (what might be termed judgment laundering). Accordingly, as explained by Mr Fox at [6] and [7] of Fox 3 none of those decisions have any bearing on conduit enforcement or expressly deal with it.

The GHF Parties' submissions

94. The GHF Parties submitted that the evidence of Mr Dagher (and of Mr Fox to the extent consistent with that of Mr Dagher) demonstrated that there remained a real risk that a costs judgment in their favour would not be enforced by the UAE Courts and that their costs would be unpaid. The developments relied on by Dr Ahnish did not show that there had been any material change in relevant UAE law or practice since the SFC Hearing or that the conclusions in the SFC Judgment needed to be adjusted.
95. The GHF Parties' arguments largely followed those of Fund IV albeit that they were based on Mr Dagher's evidence, which I have summarised above. I do not propose to set out the arguments made by the GHF Parties where they replicate or are aligned with those of Fund IV. Instead I shall mention a few points distinctively made by the GHF Parties.
96. The GHF Parties reviewed the approach to be adopted by the Court on an application for further security. They submitted that it was settled that the Court had a discretion to make a further order for security on an application to vary an existing order for security where there has been a "*material change of circumstances*" since the original order for security for costs was made (citing *AHAB v SICL* [2017] (2) CILR 602 (*AHAB v SICL 2017*) which relied on *AHAB v SICL* [2016] (2) CILR 244 (*AHAB v SICL 2016*) at [90]-[91] approving and adopting the dictum from *Kazakhstan v. Istil Group Inc* [2006] 1 WLR 596 (the *Kazakhstan case*) at [32]).
97. As regards an increase in the amount of security already awarded for costs relating to the period up to the conclusion of the discovery, the GHF Parties referred to the judgment of Smellie CJ in *AHAB v SICL, 2017* in which he had cited (at paragraph [13]) the judgment of Popplewell J (as

he then was) in *Stokors SA v. IG Markets Ltd* [2012] EWHC 1684 (Comm) (*Stokors*) which he said warranted “*repetition...because of the nature of the defendants’ application citing material change of circumstances within a particular stage (i.e. the trial stage) of the proceedings.*” At [33] Popplewell J had said as follows, citing the *Kazakhstan case* (underlining added):

“The next matter of principle which is important is that where a security for costs up to a particular stage of proceedings has already been provided, a defendant who applies to increase the amount of security for the costs of that same stage in proceedings will generally have to justify a further order by reference to circumstances which did not exist or were not apparent at the time the order was made. For it to be just to order further security, a defendant will generally have to show a material change of circumstances from those which pertained or were envisaged when the matter was before the court making the order. Otherwise the court is simply being asked to reconsider a decision made on the basis of arguments which were made or could have been made at the time.”

98. In *Stokors*, the Court had held that it was appropriate to make a further award of security for costs where a disclosure exercise had been much more substantial and complex than the parties had anticipated so as to amount to a material change of circumstances.
99. As regards an award of further security for the period after discovery, the GHF Parties submitted that where a previous order described security as being in respect of costs up to a specified stage in the proceedings, there will be a relevant and material change of circumstances when the period provided in the previous order for costs expired.
100. The GHF Parties relied on the notes in the White Book 2023 at [25.12.15] citing *Eli Lilly & Co Ltd v Neopharma Ltd* [2012] EWHC 2297 (Ch) (*Eli Lilly*) at [15]. In *Eli Lilly*, security had been provided for the claimants’ costs up to the stage of reply evidence. An application was made for further security for costs both in relation to costs incurred up to the end of reply evidence and costs to be incurred thereafter (and until the conclusion of the trial). Counsel for the defendant (who was in that case the party giving security) submitted and accepted that the court had a discretion to vary any order including an order for security for costs if there had been a material change in circumstances and the Court otherwise considered that a variation is justified. However, it had also been submitted that even if there was scope for variation the court should only vary the security for costs given up to the end of the reply evidence and should not impose a varied condition which extended beyond that point in time to the end of the trial. Floyd J was not persuaded by that submission and held (at [15]) that:

“The reason for the time limit was, as is often case in security for costs applications, that it is appropriate to deal with it in chunks. As the extract from the White Book shows, there is a change of circumstances when the period provided in the previous order for costs has

expired. The court needs to reconsider whether it is appropriate to continue that security or not. Quite apart from anything else, as [counsel for the claimant] submits, it allows for the possibility that the case may not go forward beyond that point. It is now clear, of course, that the case will proceed to trial and it seems to me appropriate to extend the order for security accordingly. I am therefore satisfied that I have jurisdiction to extend the order for security under Part 24.”

101. The GHF Parties noted that there had been no appeal from the SFC Judgment which was therefore conclusive as between the parties in relation to the matters it decided. Furthermore, it was not permissible for the Plaintiff to rely on matters that could have been adduced in evidence or referred to at the SFC Hearing. They argued that Dr Ahnish had gone beyond what was permissible in the Ahnish Report by opining on what the term exclusive jurisdiction meant by reference to matters pre-dating the SFC Judgment and in considering the potential conduit (or offshore) jurisdiction of the DIFC courts whilst pointing to no significant developments in this regard post-the SFC Judgment.
102. It was the GHF Parties’ position that, even if the direction of travel as regards the law and procedure of the UAE as regards enforcement of foreign judgments was as Dr Ahnish contended, it did not follow that it could be said that if a costs order were to be made by this Court as against the Plaintiff there was no risk that such an order would not be enforced against him in the courts of the UAE.

Discussion and decision

103. As I noted at [60] of the SFC Judgment, the two key questions for the Court are (a) whether the Fund Parties have shown that there are objectively justified grounds for concluding there are obstacles to or burdens on the enforcement of a costs order against the Plaintiff in the UAE such that there is a real and serious risk of non-enforcement and (b) whether if there are such real risks, it is just in the circumstances to order security. It is not necessary for an applicant for security to show that it was more likely than not that there would be substantial obstacles to enforcement.
104. I summarised what needed to be established by the Fund Parties at [62] of the SFC Judgment as follows:

“the [Fund Parties] must at least show some evidential basis for the conclusion that there would be a realistic risk of obstacles or burdens in the way of enforcement. The obstacles need to be sufficiently substantial to amount to a real risk of non-enforcement and the Court must be satisfied that there is a proper basis for considering that such obstacles might exist. The Court must carefully review the evidence but where there is disputed evidence, particularly expert evidence, the Court cannot be expected on an interlocutory application without cross-examination to resolve the points in dispute. It is open to the

Court even where the Plaintiff produces evidence to the contrary to conclude that the evidence properly evaluated and taken as a whole shows that there is a real and serious risk of non-enforcement.”

105. In the SFC Judgment I also referred to the judgment of Lady Justice Gloster in *Bestfort* and of Mrs Justice Moulder in *Pipia*. As Gloster LJ said in *Bestfort* (at [77]) while a flexible approach is required there must be a proper basis for considering that such obstacles may exist but whether the evidence is sufficient in any particular case to satisfy the judge that there is a real risk of serious obstacles to enforcement will depend on the circumstances of the case. Furthermore, Moulder J had noted that in the context of an interlocutory application for security for costs it was not just or proportionate to require expert evidence to be adduced which complied with the rules on expert evidence and that evidence could be given by witness statements and without complying with GCR O.38, although the Court would still need to be satisfied having regard to the totality of the evidence before the court that the evidence was sufficient to establish the risk of non-enforcement. Accordingly, the Court must undertake a risk assessment based on the totality of the evidence.
106. Mr Justice Bryan in *Invest Bank* noted that in *In Re RBS Rights Issue Litigation* [2017] 1 WLR 4635 at [29] Mr Justice Hildyard had equated a real risk with a non-fanciful risk and said that the order for security should generally be tailored to cater for the relevant risks (see *Danilina* at [51]). Where the risk posed was of non-enforcement, the defendant should usually have security for the entirety of the costs and there is no room for discounting the security figure by grading the risk using a sliding scale (see *Danilina* at [64]).
107. He also noted that in *PJSC Tatneft v Bogolyubov* [2019] Costs LR 977 (*Tatneft*) Butcher J had considered the position where there is conflicting expert evidence as to the risks of non-enforcement in a foreign jurisdiction and had stated as follows (underlining added):
- “19. *In approaching this area of dispute, I consider it important to bear the following in mind:*
- (1). *I am concerned only to decide whether there has been shown to be a real risk of substantial obstacles to enforcement.*
 - (2). *One of the reasons why the threshold was set as a real risk, rather than a likelihood, of non-enforcement was that there should be a 'simple and clear approach' (*Danilina v Chernukhin* [2018] EWCA Civ 1802, paras [58], [60]).*
 - (3). *The issues are largely ones of Russian law and practice, where the evidence is given by experts who have not been cross-examined. In the circumstances, save in clear cases in which it can be plainly seen that one or the other expert*

lacks qualifications or reliability, or that there is no room for serious argument, it is unlikely to be possible to prefer one expert's view on a disputed point to the other's.

- (4). If the court is unable to decide between the evidence of two experts as to whether there is a real risk of substantial obstacles to enforcement, that may itself lead the court to conclude that there is such a risk, because there is the possibility that the views of the expert who says that there is such a risk are correct. This sort of situation seems to be envisaged by Gloster LJ in para [81] of Bestfort ."

108. As Mr Justice Butcher had noted, in *Danilina Hamblen LJ* had said (at [58]) that there had been various reasons given for deciding to adopt a test based on serious risk including the need for a simple and clear approach to issues which will be considered at an interlocutory hearing on the basis of what necessarily and proportionately will be limited evidence.

109. Bryan J had also noted (at [35]) that whilst the Court should reach its conclusion as to whether there is a real risk of substantial obstacles independently from any other judgment, findings by other judges in other cases may provide additional support for the Court's conclusion. He referred to the judgment of Butcher J in *Tatneft* at [39] where he had said this:

"My conclusion that there is a real risk of substantial obstacles is in conformity with the conclusion reached by Cockerill J in Danilina v Chernukhin. While I have reached my conclusion independently on the basis of the considerations I have set out above, I consider that her finding in that case, which lacked many of the features which might be said to contribute to the risk of non-enforcement in the present case, provides additional support for my conclusion."

110. However, Bryan J did not consider the views expressed by the expert in the *Hirbodan* case to be of any particular assistance given that the claimant did not appear, there was no opportunity to test the views expressed by the expert in that case, there was no expert called on behalf of the claimant, and there was no suggestion that matters were addressed with the same level of detail as in the three rounds of expert evidence in *Invest Bank*. So he decided that he must focus on the expert evidence that had been produced before him.

The experts – can it be said that Mr Fox and Mr Dagher lack qualifications or reliability

111. The first issue to address is the Plaintiff's challenge to the expertise and impartiality of Mr Fox and Mr Dagher. I have summarised the Plaintiff's case above. The Plaintiff says that Dr Ahnish's evidence is far more reliable than and is on all points to be preferred to that of Mr Fox and Mr Dagher because of his superior expertise and because he is impartial and they are not. The Plaintiff did not suggest that the evidence of Mr Fox and Mr Dagher should be ignored (he did

not apply to have the evidence excluded or declared inadmissible). He says that in all cases the evidence of Dr Ahnish is to be preferred.

112. I discussed at [66] of the SFC Judgment the challenge made by the Plaintiff to the evidence of Mr Fox and Mr Dagher (and the DLA team) adduced that the SFC Hearing. I said this:

“.... Both the DLA team who prepared and took responsibility for the DLA Advice and Mr Fox have sufficient local law qualifications, expertise, and experience to demonstrate that they were qualified and, by reason of their being generally skilled in UAE law, could be expected to know the answer to the question on which the Court needed expert evidence. I do however accept that the fact that DLA and Mr Fox are advisers to the GHF Parties and the Fourth Defendant respectively, while Mr Al Aidarous was an independent expert, is to be taken into account when considering what weight to give to their evidence and views. But I do not regard this as determinative or a sufficient basis for substantially discounting the evidence given by DLA and Mr Fox and for preferring Mr Al Aidarous’ evidence. I do give his evidence particular weight but still consider that it needs to be tested and judged by the quality and cogency of his analysis and the contrary evidence given by DLA and Mr Fox.”

113. My point was that it seemed to me that both Mr Fox and Mr Dagher crossed the expertise threshold. They had demonstrated as a result of their qualifications and considerable experience that they were well able and qualified to opine on the issues of UAE law that arose. But their lack of impartiality (combined with the language constraints that they operated under which required them to seek and obtain the support for their views from other local lawyers) significantly reduced the weight to be given to their opinions and was a factor I had taken into account. The lack of impartiality was a particularly important factor. This did not mean though that their opinions and legal analysis could or should be ignored. To the extent that they set out a well-reasoned and supported case and propositions of law that appeared to be based on the relevant authorities or materials, they were to be considered and set against the views of Mr Al Aidarous. Mr Al Aidarous’ opinions, to which considerable weight was to be given in view of his independence and local expertise, nonetheless still had to be tested and the quality and cogency of his analysis assessed.
114. It seems to me that the same approach is to be applied on this application. As Moulder J said in *Pipia*, the strict rules governing expert evidence to be adduced at trial do not apply to interlocutory applications of this type and the Court adopts a more flexible approach for dealing with disputes as to foreign law. It was therefore not wholly unacceptable for the Fund Parties to rely on evidence from their own legal advisers and that evidence can be taken into account by the Court. But if a party chooses to rely on its own advisers rather than an independent expert (and it is unclear why the Fund Parties have chosen to do so in this case) it takes a risk. Even where such advisers confirm to the Court that they have sought to act impartially and in accordance with

the guidance given to independent expert witnesses (as Mr Dagher had done in this case) their continuing role in acting for their client means that they will be treated, at least to some extent, as advocates in the clients' cause. The weight to be given by the Court to their opinions will be adjusted and discounted accordingly.

The issues which are said to give rise to the real risk of non-enforceability

115. The Plaintiff identified three main problems which I had referred to in the SFC Judgment when explaining my conclusion that the evidence taken together, when carefully and critically assessed, revealed that there was a real risk that a costs order of this Court would not be enforced in the UAE Courts. They were the general absence of decisions on Article 85 in the Regulations, the reciprocity issue and the exclusive jurisdiction issue.
116. I will examine the new evidence on these issues shortly. But it is worth saying at the outset that the core concern I had was that, as I had noted, the evidence (even that of Mr Al Aidarous) revealed that the core issues relevant to enforceability in the UAE of a Cayman Islands Court judgment were untested. There had never been a case in which such a judgment had been enforced. Nor was there a clear example of (let alone a written judgment in) a case in which this Court had enforced a UAE judgment (the order made in *Credit Agricole v AHAB* was unlikely to be of any precedential weight as the evidence of what had been decided was limited and the order appeared to have been made in the context of an application for leave to serve out and in default of a defence being served). The mere absence of the foreign law having been tested and the subject of court decisions (or other authoritative local guidance) need not of itself be determinate and evidence of serious uncertainty as to the law's application and effect. There will be some uncertainty but it need not create material doubts as to how the law will be interpreted and applied. The effect and manner of application by the local courts may be uncontroversial and straightforward in some cases. It all depends on the context. But this was not the case in relation to the regulations and statutes governing and the approach of the local courts in connection with the enforcement of foreign judgments in the UAE. The uncertainty level was substantially raised by the context of a significant record of decisions refusing to recognise foreign judgments, the difficulties in finding a clear and reliable authority and the disputes concerning the construction of the applicable regulations and statutes and the absence of clear extra-judicial or administrative guidance from legal or governmental sources. The cumulative effect of the various uncertainties was in my view to create a real risk of unenforceability.

117. The main question is whether the Fund Parties remain able to establish such a real risk having regard to the current position under UAE law in light of and taking into account the post-SFC Judgment developments set out in Dr Ahnish's evidence and relied on by the Plaintiffs. In my view they are, although I regard the decision as much more finely balanced now.

The MOJ Letter and the reciprocity requirement

118. Starting with the MOJ Letter, the impact of this is clearly of substantial significance for the enforcement of English court judgments. Had the MOJ Letter covered the Cayman Islands (or a separate letter in the same terms been issued in relation to the Cayman Islands) it would have created at least a strong presumption in favour of enforceability and reduced the significance and weight to be attached to the uncertainties caused by the other issues I had identified as being important. It was clearly a factor of great importance in Bryan J's judgment in *Invest Bank* (he understandably concluded at [62] of his judgment that the MOJ Letter had "put beyond any doubt" the fact that was reciprocity in relation to English judgments). But Dr Ahnish was unable to, and did not, assert that the MOJ Letter was to be understood as covering judgments of this Court. Therefore, the evidence is that it does not. This was the clear view of Mr Fox and Mr Dagher. All that Dr Ahnish was able to say was that in his view the MOJ Letter was evidence of a UAE government commitment to having foreign judgments enforced and that as far as he was aware there were very strong diplomatic ties and judicial relations between the UAE and UK and the British Overseas Territories. I can see that there may well be such a policy commitment by the UAE government and that as a general matter that there are good relations between the UAE and the UK and that the British Overseas Territories may well be seen by the UAE as closely linked with the UK. But the policy position and the state of diplomatic relations do not reliably establish what approach the UAE Courts, in particular the relevant highest court, will take when interpreting and applying Article 222. They cannot remove the uncertainty that exists as a result of the absence of decisions of the highest courts or other reliable guidance as to what those courts will decide. As Lord Hodge noted in his judgment in the Judicial Committee of the Privy Council in *Lea Lilly Perry v Lopag* [2023] UKPC 16 at [11]:

".. the task of the trial judge when there are disputed questions of foreign law is to determine what the highest relevant court in the foreign legal system would decide if the point were to come to it: Dexia Crediop SpA v Comune di Prato [2017] EWCA Civ 428, para 34; Morgan Grenfell & Co Ltd v SACE Istituto per I Servizi Assicurativi del Commercio [2001] EWCA Civ 1932. It is not sufficient for a party to identify a judgment of a foreign court of first instance which may be on point and assert that the task of the appellate court is simply to analyse that judgment."

119. The Federal Supreme Court is the highest court for federal law in the UAE and the Courts of Cassation for each of the Emirates are the highest court within each Emirate. The evidence indicates (Ahnish Report at [3.7]) that *stare decisis* is not a rule of law in the UAE but that judgments of the Cassation Courts have always been treated as having strong persuasive value.
120. It seems to me that Mr Fox's and Mr Dagher's view that the MOJ Letter is not determinative and does not establish that the UAE Courts will treat the reciprocity requirement as having been satisfied with respect to judgments of this Court is consistent with the evidence and entirely reasonable. It also seems to me that it is not possible to treat the MOJ Letter as being supportive of Dr Ahnish's view that reciprocity can always be established even without the need for the foreign court to have enforced a UAE judgment. From the English translation that all parties used, it also seems to me reasonable for Mr Fox and Mr Dagher to say that the MOJ Letter strongly suggested that the MOJ regarded it as necessary (or at least of special importance) that the foreign courts "*have enforced a judgment rendered by [the UAE] Courts under a final judgment ... which is a judicial precedent and a binding principle for all [such] courts according to their judicial system.*" As Mr Justice Bryan noted in *Invest Bank* at [68] "*... the MOJ Letter is itself a recognition of the consequences of the [Lenkor] case and given the existence of such a case ... I do not see how the Bank could properly contend ... that the reciprocity requirement was not met.*"
121. That test is not satisfied in relation to this jurisdiction. The order made by Justice Foster in *Credit Agricole v AHAB* would clearly be insufficient (all that has been produced is an interlocutory order dated 20 September 2013 granting leave to serve out). It appears from the MOJ Letter that a reasoned judgment of the Court which can stand as a precedent is what is required. It may well be the case, as the Plaintiff argued, that this Court would and will when a case comes before it enforce a UAE Court judgment. But this has not yet been done and there is no reasoned judgment of this Court confirming that a UAE Court judgment will be enforced here.
122. On the basis of the evidence adduced on this application, the MOJ Letter is to be treated as not being binding on the UAE Courts. But, as I mentioned during the hearing, there was no detailed evidence adduced as to the nature and status of the MOJ Letter. The evidence simply stated that the MOJ Letter was not binding but would be treated as persuasive. But Mr Justice Bryan in *Invest Bank* did receive evidence as to the legal nature and status of the MOJ Letter, with an explanation of the related "*unusual*" features of the UAE Constitution (see [64]-[68] of *Invest Bank*). Bryan J concluded (at [65]) that the evidence adduced showed that the MOJ Letter "*represents conformation by the executive branch of the federal UAE government as the [to] the*

enforcement of a UAE judgment in England such as to satisfy the reciprocity requirement.” He had noted (at [64]) that the analysis in the evidence demonstrated “why reciprocity does not require a treaty when article 85 of the [Regulations] incorporates a reciprocity requirement which the UAE MOJ is constitutionally empowered to deem satisfied, thus determining the issue without need for further judicial consideration, lest there be any doubt whatsoever that Lenkor meets the reciprocity requirement.” If this analysis is correct, the MOJ Letter goes beyond being merely persuasive and an indication for the executive branch’s views and preferred outcome which is to be taken into account by the Courts. It represents a determination of the reciprocity issue. In any event, the analysis shows how significant the MOJ Letter is. It is clearly a game -changer.

123. So the MOJ Letter does not resolve the reciprocity issue on this application and suggests that a previous decision from the Court that issued the foreign judgment to be enforced in the UAE (which is treated as a precedent there) recognising a UAE judgment (a **Recognition Judgment**) is either needed or important evidence that will support a finding that there is reciprocity. The post-SFC Judgment cases that Dr Ahnish relied on do show that there are a few recent examples of UAE Courts deciding to enforce foreign judgments even where there is no Recognition Judgment. In the Dutch Court Judgment case (19 May 2021) the Abu Dhabi Execution Court (in a reasonably detailed ruling) considered the conditions (under Dutch law) which had to be satisfied in order for a foreign judgment to be recognised and stated that “*Whereas the aforementioned conditions are equivalent to the conditions for the execution of foreign judgments in the United Arab Emirates, the condition of reciprocity is met.*” The order made by the Dubai Execution Court in the Polish Court Judgment (27 October 2022) does indicate that in a case where there was no treaty (with Poland) what was required was evidence of the conditions to be satisfied in and under the law of that jurisdiction (Poland) for a UAE judgment to be recognised there. These decisions cannot be ignored (orders were made, as the Plaintiff pointed out, giving effect to them) but they are brief and not fully reasoned (the Polish Court Judgment is only one page in length) and of limited weight since they are only decisions of the Execution Court on an *ex parte* application.

124. The other cases seem to me to be less directly relevant for the reasons given by Mr Fox and Mr Dagher. Case 14 of the Dubai Court of Appeal was heard after the MOJ Letter had been issued and taking its effect into account. In the Singapore Judgment Case decided by the Dubai Court of Cassation, the appellant (the judgment creditor) argued that recognition of the Singaporean Court Judgment would involve a violation of (a) Article 20 of the Federal Civil Procedures law because the International Commercial Court of Singapore had no jurisdiction under that Article

to hear the counterclaim against the appellant which had its headquarters and its trade licence issued in Dubai and (b) a violation of Article 85 of the Regulations because the Dubai Courts had exclusive jurisdiction to deal with the dispute (and the appellant was not represented before the International Commercial Court of Singapore). The judgment deals almost exclusively with the *res judicata* point and while the Court confirms that it is satisfied the decision below permitting enforcement was in conformity with the law there is no discussion of the reciprocity requirement and the need for (or possible absence of) a Recognition Judgment in Singapore was not raised by the appellant and therefore not an issue which the Court had to deal with.

125. So the expert evidence has not produced post-SFC Judgment decisions of any Court of Cassation which clearly deal with the reciprocity requirement and the evidence required to satisfy it (let alone which explain the approach to be followed as a matter of UAE law). There is an earlier judgment of the Dubai Court of Cassation in Case 269 which was relied on by Mr Fox in which that Court refused to enforce a judgment of the English Court. It does appear from reading the English translation of the Court's decision that, as the Plaintiff pointed out, there had been a problem with the evidence of English law filed by the applicant which appears to have been incomplete. But it remains a decision of the highest Court in Dubai which at a minimum shows that there may be problems in meeting the evidential burden for demonstrating that the reciprocity requirement has been satisfied.
126. Taking all these points together and considering the evidence in the round, it seems to me that there remains a material uncertainty and therefore a real risk as to whether the Fund Parties would be able to establish the reciprocity requirement in this case. It seems to me that on this issue the legal analysis (as opposed to opinions) presented by Mr Fox and Mr Dagher are at least seriously arguable and need to be taken into account. They represent a serious challenge to Dr Ahnish's analysis and conclusions. I can see the force of the Plaintiff's case that there are strong indications that as a matter of UAE law a determination of whether the reciprocity requirement is satisfied is a question of evidence and that a determination by the MOJ is either determinative or highly persuasive and a Reciprocity Judgment is strong supportive evidence, but neither is an absolute requirement. It may also be the case that if reciprocity is (largely) a matter for the executive based on its relations with the particular foreign state, diplomatic relations between the UAE and the UK/the British Overseas Territories will also be a relevant factor. But as matters currently stand the evidence does not establish that this is the law and it is not possible to say that the risk that a determination by the MOJ or a Reciprocity Judgment are required is fanciful. I have taken into account the fact that, as the Plaintiff said, there is also no (recent) Court of Cassation (or other) decision refusing to enforce a foreign judgment on the ground that there was no Reciprocity

Judgment. But this confirms the absence of clear and authoritative guidance in the context of a history of differing decisions which include a number of cases in which enforcement has been refused. The risk that the Fund Parties need to establish is not a high one but it must be a real risk. In this case it is, in my view, real and material. Further pronouncements by the MOJ or Court of Cassation decisions may clarify and confirm the law but at present there are in my view risks beyond the fanciful that the reciprocity requirement may not be satisfied in this case.

127. I would note the approach on the issue of reciprocity taken by Mr Justice Butcher in *Tatneft* which, while dealing with the entirely different case of Russia and the evidence adduced in that case, reflects a similar line of reasoning and conclusion to mine in this case. He said as follows (underlining added):

“3) Issues as to Enforcement on Basis of Reciprocity

25. *The basis on which it would most usually and cogently be put that there should be enforcement in Russia of an English judgment is, it appears, that it is required by comity, on the basis of reciprocity: i.e. because English courts recognise and enforce Russian judgments. There is a debate between Dr Rachkov and Professor Asoskov as to whether the existence of such reciprocity must be established before the Russian courts "on a case by case basis" (Rachkov) or whether there is now, and has been since 2012-2014, a "settled practice" of enforcement of English judgments based on a "presumption" of reciprocity (Asoskov).*
26. *Not least because of the Kekhman case (resolution No. F07- 9292/2016 of the Arbitrazh court of the North-West district), and the absence of any mention of it by independent commentators, it appeared to me that there was at least uncertainty as to the existence and ambit of any such "presumption". I therefore considered that the evidence indicated a non-fanciful risk that reciprocity would have to be established in any particular case. Further it appeared to me that there was a risk, which again could not be described as fanciful, that reciprocity might not be found to be established in the event of an attempt to enforce a costs award in the present case. This is especially so given that no one has identified a case in which an English court has enforced a Russian costs-only judgment, and accordingly there might be an issue as to whether any relevant reciprocity could be shown in relation to the enforcement of such orders.*
27. *Moreover, there was no evidence before me that any court in Tatarstan had enforced an English, or any foreign, court's judgment on the basis of reciprocity.*
28. *Thus, it appears to me that there is a risk, which though not high is more than fanciful, of non-enforcement on the ground that reciprocity may not be established to the satisfaction of the putative enforcing court.*”

The exclusive jurisdiction issue

128. There are two aspects to this issue. First, what does the expert evidence establish is the meaning given (by the UAE Courts or in the absence of such decisions based on an interpretation in

accordance with UAE law) to the reference to exclusive jurisdiction in Article 222? Secondly, in light of this, what risks do the Fund Parties face in this case? At I indicated at [65] of the SFC Judgment I felt that the expert evidence had not been entirely helpful or focussed on the facts of this case. I noted that:

“What is needed in this context is an account of the approach of the UAE courts to interpreting article 85(2)A and the meaning to be given in that context to “exclusive.” What is the policy rationale underpinning that article? Presumably, the UAE courts are expected to decide which types of case are so significant for the UAE and engage important local interests such that the judgments in foreign proceedings in such cases should not be recognised or enforced. None of the experts was able to provide any real assistance on this issue. Mr Al Aidarous’ comment that, “The matters which fall within the UAE Courts exclusive jurisdiction concern issues such as disputes over real estate located in the UAE and motions to set aside arbitration awards where the seat of the arbitration was within the UAE” involved a conclusion without a justification or supporting reasoning....”

129. The same difficulty has arisen on this application. The discussion of this issue by the experts was focussed on the first issue without much attention being paid to the second issue.
130. Fund IV, as I have noted, did identify the factual matrix which they said could engage the UAE Courts’ exclusive jurisdiction. They noted that this case related to the enforcement of a very substantial costs and interest only order against a UAE national arising out of a claim relating to loan agreements concluded in the UAE said to have been induced by fraud and alleged associated non-contractual obligations supposedly governed by UAE law.
131. Dr Ahnish (at [5.43] of the Ahnish Report) concluded that the UAE Court would need to decide that it alone had jurisdiction to deal with the dispute and that the existence of concurrent jurisdiction would be insufficient. He had said that the term was intended to limit the cases that would be covered and where enforcement of the foreign judgment could not be ordered and he referred to the meaning of exclusive jurisdiction when used in other instruments but he failed to provide his view as to what was covered by the term when used in Article 222 (save to say that it meant what is said, which I did not find helpful).
132. His view that merely because another court had assumed jurisdiction in relation to the dispute in a case where the UAE Court concluded that it also had jurisdiction to deal with the dispute appeared to be supported by the case law he cited. This view was consistent with the decision by the Dubai Court of Appeal in Case 14 where the defendants in the English proceedings were resident in Dubai and the dispute covered property in Dubai. The Dubai Court of Appeal had, as I have noted, recorded the fact that the English Court had jurisdiction to hear the claim by reason

of the jurisdiction clause that stated without more that "*the state's [i.e. the UAE's] courts [were] not exclusively competent*" in relation to the dispute.

133. In *Invest Bank*, Bryan J had had to deal with a challenge to enforceability based on the risk that the Sharjah Court would decide that the dispute was one in respect of which it had exclusive jurisdiction. Mr Justice Bryan set out the evidence before him and his analysis as follows (underlining added):

“71. *The fundamental difficulty with the Defendants' stance is that Mr Attia [the expert] does not provide any credible analysis as to the basis on which the UAE Court would have **any** jurisdiction for the specific claims the Bank has brought in the English Court against the Stewarts Defendants and D2, still less that it would have "exclusive " jurisdiction as referred to in Art.85(2)(a).*

.....

73. *When this matter was explored in oral argument with Mr Mather, Mr Mather could not justify before me any basis on which the UAE court would assume jurisdiction in relation to an enforcement action concerning real property in England and personal assets in England, and a claim under s.423 of the Insolvency Act, an English Act. By their very nature, all those are matters which relate to the sovereign jurisdiction of the English courts and it is inherently improbable that the UAE Court or, indeed, the court of any jurisdiction, would assume jurisdiction, still less exclusive jurisdiction, in relation to such matters which are so clearly tied to enforcement and the territory of another sovereign state.*

.....

74. *Mr Attia nevertheless opined in his second report that the UAE Court had jurisdiction over claims in English proceedings under Art.21(3) on the Civil Procedures Law which provides as follows:*

"The courts shall have jurisdiction to examine the actions against the foreigner who has no residence or domicile in the state in the following cases:

1. *If he had an elected domicile.*
2. *If the action is related to real estates in the state, a citizen's heritage, or an open estate therein.*
3. *If the action is concerned with an obligation concluded, executed, or its execution was conditioned in the state or related with a contract required to be authenticated therein or with an incident occurred therein or bankruptcy declared at one of its courts.*
4. *If the action has been instigated by a wife who has a domicile in the state, against her husband who had a domicile therein.*
5. *If the action is concerned with an alimony of one of the parents or the wife or with a sequestered or with a minor, or with his next of kin or with a custody on fund or on person, in case that the claimer of the alimony, the wife, the minor or the sequestered has a residence in the state.*
6. *If the action is concerned with the civil status and the plaintiff is a citizen or a foreigner who has domicile in the state, provided that the defendant had not*

determined domicile abroad or the national law is imperatively applicable on the action.

7. *If one of the defendants has a domicile or residence in the state."*

.....

77. *I am satisfied that Art.21(3) has no application to claims by the Bank against the other defendants which are claims for declaratory relief as to the beneficial ownership of English Real Estate and for relief under s.423 of the Insolvency Act 1986 . In such circumstances, and as I have already foreshadowed, I cannot see any basis for the contention that the UAE Courts would refuse enforcement of the English judgment because of any alleged operation of Art.21(3) which, on the facts of this case, and in the circumstances I have just identified, would not appear to be engaged."*

134. Bryan J was able to form a view as to whether there was a credible or arguable basis for exclusive jurisdiction on the facts and to conclude, in a case involving a dispute relating to English land and a claim based on an English statutory cause of action, that there was not. As he noted at [73] the expert was unable to justify a basis on which a UAE Court could assume jurisdiction over the case at all.
135. This is not the case here. For example, in the 16 June 2021 DLA Opinion Letter, DLA had (at [5.9]) set out various reasons why a UAE Court would have (and concluded that it had) original jurisdiction to deal with the dispute that is covered by these proceedings. Mr Fox dealt with the connections with the UAE and the reasons why the UAE Courts may conclude that they have jurisdiction generally and in relation to a costs order made by this Court in Fox 1 at [4.17]-[4.19].
136. The Plaintiff also argued that there was not a serious risk of non-enforcement of a costs judgment against him in case where he was the unsuccessful claimant in the proceedings pursuant to which the costs order was made. It was argued that since he had commenced the Cayman Islands proceedings he would not be permitted to say in a UAE Court that he was not bound by the adverse costs order made in those proceedings. I can see that this might be a basis for dismissing an attempt by the Plaintiff to resist enforcement but the difficulty I have is that the UAE evidence is unclear and there is no clear guidance as to applicable UAE law on the facts of this case.
137. As regards enforcement pursuant to the offshore route or conduit jurisdiction, the Plaintiff did not rely on this jurisdiction to show that there was no real risk of non-enforcement. This was made clear at [61] of the Plaintiff's skeleton argument where it was said that:

“The parts of Mr Fox’s and Mr Dagher’s reports concerned with the so-called “offshore route” to enforcement via the DIFC are, to a great extent, a red herring: Mr Jafar’s case is that, for the reasons expressed by Dr. Faraj, there is a clear and obvious direct, “onshore” route to enforcement.”

138. Accordingly, I do not propose to analyse and form a view as to the further evidence on the availability of the offshore route. However, since the SFC Judgment did not explicitly explain, when setting out my reasons for concluding that there were real risks of non-enforcement, my conclusions as to availability of enforcement via the DIFC Courts, I should add the following. I had accepted (and should have said and spelled out that I had accepted) the evidence of Mr Fox and DLA which I summarised at [33(m)] of the SFC Judgment. It had seemed to me that the dictum of Sir Richard Field when sitting as a Justice of the DIFC Court in *Tavira* confirmed a serious and substantial doubt as to whether enforcement via the DIFC Court and then the local Courts using the conduit jurisdiction would be available. While I could see that there had been cases in which the offshore route had been used, and there appeared to be a statutory basis for obtaining enforcement via the DIFC Court, nonetheless the position was not settled and material uncertainties and doubts in my view remained (it had been acknowledged by the Plaintiff’s expert that there were conflicting JJC decisions and that the rulings did not set out the detailed reasoning of the Court). On this application, I found Mr Fox’s analysis of the authorities relied on by Dr Ahnish (summarised above at [93]) to be persuasive and to confirm that there appeared to be continuing material doubts as to the availability of the offshore route in the present case. I note that Bryan J in *Invest Bank* was satisfied on the evidence and in light of the arguments made before him that enforcement of the English Court’s judgment would be available by way of the offshore route. It had been argued in that case that the defendants’ use of the offshore DIFC enforcement route could be stymied by the claimant bank commencing parallel proceedings in the onshore courts for declarations that the English costs judgments were not enforceable. However, Bryan J was not satisfied that the onshore courts would have jurisdiction on the facts to hear such proceedings. In that case the defendants in the English proceedings, who would also be the defendants in the parallel proceedings seeking declaratory relief, were not domiciled in Sharjah or the UAE (the position may be the same for the Fund Parties in the present case but the issue of the jurisdiction of the UAE Courts in respect of proceedings against them was not addressed). Furthermore, he was not satisfied that the claimant was threatening to commence parallel proceedings and in any event he accepted its undertaking not to do so). He also noted (at [56]) on the facts it would be surprising if the UAE Courts had jurisdiction “*in relation to what ultimately are claims in relation to real and personal property in another foreign state.*” But, as can be seen from this short summary, it appears that the UAE law evidence relied on and the facts in *Invest Bank* were materially different from the evidence and facts in this case.

139. I also note that Bryan J in *Invest Bank* rejected the argument that a costs order obtained in a foreign court could never be enforced in the UAE because enforcement of such an order would be against UAE public policy (because UAE law does not recognise recovery of lawyers' fees). I found his analysis of the evidence before him, which did not appear to differ materially from the evidence of Mr Fox and Mr Dagher, at the SFC Hearing and on this application, to be convincing.

Quantum – Fund IV

The Initial Security

140. As I have noted above Fund IV's Initial Security of US\$3,561,319.24 comprised (a) US\$1,099,733.39 representing 70% of costs already incurred by Fund IV up to 30 June 2021 and (b) US\$2,461,585.84, representing 70% of Fund IV's estimated legal costs and 100% of its estimated disbursements from 30 June 2021 up to the completion of discovery.

Costs actually incurred to 30 April 2023

141. Fund IV now seeks to adjust the amount of its security to cover its actual costs incurred to 30 April 2023 to take account of the increase in those costs (covering disbursements and the fees charged by its Cayman attorneys, Ogier, and Leading Counsel) above the estimate on which the SFC Order was based. In Hayward 16, Mr Hayward exhibited an updated costs estimate document dated 18 June 2023 (the *Fund IV Costs Schedule*) containing a statement of costs incurred to 30 April 2023 as well as an estimate of Fund IV's future costs to trial. This had been prepared by Ogier (and updated the costs estimate exhibited to Hayward 7). Mr Hayward said that Fund IV's total fees incurred from the start of the Jafar Proceedings up to 30 April 2023, on the basis of 70% of its legal fees and 100% of its disbursements, amounted to US\$5,464,828.05. After deducting the sum of US\$236,544.13 representing the amount received by Fund IV from the Plaintiff by way of interim costs in relation to the costs order made in its favour following the Plaintiff's application for leave to amend his statement of claim (Fund IV having been granted its costs of and occasioned by those amendments), the total incurred costs up to 30 April 2023 were US\$5,228,283.92, which sum exceeded Fund IV's Initial Security of US\$3,561,319.24 by US\$1,666,964.69.

142. Mr Hayward said that the SFC Order had been based on an estimate that 100% of Fund IV's disbursements between 30 June 2021 and the end of discovery would be US\$1,546,444.16. The primary disbursements are fees charged by Alvarez & Marsal (*A&M*). A&M are Fund IV's e-discovery providers and forensic accountants. The SFC Order was based on the estimate that 100% of A&M's fees from 30 June 2021 to the end of discovery would be US\$750,000 and that data room hosting fees would be US\$90,000. A&M's actual fees between 30 June 2021 and 30 April 2023 have amounted to US\$911,192.66 (including data hosting service fees).
143. As regards the fees charged by Ogier and Leading Counsel, Mr Hayward said that the SFC Order had been based on an estimate that 70% of Fund IV's legal fees between 30 June 2021 and the end of discovery would be US\$915,141.683. 70% of the actual legal fees charged by Ogier and leading counsel between 30 June 2021 and 30 April 2023 was US\$2,916,699.69. This was US\$2,001,558.01 more than had been provided for in Fund IV's Initial Security.
144. In Hayward 7 and Hayward 16, Mr Hayward explained the work that had been performed by both A&M and Fund IV's legal team in the period between 30 June 2021 and 30 April 2023 as well as the reasons why more work was ultimately performed than had been expected at the time that Fund IV had sought Fund IV's Initial Security. As he had explained in Hayward 7, the previous estimates were initially provided in 2021.
145. In Hayward 7, Mr Hayward said that Fund IV's legal advisers had incurred in relation to discovery in the period from 30 June 2021 to 31 December 2022 fees of US\$1,156,857.62 as compared with the estimate of US\$700,000. He explained the work that had been done and the reasons for the increase. The cost of discovery had been higher he said because of various developments in the Jafar Proceedings. There had been unforeseen workstreams and additional work on the anticipated workstreams. This included lengthy discussions and negotiations relating to the Discovery Protocol, preparation for the two-day March 2022 CMC and work following that CMC, unanticipated extra manual work in preparing Fund IV's documents for production in accordance with the Discovery Protocol and a lengthy exercise with multiple legal teams in relation to obtaining an order of the Court required by the Confidential Information Disclosure Act, 2016 (the *CIDA Act*). The last task included additional work relating to the search for documents and preparing briefing notes for document reviewers. Mr Hayward also referred to the additional costs resulting from the problems with the Plaintiff's production set which had required substantial additional time to work through and resolve the problems and to consider the legal issues arising. Mr Hayward said that the balance of Fund IV's Initial Security would be insufficient to cover the further costs of the discovery exercise.

146. As regards the period from 1 January 2023 to 30 April 2023, Fund IV's legal team had been involved on various workstreams and had commenced work on expert evidence but the most significant workstreams in terms of time spent and the level of costs incurred were: (i) discovery; (ii) amendments to the pleadings (including both amendments consequential upon Mr Jafar's amendments and those arising from discovery); and (iii) interlocutory applications concerning discovery and pleadings amendments. The total incurred costs were US\$2,242,626.00. This included US\$1,174,205.59 in Ogier's legal fees and the fees of Leading Counsel (Mr Andrew Ayres KC) and Junior Counsel (Henry Phillips, who was granted limited admission on 6 April 2023 to appear in the Related Proceedings) at 70% and US\$1,068,420.41 in disbursements at 100%.
147. The breakdown of costs already incurred in the Fund IV Costs Schedule separately identified the costs incurred to March 2021, the additional costs incurred from March 2021 to 30 June 2021, from 30 June 2021 to 31 December 2022 and then from 31 December 2022 to 30 April 2023. For each period the fees paid to Ogier and Leading Counsel and the sums paid to A&M and Fund IV's UAE law expert (and for other disbursements) were separately identified. The reasonableness of the amount incurred could be assessed by reference to the workstreams that Mr Hayward had set out and explained in Hayward 7 and Hayward 16, which identified the categories of work that had been done by the legal team.
148. In Hayward 16, Mr Hayward said that the reasons why Fund IV's costs incurred up to 30 April 2023 exceeded Fund IV's Initial Security could be split into three broad categories: (a) the costs of discovery (b) the costs of the discovery applications and the April 2023 CMC and (c) the costs of the pleadings amendments. He set out his explanation in some detail.
149. As regards discovery, he said that a substantial additional amount of time had had to be spent in order to identify and attempt to rectify issues with the Plaintiff's various discovery productions and he noted that the quantum of Fund IV's Initial Security was designed to cover the period leading up to the end of discovery but that the discovery process and problems with it were continuing in mid-June 2023 (over 18 months after Fund IV's Initial Security was ordered) and the Plaintiff had yet to comply in full with his discovery obligations. He provided a timeline of events for how the Plaintiff's discovery had unfolded and said that the Plaintiff had provided fifteen iterations of his discovery between 29 January 2023 and 6 June 2023. This included his original productions, attempts to rectify the issues that the other parties had identified with his discovery and providing documents that were missed in the initial productions.

150. As regards the unexpected costs of the interlocutory discovery applications, Mr Hayward said that (as he had explained in Hayward 2) when Fund IV had sought Fund IV's Initial Security it had calculated the quantum of the security on the assumption that it may need to make further factual enquiries or requests for further discovery, or specific discovery after having inspected, reviewed and considered the other sides' documents. However, it did not anticipate at the time the extent of the work that would be required on such applications. Considerable time and expense had to be spent on the two privilege applications that Fund IV was required to make. It had issued a summons dated 10 February seeking an order that the Plaintiff provide a further and better list of documents on the basis that the Plaintiff's privilege review had not been properly conducted. Fund IV had also been required to issue two summonses on 27 March 2023, the first of which sought the production of the Plaintiff's bank statements and related documentation which evidenced payments made in relation to his loans and the second of which sought orders relating to the documents held by the Plaintiff's sons. All these applications had been resisted by the Plaintiff.
151. As regards the amount of time spent in connection with the CMC in April, Mr Hayward said that this took place over three days and said that preparation for the CMC including reviewing the Plaintiff's evidence in response and preparing written submissions took months of intensive work (including over the entire Easter vacation period) starting when the Plaintiff's initial discovery was provided on 29 January 2023.
152. As regards the pleading amendments, Mr Hayward said that at the time that Fund IV's Initial Security was ordered Fund IV was unaware that the Plaintiff would subsequently make the extensive pleadings amendments that were allowed by the Court in its order dated 18 August 2022. Additionally, Fund IV's Initial Security was designed only to cover costs incurred up to the end of the discovery process and was not designed to cover costs that would be incurred after discovery (including costs incurred by Fund IV when amending its pleadings to incorporate new information and documents received in discovery). He also provided a description of the work that Fund IV's legal team had performed in relation to pleadings amendments.

Estimated future costs to trial

153. In Hayward 7 and Hayward 16, Mr Hayward had set out the basis for Fund IV's estimated further costs to trial by reference to the costs schedules provided by Ogier. This covered the further work on discovery, the amendment of pleadings, the work on the two further CMCs, dealing with Fund

IV's factual witness and reviewing the Plaintiffs' factual evidence, dealing with expert evidence, preparing for the PTR, preparing for trial, attendance at and participation in the trial estimated to be of 3-4 weeks duration for the Jafar Proceedings (with the trial of all the Related Proceedings estimated to take between 4-6 weeks) and other miscellaneous matters.

154. Mr Hayward said that the methodology applied in Hayward 16 and the Fund IV Costs Schedule reflected the approach taken by the Court in the SFC Judgment, namely to allow for approximately 70% of Fund IV's incurred and estimated legal fees (after apportioning fees between the Jafar Proceedings and the proceedings brought by the official liquidators of Abraaj Holdings (the *AH Proceedings*) along with 100% of recoverable disbursements.
155. The Fund IV Costs Schedule listed the different workstreams and tasks which needed to be done, provided a brief narrative of the work that would be involved and then listed each member of the counsel team or Ogier fee earner who would be working on the task, the expected number of hours they would spend, their hourly charge and the total amount estimated to be spent.
156. The list of workstreams and the associated narrative for each was as follows:

Remaining discovery (review of Badr documents and resolving any further issues with Mr Jafar's production set): Ogier team review and liaising with the e-discovery service provider.

One further CMC: preparing and/or reviewing summonses for any applications or Directions; supporting evidence / evidence in response and skeleton arguments; preparations for and attendance at the hearing (assuming two days); and drawing up, reviewing and communicating with the parties in relation to orders made.

Factual witness evidence: interviewing one factual witness and preparing a witness statement with exhibits; reviewing and considering Plaintiff's factual evidence and dealing with reply statements; inter partes correspondence

Expert witness evidence: instructing expert witnesses (UAE law and valuations); preparing instructions to experts and assisting with drafting reports; attending to exchange of expert evidence with the Plaintiff and reviewing the Plaintiff's expert evidence; inter partes correspondence; coordination with the expert and the legal team.

Pre-trial review: two-day hearing and preparation for said hearing; drawing up, reviewing and communicating with the parties' legal teams in relation to the order following the PTR

Trial preparation: preparing bundles, review of trial bundles; preparing or reviewing list of issues, chronology, dramatis personae and case memorandum; preparation of skeleton argument and oral arguments with leading counsel, legal research; reviewing Plaintiff's skeleton argument and reporting to clients; liaising with experts and witness of fact; other preparation for the hearing by counsel in particular for cross examination; inter partes correspondence; coordination internally and externally.

Trial: anticipated 3-4 weeks (Jafar Proceedings only, in a 6-8 week total trial); appearing at/attending the trial; reporting to clients; dealing with counsel queries and tasks, inter partes correspondence, trial bundle and transcripts review and coordination; additional research and discovery during trial; coordination internally and externally.

Misc/Gen correspondence.

Post-trial: post-hearing submissions; correspondence; reviewing judgment and finalising order; inter partes correspondence; preparing costs submissions and bill of costs; attending consequential hearings; taxation (assessment) proceedings.

157. The Fund IV Costs Schedule also listed an estimate of other disbursements to be incurred.

The impact of the settlement of the AH Proceedings

158. At [17] of Hayward 16, Mr Hayward noted that the costs estimate to trial contained in the Fund IV Costs Schedule had been prepared on the basis that Fund IV's future costs would be split equally between the Jafar Proceedings and the AH Proceedings.

159. The AH Proceedings had been settled after Hayward 16 was sworn. Hayward 17 considered the impact of the settlement on Fund IV's costs estimate. Mr Hayward said that many of the common costs to be incurred in relation to taking the AH Proceedings and the Jafar Proceedings to trial (and dealing with post-trial matters) that had previously been allocated as to 50% to each set of proceedings will still be incurred albeit the total costs will be reduced somewhat given that Fund IV will no longer need to defend the AH Proceedings. Mr Hayward considered that these common costs therefore should now be attributed to the Jafar Proceedings with a reduction to reflect the

fact that the overall legal costs of Fund IV will be reduced. He noted that the estimate of the costs that Fund IV had previously attributed solely to the Jafar Proceedings would not change. He set out a table with the new totals taking into account these adjustments and with the new total amount of security sought by Fund IV and explained how each of the workstreams and costs categories had been impacted by the settlement of the AH Proceedings:

- (a). *Remaining discovery*: Mr Hayward said that the US\$141,616.25 of future costs estimated for this category already anticipated that 100% of the work would be done for the purposes of the Jafar Proceedings so that no adjustment was needed.
- (b). *Further CMC*: Mr Hayward said that Fund IV's cost estimate took into account that 50% of its costs for the proposed further CMC would be allocated to the AH Proceedings but that if the CMC was held the work to be done in connection with it would need to be done notwithstanding the dismissal of the AH Proceedings. Mr Hayward claimed that Fund IV had in fact incurred more costs in the Jafar Proceedings than in the AH Proceedings so that the allocation of 50% of the total estimated costs to the Jafar Proceedings may therefore result in less security being provided to Fund IV than its true entitlement. Mr Hayward said that now that Fund IV will no longer be allocating costs to the AH Proceedings, and adopting the broad brush approach previously approved in the SFC Judgment, Fund IV's position was that the estimated costs for this category increase by 30%. This would mean that estimated future costs for this category now increase from US\$209,275.00 to US\$272,057.50.
- (c). *Factual witness evidence*: the future costs estimated for this category already anticipated that 100% of the work would be done for the purposes of the Jafar Proceedings so that no adjustment was needed.
- (d). *Expert witness evidence*: once again, the future costs estimated for this category already anticipated that 100% of the work would be done for the purposes of the Jafar Proceedings so that no adjustment was needed.
- (e). *Pre-trial review*: Mr Hayward said that Fund IV acknowledged that there was likely to be less work for its legal team and therefore lower total costs incurred. However, in light of the fact that the PTR will still go ahead and Fund IV will no longer be allocating costs to the AH Proceedings, and adopting the broad brush approach, Fund IV's position was that

the estimated costs increase by 30%. This would mean that estimated future costs for this category now increase from US\$287,177.50 to US\$373,330.75.

- (f). *Trial preparation*: Mr Hayward said that Fund IV took the same position as for the PTR and therefore proposed that the estimated costs for this category increase by 30% (from US\$1,594,462.50 to US\$2,072,801.25).
- (g). *Trial*: Mr Hayward explained that Fund IV had anticipated that 50% of the costs would be allocated to the AH Proceedings. This was done by including a costs estimate for an anticipated three to four weeks, being 50% of the trial for all the Related Proceedings which has been listed with a six to eight week estimate. Fund IV considered that, notwithstanding that the AH Proceedings had been dismissed, since the Jafar Proceedings were still being case managed with FSD 150 of 2020 (NSJ) the Fund IV team will still need to be in attendance for the entire trial and so will incur the consequent costs. Therefore adopting the broad brush approach, Fund IV considered that the estimated costs for the trial should be increased by 30%. This would mean that estimated future costs for this category increased from US\$1,010,858.75 to US\$1,314,116.38.
- (h). *Misc/Gen correspondence* : Mr Hayward said that Fund IV took the same position as for the Pre-Trial Review and therefore proposed that the estimated costs for this category increase by 30%, from US\$284,212.50 to US\$369,476.25.
- (i). *Post-trial*: once again Fund IV's position was that its estimated costs be increased by 30%. This would mean that estimated future costs for this category increased from US\$442,028.75 to US\$574,637.38.

160. At [27] of Hayward 17, Mr Hayward set out the adjusted totals, with the figures in the first column showing 100% of the estimated fees after these adjustments and the figures in the second column showing 70% of those amounts:

1. Discovery	141,616.25	99,131.38
2. One Further CMC	272,057.50	190,440.25
3. Factual Witnesses	127,523.75	89,266.63
4. Expert Witnesses	393,435.00	275,404.50
5. Pre-trial Review	373,330.75	261,331.53
6. Trial Preparation	2,072,801.25	1,450,960.88

7. Trial	1,314,116.38	919,881.46
8. Post-Trial	574,637.38	402,246.16
9. Misc/general	369,476.25	258,633.38
Subtotal of Legal Fees	5,638,994.50	3,947,296.15
Disbursements	353,641.25	353,641.25
TOTAL	5,992,635.75	4,300,937.40

Quantum - the GHF Parties

161. The GHF Parties sought further security in respect of the costs of the Discovery Security. This covered both the costs already incurred on the discovery phases (which were higher than estimated at the time of the SFC Hearing) and the further costs which the GHF Parties estimated would be incurred in completing the discovery phase. They also sought further security in respect of their estimated costs for the Future Security.
162. The additional Discovery Security (referred to by the GHF Parties as the top up security) is \$1,269,084.98 and the additional Future Security is US\$6,984,230.52 including disbursements and US\$3,745,154.09 (excluding disbursements). This gives a total of US\$8,253,315.50 (including disbursements).
163. In Lewis 13, Mr Lewis set out the figures relating to each of these categories of costs covering the actual costs incurred in respect of discovery up to 26 January 2023 for Ogier and 22 November 2022 for counsel (the *Respective Relevant Periods*) and separately for the estimated further costs of discovery and to the end of the trial. In Lewis 15, Mr Lewis set out the actual recoverable costs of discovery for Walkers, Counsel and FFP from the end of the Respective Relevant Periods to 30 April 2023 (the *Revised Relevant Period*) and updated the GHF Parties' estimates of certain of their future recoverable costs. The GHF Parties seek security by reference to the costs set out in Lewis 15.
164. The total of the GHF Parties' actual recoverable costs (meaning 70% of the total, gross costs) in respect of the discovery phase post-the Respective Relevant Periods and up to the end of April 2023 was US\$340,928.97. Of that sum Walkers' costs were US\$331,447.20 and the counsel's costs were US\$9,481.77. When added to the GHF Parties' actual recoverable discovery costs incurred during the Respective Relevant Periods (US\$1,325,636.01) the GHF Parties' total actual recoverable discovery costs in the period to 30 April 2023 were US\$1,666,564.98. The GHF Parties' revised estimated further costs of the discovery phase

after 30 April 2023 were US\$302,520, giving a total of US\$1,969,084.98 for the whole discovery phase (Lewis 15 [21]). This represented an increase of US\$293,553.97 compared to the discovery security originally sought in Lewis 13 (Lewis 15 [22]). After subtracting the amount already awarded by the SFC Order in relation to the discovery phase (US\$700,000) the balance was US\$1,269,084.98 (Lewis 15 [22]).

165. In addition, the GHF Parties seek future security in the sum of US\$3,745,154.09 (excluding disbursements). This represents an increase of US\$522,567.59 compared to the future security sought in Lewis 13. The total amount now sought for each cost category (with a comparison against that contained in Lewis 13, which is set out in the middle column) was summarised in the following table:

Provision for a further hearing in respect of discovery	153,937.00 Lewis 13 [65]	265,342.14: Lewis 15 [28]
Further case management conference	153,937.00: Lewis 13 [65]	
Amendment of pleadings (required).	148,225.00: Lewis 13 [70]	148,225.00 (No revision required).
Preparation and service of witness statements	352,450.00: Lewis 13 [74]	352,450.00 (No revision required).
Work on expert evidence	192,710.00: Lewis 13 [77]	192,710.00 (No revision required).
Trial preparation	763,962.50: Lewis 13 [81]	763,962.50 (No revision required).
Trial	1,264,480.00: Lewis 13 [84]	1,264,480.00 (No revision required).
Miscellaneous / General Correspondence	192,885.00: Lewis 13 [89]	448,418.62
The Summons		176,894.76: Lewis 15 [38]
A further CMC N/A.		132,671.07: Lewis 15 [41]
TOTAL	3,222,586.50	3,745,154.09

Costs actually incurred to 30 April 2023

166. Lewis 13 dealt with costs of Walkers incurred to 26 January 2023 and of counsel to 30 November 2022. Lewis 15 added the costs incurred up to 30 April 2023 (making adjustments for the GHF Parties' actual costs of the discovery phase of the Jafar Proceedings).
167. In Lewis 13, Mr Lewis noted that US\$700,000 had been awarded as security for the discovery phase of the proceedings. The actual costs incurred by the GHF Parties in relation to discovery in the Relevant Respective Periods had been US\$1,325,636.01 in respect of Walkers and counsel. Walkers' share of this was US\$1,240,431.68 (being 70% of US\$1,772,045.25).
168. Mr Lewis explained how this figure for Walkers for the period to 26 January 2023 had been calculated:
- (a). Walkers had manually reviewed all time entries following the SFC Hearing (on 3 July 2021) and until 21 July 2021 when a separate billing code was introduced. Any time entries that related to discovery-related tasks were identified and isolated. The total quantum of these time entries was US\$7,335.00: Lewis 13 [37(a)];
 - (b). on 21 July 2021, Walkers introduced a separate billing code for discovery-related tasks in the Related Proceedings. The total quantum of the time entries allocated to this billing code between 21 July 2021 and 26 January 2023 was US\$2,355,392.00: Lewis 13, [37(b)];
 - (c). Walkers applied any necessary caps to the hourly rates of all attorneys who recorded time pursuant to the Practice Direction No 1/2011 (the *Practice Direction*): Lewis 13, [37(c)];
 - (d). Walkers reduced each time entry to 75% of the actual total, reflecting the allocation to the Jafar Proceedings of the costs incurred in respect of all of the Related Proceedings. The total quantum of these time entries after the relevant deduction was US\$1,772,045.25: Lewis 13, [37(d)]; and
 - (e). the total was then reduced by 30% to account for the taxation of costs on the standard basis: Lewis 13, [37(e)].
169. The actual recoverable costs of counsel in respect of the discovery phase of the Jafar Proceedings from 3 July 2021 up to 30 November 2022 in the sum of US\$85,204.33 was calculated as follows (Lewis 13, [38]):

- (a). Walkers manually reviewed all of counsels' time entries between 3 July 2021 to November 2022 and separated all entries that related specifically to the process of discovery. The total quantum of these time entries was US\$162,293.97: Lewis 13, [39(a)];
 - (b). Walkers then applied any necessary caps pursuant to the Practice Direction: Lewis 13, [39(b)];
 - (c). for the time entries that were allocated to work on discovery, Walkers reduced each time entry to 75% of the total time, for the reasons set out above. The total of these time entries after the deduction was US\$121,720.48: Lewis 13, [39(c)]; and
 - (d). the total was then reduced by 30% to account for the taxation of costs on the standard basis: Lewis 13, [39(d)].
170. Mr Lewis set out in Lewis 13 (at [47]), the reasons for the increase in the costs associated with the discovery process. He noted that after the SFC Judgment, there had been a number of key (and in some cases, unforeseen) events that contributed to the GHF Parties' actual time costs of the discovery phase being well above the amount awarded by the Court by way of initial security. These events included (a) the lengthy process by which the parties agreed the terms of the Discovery Protocol (as appended to the Court's order dated 18 August 2022 (the **Directions Order**)); (b) the need for the parties to seek directions in respect of discovery at a case management conference on 23 and 24 March 2022 (the **March CMC**); (c) an application in March 2022 (the **Settlement Agreement Application**) pursuant to which the GHF Parties requested production of a settlement agreement (the **Settlement Agreement**) between the Plaintiff and Mr Arif Naqvi; and (d) an application by the GHF Parties dated 25 April 2022 in respect of the Plaintiff's entitlement under the Settlement Agreement to obtain documents from Mr Naqvi (the **Naqvi Documents Application**).
171. At [48] of Lewis 13, Mr Lewis explained the further work that had been done. This covered, (a) sourcing all potentially relevant documents; (b) preparing briefing documents and conducting review briefings for reviewers; (c) preparing and running keyword and custodian searches across the document universe; (d) liaising with FFP and their eDiscovery provider Consilio LLC regarding AI review technology and preparing the AI review; (e) conducting quality control of the AI; (f) reviewing a substantial number of documents received from the joint official liquidators of Abraaj Investment Management Limited (in Official Liquidation); and (g) reviewing a substantial number of documents to prepare the GHF Parties' discovery production

in accordance with the terms of the Discovery Protocol. The GHF Parties had also, (h) had extensive *inter partes* correspondence and general engagement with the other parties to agree the terms of the Discovery Protocol and in respect of the parties' discovery generally; (i) prepared for and attended the March CMC at which discovery related directions were sought followed by voluminous correspondence to agree the order made at the March CMC; (j) prepared for and attended without prejudice meetings and engaged in without prejudice communications between the parties regarding discovery; (k) prepared for and attended the GHF Parties' contested Settlement Agreement Application; (l) prepared for and attended the GHF Parties' contested Naqvi Documents Application, and the subsequent communications and steps arising from the Naqvi Documents Application to ensure receipt of the requisite documents from Mr Naqvi; and (m) prepared and filed (on behalf of all parties to the Jafar Proceedings) the application dated 9 January 2023, pursuant to section 4 of the CIDA Act.

Further costs relating to discovery after 30 April 2023

172. In Lewis 13, Mr Lewis explained (at [49]) that while the majority (he uses the term “*balance*”) of the GHF Parties' discovery was by then (3 February 2023) complete, there were still a number of workstreams that were expected to emerge following the production of the parties' discovery on 27 January 2023 including:

- (a). further communications and other steps arising from any production of documents from Mr Naqvi to the Plaintiff pursuant to the Naqvi Documents Application;
- (b). further communications and steps arising out of the production of hard-copy documents in the AH JOLs' possession, power and/or control;
- (c). reviewing and considering the other parties' document productions (and lists of documents) in the Jafar Proceedings and pursuing specific discovery requests and applications (as necessary);
- (d). dealing with questions raised by the other parties in relation to the GHF Parties' document production and responding to specific discovery requests and applications (as necessary); and
- (e). reviewing and considering the total universe of documents discovered by the parties and their organisation into a chronological reference resource.

173. In Lewis 15, Mr Lewis, as I have noted, provided details of the further actual costs incurred in relation to discovery after the Relevant Respective Periods.

Costs of further work on discovery phase after 30 April 2023

174. In Lewis 15, Mr Lewis noted that as at 30 April 2023 there were a number of discovery workstreams that were continuing as follows:

- (a). reviewing a number of additional discovery productions and overlays from the Plaintiff's eDiscovery provider;
- (b). reviewing additional documents produced by the joint official liquidators of AH as a result of the review of the hardcopy documents in their possession;
- (c). reviewing additional documents from Mr Badr Jafar following their production by the Plaintiff;
- (d). preparing and filing of a further application pursuant to section 4 of the CIDA Act; and
- (e). further *inter partes* correspondence between the parties and general engagement with the other parties on discovery.

175. As I have noted, Mr Lewis said that the GHF Parties estimated further costs up to the conclusion of the discovery phase in respect of these workstreams would be US\$302,520.00 and at [20] of Lewis 15, he set out the projected time to be spent by Walkers' fee earners and counsel on these tasks. The estimate included 5 hours of Leading Counsel's time; 22 hours of junior counsel's time; 65 hours of partners time, 320 hours of associate time and 100 hours of paralegal time.

Estimate of further costs post-discovery to trial

176. Mr Lewis exhibited to Lewis 13 a 6-pages schedule of estimated costs (the ***GHF Parties Cost Schedule***) and in Lewis 13 he referred to the methodology originally used by the GHF Parties to estimate their costs of the Jafar Proceedings to trial. This, as explained at paragraph 44 of Lewis 2, was as follows:

- (a). the GHF Parties determined the various steps that would need to be completed before trial. In that regard, the GHF Parties identified the following phases of work: pleadings; directions and case management hearings; discovery; witness statements; experts; trial preparation; trial and general correspondence. In respect of each of those phases, the GHF Parties estimated how many hours of work would reasonably be incurred by their attorneys at the various different levels of seniority (including counsel);
- (b). those hours were then multiplied by the relevant hourly rates to produce headline figures for each step in the litigation (and Walkers' fees were reduced by 10% to reflect their agreement with the GHF Parties);
- (c). a further 30% deduction was then applied to the amounts determined to be estimated legal fees) in order to take account of the taxation of costs on the standard basis; and
- (d). disbursements were included at 100% of cost.

177. Mr Lewis said that in light of the progress of the Jafar Proceedings since the SFC Order was made, and taking into account the work completed to date, the GHF Parties had updated both the phases of work that were likely to be undertaken and the estimated costs for those phases through to the completion of the trial. At the time that Lewis 13 was sworn, the GHF Parties' best estimate of their Future Security (after the discovery phase through to the conclusion of the trial in the Jafar Proceedings) was US\$4,494,492.45. This was made up of estimated future recoverable costs (US\$3,222,586.50) and disbursements (US\$1,271,905.95). Figure 3 of Lewis 13 provided the following breakdown of the estimate for future recoverable costs as follows:

No.	New Phase of Work	GHF Parties' Estimated Costs	GHF Parties' Estimated Recoverable Costs
1.	Provision for a further hearing in respect of discovery	219,910.00	153,937.00
2.	Amendment of pleadings	211,750.00	148,225.00
3.	Preparation and service of witness statements	503,500.00	352,450.00

4.	Work on expert evidence	275,300.00	192,710.00
5.	Trial preparation	1,091,375.00	763,962.50
6.	Further case management conference	219,910.00	153,937.00
7.	Trial	1,806,400.00	1,264,480.00
8.	Miscellaneous / General correspondence	275,550.00	192,885.00
	<u>TOTAL</u>	<u>4,603,695.00</u>	<u>3,222,586.50</u>

178. In Lewis 15, Mr Lewis noted that work had progressed after Lewis 13 was sworn in relation to a number of workstreams so that it was possible, by the time that Lewis 15 had been sworn, to provide updated actual costs for three of these. The revised figures were set out at [25] of Lewis 15 as follows:

No.	Phase of Work	Original Estimate	Actual Costs	Difference
1.	Provision for a further hearing in respect of discovery	153,937.00	265,342.14	(42,531.86)
6.	Further case management conference	153,937.00		
8.	Miscellaneous / General correspondence	192,885.00	194,068.62	1,183.62

179. In Lewis 13, the GHF Parties had estimated that they would incur recoverable costs of US\$153,937.00 in respect of a future two-day hearing in respect of discovery in February 2023 and US\$153,937.00 in respect of a future case management conference in April 2023

(the *February CMC* and *April CMC*). They have now calculated their actual recoverable costs incurred in respect of the February and April CMC in the amount of US\$265,342.14 (covering US\$184,226.70 for Walkers and US\$81,115.44 for counsel). The estimate in Lewis 13 therefore needed to be reduced by US\$42,531.86.

180. In Lewis 13, the GHF Parties had estimated that they would incur recoverable costs of US\$192,885.00 in respect of the miscellaneous/general correspondence phase of work up to the end of trial. The GHF Parties have now calculated their actual recoverable costs incurred in respect of this phase of work, post-Lewis 13 and up to the end of the Revised Relevant Period in the amount of US\$194,068.62. That sum comprised US\$168,490.88 for Walkers and US\$25,577.74 for counsel. As regards the further costs, the GHF Parties said that in circumstances where the parties were still six-months away from the trial and where recoverable costs of US\$194,068.62 had been incurred in a relatively short period of time, they estimated that they will incur at least a further US\$254,350.00 in recoverable costs in respect of this phase of work between the end of the Revised Relevant Period and the end of the trial. Lewis 15 set out a schedule of the estimated time that would be spent by the counsel team and Walkers' fee earners totaling 390 hours. Mr Lewis said that in addition to the US\$1,183.62 in respect of which the GHF Parties were not presently secured, they sought supplemental future security for the costs of this phase of work in the sum of US\$255,533.62. The reason for this increase, he said, was the significant amount of *inter partes* correspondence and ancillary workstreams related to the ongoing conduct of the Jafar Proceedings, which had intensified as the parties prepared for a trial in November 2023. At the time of swearing Lewis 13, the GHF Parties did not appreciate (nor could they have appreciated) the sheer volume of correspondence that would be required to deal with the various matters arising and ongoing conduct of the litigation.
181. As regards their costs of the GHF Parties Top-Up Summons, Mr Lewis in Lewis 15 said that when Lewis 13 was sworn the estimated costs of that summons were included within the estimate given in respect of the February CMC on the basis that the GHF Parties expected that the GHF Parties Top-Up Summons would be listed at the February CMC, which did not happen. As a result, that estimate did not include a separate hearing of the GHF Parties Top-Up Summons, the need for Lewis 15 to be sworn, and a further round of expert evidence on UAE law. The GHF Parties now had the benefit of knowing their actual recoverable costs incurred in respect of the three-day April CMC (US\$265,342.14) and using this figure as a sensible starting point and bearing in mind the GHF Parties' actual recoverable costs up to the end of the Revised Relevant Period (in the sum of US\$89,490.71)

the GHF Parties estimated that their total recoverable costs of the GHF Parties Top-Up Summons will be US\$176,894.76, being two-thirds of the recoverable costs incurred in respect of the April CMC.

182. The GHF Parties noted that Fund IV, with their support, had applied for the listing of a further CMC before the Pre-Trial Review. The costs of such a further CMC had not been included in their estimate. They sought a further US\$132,671.07 in respect of a such future two-day case management conference.
183. As regards disbursements, in Lewis 13 the GHF Parties had calculated their estimated future recoverable disbursements in the amount of US\$1,271,905.95 (the ***Original Disbursements***). In light of the progress since the GHF Parties Top-Up Summons had been issued, the GHF Parties had been able to calculate some of their actual recoverable disbursements (up to the end of April 2023) in respect of which estimates were given in Lewis 13. In addition, the GHF Parties were at the time that Lewis 15 was sworn able to give updated estimates of their future recoverable forensic costs.
184. In the period following Lewis 13 and up to 30 April 2023, the GHF Parties had incurred actual costs of US\$58,941.00 in respect of Consilio (their third-party professional service providers to host data room for disclosure purposes) which was US\$38,941.00 more than the estimate (of US\$20,000) in Lewis 13. These costs largely related to the hosting of the parties' discovery data. Based on the GHF Parties' estimates of a further eight months of data hosting costs, they expect to incur a further US\$157,176.00 through to the end of trial.
185. Further, the parties have been negotiating a fee quote with Opus2 for the provision of services for the trial of the Related Proceedings. The base fee that had been agreed was approximately US\$106,128.64 per party. Assuming the percentage split of 75% that has been adopted previously by the GHF Parties to reflect the split as between each of the Related Proceedings, the final total was US\$79,596.48.
186. Therefore, the GHF Parties sought supplemental future security for these costs in the aggregate sum of US\$275,713.48.
187. In Lewis 13, the GHF Parties included a figure of US\$10,000.00 for expert fees, which reflected the GHF Parties' position as regards what they considered may be required at that time. The GHF Parties have now engaged experts on the valuation of the various assets that

comprise the Naqvi consideration and on the UAE law issues. Following discussions with those experts the GHF Parties are able to provide a more accurate estimate of the expert fees. As regards the valuation expert, the estimates costs are US\$347,000.00. As regards the UAE law expert, the costs are US\$187,500.00. Accordingly, the GHF Parties sought supplemental future security for these costs in the aggregate sum of US\$524,500.00.

188. The GHF Parties also sought additional security to cover their actual and estimated FFP forensic costs. In Lewis 13 Mr Lewis said that that the GHF Parties expected to incur future forensic costs in the sum of US\$1,084,552.00. The relevant methodology had been set out in [91] to [101] of Lewis 13. In the period from 1 February 2023 to the end of May 2023, the GHF Parties had incurred actual forensic costs in the Jafar Proceedings in the sum of US\$1,893,193. FFP's actual forensic costs had been calculated by totaling the costs incurred by the members of FFP's discovery and forensic team (all of whom are legally qualified) (the *Actual Total Costs*), then reducing the Actual Total Costs by 25% to reflect the allocation of FFP's forensic costs to the Jafar Proceedings (the *Actual Jafar Proceedings Costs*) and then reducing the Actual Jafar Proceedings Costs by a further 25% to account for the time that FFP's discovery and forensic team members had spent on other, non-forensic workstreams (which would fall outside of this workstream (the *Actual Jafar Proceedings Forensic Costs*)). Mr Lewis set out in a table in Lewis 15 (Fig. 5) the updated monthly forensic costs of FFP to take account of the Actual Jafar Proceedings Forensic Costs for February to May 2023. The estimates up until the end of trial (from June to December 2023) were expected to remain the same. The monthly figures for February – June 2023 were as follows: February - US\$316,498, March – US\$679,581, April - US\$513,743, May – US\$383,371, June – US\$73,304. The monthly figure for July to December 2023 was US\$47,502. Mr Lewis said that the increase in FFP's actual forensic costs between February and May 2023 (from US\$726,236.00 in Lewis 13 to US\$1,893,193) could largely be attributed to the amount of work that was needed to be done by FFP in order to deal with the Plaintiff's deficient discovery. He also said that the workstreams relating to the privilege application, including the review and consideration of the various privilege overlays by the FFP forensic team, had also resulted in unforeseen and increased costs.

The Plaintiffs' submissions

Overview

189. The Plaintiff challenged the reasonableness of and the adequacy of the justification provided to support the sums claimed by the Fund Parties by way of further security. He did so by reference to a series of general propositions regarding the approach to be adopted on an application for (further) security and by way of a detailed critique of the time estimates provided by the Fund Parties with respect to each of the identified workstreams. The latter was set out in two documents filed by the Plaintiff, namely Mr Jafar's Calculations in respect of the GHF Parties (the ***Jafar GHF Parties Calculations***) and Mr Jafar's Calculations in respect of the Fund IV Parties (the ***Jafar Fund IV Calculations***, together with the GHF Parties Calculations, the ***Calculations***).
190. The Plaintiff submitted that the Court should adopt a cautious approach and err in favour of the respondent where a costs breakdown was insufficiently detailed and where there was insufficient evidence explaining the basis upon which a costs figure had been reached. In addition, there had to be a material change in circumstances supported by evidence where a top up to security previously ordered was sought and that 60% was a more appropriate proportion to adopt than 70% when applying a percentage discount to total fees.
191. The Plaintiff submitted that the wording of GCR O.62, r.4.2 indicated that while an order for security for costs protects a defendant from the risk of non-payment it did not do so for the purpose of punishing a claimant or in a manner that might encourage the defendant to conduct uneconomical litigation (or which might be seen as an endorsement of such an approach).
192. The Plaintiff noted that the English Court of Appeal had held that “[t]he making of an order for security is not intended to be a weapon by which a defendant can obtain a speedy summary judgment without trial” (Ward LJ in *Radu v Houston* [2006] EWCA Civ 1575) and that the principles relevant to the assessment of quantum of security had been summarised at [26], [27] and [28] of the SFC Judgment. The Court will seek “to arrive at a fair and realistic, not necessarily a precise or generous, estimate of the costs to be incurred.” The Plaintiff submitted that where there was insufficient evidence explaining the basis on which a costs figure had been arrived at, the Court may adopt a cautious approach and revise down the figure to be used for the purpose of calculating a sum for security. He referred to my judgment in *In Re China Shanshui Cement Group Ltd* (Unreported, Grand Court, 20 May 2022). The Plaintiff also relied on the decision of Mr Christopher Hancock KC sitting as a judge of the High Court in *Steenbok Newco 10 SARL v Formal Holdings Ltd* [2023] EWHC 1112 (Comm) (at [8]-[13]) in which the judge had held that even in a case where allegations of fraud were advanced by the claimant, the appropriate rate for security for costs will ordinarily be 60%. The Court should not “determine

the amount of security to be ordered in the defendants' favour on the basis that it would be assessed on the indemnity basis."

193. The Plaintiff submitted that it was common ground that assessing the level of security involved an element of broad brush analysis. However, that was, he said, an analytical approach intended to assist the Court when dealing with uncertainty. It did not excuse a party seeking security for costs from properly justifying its claim and any assumptions which have gone into it.

The amounts claimed by the Fund Parties are too high – they are disproportionate and unreasonable

194. The Plaintiff submitted that, adopting the broad brush approach, in this case it was appropriate to step back and consider the global sums being sought by the Fund Parties having regard to the requirements of reasonableness and proportionality as enshrined (*inter alia*) in GCR O.62, r.4:
- (a). the GHF Parties seek further security of US\$8,253,315.50. Having already been secured for US\$4,147,951, this meant that they were seeking to have total security of US\$12,401,266.50;
 - (b). Fund IV sought further security of US\$5,967,902.09. Having already been secured for US\$3,561,319, this meant that they were seeking to have total security of US\$9,529,217;
 - (c). the vast difference between the two sums was inexplicable. There was no good reason, having regard to reasonableness or proportionality, why the GHF Parties should be substantially more secured than the amount for Fund IV. These are defendants facing materially the same claims. There was no reason why it should cost the GHF Parties so much more to contest it; and
 - (d). the total amount of security being sought was US\$21,930,483.50 with a 30% reduction already baked-in. On a 100% basis, the total costs of this litigation for just two of the Defendants was therefore said to be the US\$31,329,262.10, which the Plaintiff regarded as extortionate. The Fund Parties costs were out of control. They had both already sought to revise their previous costs estimates to trial in the evidence originally filed in support of the Top-Up Summonses and yet subsequently sought to increase the amount of security even further, ostensibly on the basis that those figures were more reliable. In fact, the changes showed the Fund Parties' inability accurately to assess their costs and their complete lack of consideration of reasonableness and proportionality when incurring costs.

195. The Plaintiff argued that the incurrence of such costs was totally disproportionate to the complexity of the case and the sums at stake (which though large were modest by comparison with some other cases). The Fund Parties were not acting in accordance with the overriding objective and the Plaintiff submitted that the Court was at liberty to, and should, curb the behaviour of litigants demonstrably acting outside of the overriding objective. In particular, the Fund Parties both over-layer and over-lawyer the amount of fee earners undertaking every task. The Plaintiff provided examples in the Calculations.

Costs incurred to date in general

196. The Plaintiff noted that Fund IV had claimed US\$1,666,964.69 for incurred costs since receipt of Fund IV's Initial Security and the GHF Parties had claimed US\$1,269,084.98. The Calculations identified various objections to the sums claimed and suggested alternative figures of US\$428,571.00 for Fund IV and of US\$251,616.00 for the GHF Parties. These adjustments were based on the 60% figure which the Plaintiff argued be applied instead of 70% and a 50% allocation of costs between the Jafar Proceedings and the other Related Proceedings as opposed to the 75% allocation claimed by the GHF Parties.

The Fund Parties' costs to date of the discovery process

197. The Plaintiff submitted that the volume of documents that needed to be reviewed as part of the discovery process was considerably less than the Fund Parties had originally anticipated. The Fund Parties' pre-August 2021 evidence had made it clear that they had assumed that a very large number of documents would need to be reviewed. In Lewis 2, Mr Lewis had said (at [48] and [49]) that the GHF Parties expected to be conducting reviews of "*tens of millions of documents*" and that the process would entail "*sourcing all potentially relevant documents*" ([49(a)]). In Hayward 2, Mr Hayward had said (at [40]) that "*the volume of documents to be reviewed... will be in the 10s of terabytes...The work will include sourcing all discoverable documents...*" However, the Plaintiff argued, the process letters demonstrated that nothing like that volume of documents have had to be reviewed. According to their process letters, the GHF Parties' total document repositories, to which TAR was applied, was 1.3 million documents and only some 30-40,000 documents appeared to have been manually reviewed by Walkers. As for Fund IV, they had only 370,536 documents in the first place. These data sets - very much smaller than the tens of millions envisaged - were reviewed using TAR. Only a few tens of thousands were subject

to manual review. Therefore there should have been a decrease in the sums claimed rather than a substantial increase.

198. The Plaintiff argued that the Fund Parties had failed to provide an adequate breakdown or justification for the further costs they sought in respect of the discovery process. The Fund Parties had addressed the discovery costs in a sweeping way. They had said that there had been technical issues and unanticipated applications but they had failed to provide a proper breakdown to explain how the costs said to have been incurred related to the complaints they had made. It was also the case that at least some estimate had been included for future applications for specific discovery (see Hayward 2). The Fund Parties had also failed to take into account and explain the impact on costs of the significant reduction in the number of documents that needed to be reviewed.

199. The Plaintiff argued that the Fund Parties had overstated the significance and effect of the production issues experienced by the Plaintiff and of the need to provide further overlays of documents. In fact, he said, the amount of documents produced in eight of the overlays was only 2,917 documents in total and separating the “no natives” production from the “with natives” production so as to describe the further productions as involving seventeen overlays was both highly misleading and gave the false impression that in every case numerous documents were being produced and multiple overlays provided. That was not the reality.

The GHF Parties’ claims – apportionment between the Jafar Proceedings and the other Related Proceedings

200. The Plaintiff challenged the GHF Parties’ approach to allocating costs as between the Jafar Proceedings and the other Related Proceedings. The Plaintiff argued that the methodology used by the GHF Parties for allocating their legal fees to the Jafar Proceedings was flawed. Walkers had simply identified all of their and counsel’s time entries that related to disclosure (for all of the Related Proceedings) and then simply attributed 75% of the total amount to the Jafar Proceedings. However, this did not give the Court meaningful guidance about the GHF Parties’ actual time costs of discovery in the Jafar Proceedings. The fact that the Plaintiff had accepted this allocation for the purpose of the SFC Hearing was irrelevant. He did not do so for the purpose of the GHF Parties Top-Up Summons and it was therefore for the GHF Parties to show that this approach was reasonable and justifiable, which they had failed to do.

The GHF Parties’ claims - FFP

201. The Plaintiff also challenged the inclusion and the quantum of sums relating to FFP. The Plaintiff was concerned that FFP's work was both duplicative and that its fees were unreasonably high and submitted that FFP's costs should be disallowed for the purpose of determining the amount of any security. Mr Lewis is a director of FFP, which is the claims handler for GHF Parties. FFP was charging enormous fees for tasks which the GHF Parties say are also being undertaken by Walkers and the GHF Parties' counsel team. Therefore, at least to some extent, the work done by FFP should be viewed as the sort of work that a party or client would ordinarily do by itself and for which it would not be able to charge/claim costs. In contrast to the GHF Parties, Fund IV had paid A&M a much smaller sum (US\$321,328) and there was no reason why FFP should have incurred substantially higher fees (being more than ten times that amount). Furthermore, no affidavit evidence from FFP had been filed explaining precisely what work they have been doing and what hours have been incurred.

The GHF Parties – discovery costs to 30 April 2023

202. The Plaintiff argued that the further work that the GHF Parties had said they had been required to do (see Lewis 13 at [48], summarised above) could not have involved substantial additional time costs. With the possible exception of the Settlement Agreement Application and the Naqvi Documents Application none of the matters identified were out of the ordinary much less unexpected at the time that the GHF Parties made their original application. None of them (individually or collectively) justified the approximately 4,000 hours that Mr Lewis suggested had been incurred by the GHF Parties in the course of disclosure. Many of the items (such as preparing and running keyword and custodian searches, liaising with FFP and Consilio LLC and conducting quality control of the AI) were highly unlikely to have involved much activity on the part of Walkers or the GHF Parties' counsel team. Further items, such as correspondence relating to the AH JOLs' production of hard copy documents had nothing to do with the Plaintiff and should not have been included in the claim at all.

The GHF Parties' claims - future discovery costs

203. The Plaintiff argued that Mr Lewis' list of future discovery workstreams which were said to give rise to the future estimated costs (see [49] of Lewis 13, set out above) were deficient. Of the five tasks identified one (the second) related solely to disclosure from the AH JOLs and therefore was nothing to do with the Plaintiff. Two others (the first and third) were duplicative. The GHF Parties

had in fact pursued a specific discovery request in the Jafar Proceedings arising from the production of documents from Mr Naqvi (in respect of the documents belonging to Badr Jafar) which will be the subject of a separate costs order. The Plaintiff submitted that there was no basis for seeking security in respect of those costs, which will be ordered, assessed and paid pursuant to that order. The third and fifth workstreams were also duplicative, save that the fifth workstream was said also to involve organising the disclosed documents into a chronological reference resource, which task could be performed automatically without the involvement of fee earners.

The GHF Parties' claims - future costs to trial

204. The Plaintiff noted that the GHF Parties' estimates for the key further workstreams had increased substantially. By reference to the figures in Lewis 13, the estimate for witness statements had increased by 46%, for experts had increased by 97%, for trial preparation by 28%, for trial by 150% and for general correspondence by 54%. The Plaintiff submitted that Mr Lewis' explanation in Lewis 13 (essentially that it was now possible to provide a more reliable estimate in view of the lapse of time) was inadequate. He had failed to identify any substantive reason or new information which had arisen since he made his original estimates that would justify such very significant departures from those estimates, nor explained what impact any such reasons or information had had on the GHF Parties' estimated costs. This was, the Plaintiff submitted, all the more important given that his case had been substantially simplified since the time that Mr Lewis had made his original estimates and the much-reduced documentary (and therefore evidential) burden of preparing for trial which had resulted from the very significant reduction in the number of documents that the parties had disclosed. In those circumstances, it could reasonably be expected that the GHF Parties' costs estimates would have come down considerably and not gone up.
205. As regards expert evidence, Mr Lewis had assumed that the GHF Parties would need to assist in the preparation of expert reports regarding issues of UAE law and valuation as regards the assets to be transferred to the Plaintiff by Mr Naqvi as part of their settlement agreement. However, beyond a generic list of the tasks involved in the preparation of expert evidence, Mr Lewis had provided no explanation of how he had arrived at his costs estimate let alone explained why his costs estimate had almost doubled since his first affidavit. He had estimated that the GHF Parties will incur US\$40,000 in respect of actual expert fees. No explanation had been given as to why the GHF Parties' costs of paying Walkers and their counsel team should be more than six times greater than the costs of actually paying the experts themselves.

206. As regards amendments to the pleadings, the Plaintiff noted that these costs would now be known. In any event, the GHF Parties' estimate was excessive. The GHF Parties claim that their costs of amending their pleadings will be around 50% of the costs of preparing their pleadings in the first place and substantially amending them. That was plainly excessive. A review of the GHF Parties' Re-Amended Defence showed that the exercise of amending their pleadings was not so involved. With the exception of a new allegation against Badr Jafar much of the amendment consisted of non-admissions of allegations pleaded by the Plaintiff in his Re-Amended Statement of Claim and complaints about inadequate particularity.
207. As regards the factual witness evidence, the Plaintiff said that Mr Lewis had assumed that the GHF Parties will need to prepare at least three factual witness statements but had not identified who these witnesses might be, what issues they were expected to cover nor why three witnesses might be required to address those issues. Beyond a generic list of activities that might ordinarily be involved in preparing witness statements in litigation he had given no information about how his costs estimate has been prepared.
208. As regards the expert evidence, beyond a generic list of the tasks involved in the preparation of expert evidence, Mr Lewis had provided no explanation of how he had arrived at his costs estimate let alone why his costs estimate has almost doubled since his first affidavit.
209. As regards the estimate for the costs of the trial, the GHF Parties estimate reflected a massive increase over their previous estimate. Although part of this increase may be explained by the fact that Mr Lewis's previous estimate assumed a 10 to 15 day trial period, whereas he now assumed a 38 day trial period, he had not explained why the work involved in the trial should be any greater than the work that he had assumed would be involved at the time of his original estimate. It was not adequate simply to assume that the work involved would expand to fill the available time. Mr Lewis had assumed that Walkers' lawyers will spend a total of 1,620 hours in relation to the trial. That amounted to 43 hours – or approximately one working week – for each day of the 38 day trial period. On any view that was indulgent and excessive.

Fund IV's claims - the allocation of costs between the Jafar Proceedings and the other Related Proceedings

210. Prior to Hayward 17, Fund IV had said that it had been claiming security on the basis that 50% of their overall costs estimates were attributable to the Jafar Proceedings. Fund IV now sought to increase their costs claims against the Plaintiff by in some cases as much as 30% for phases from the PTR onwards. This approach was illogical and there was insufficient evidence to support it.

Fund IV had not provided any breakdown showing why trial preparation costs attributable to the Jafar Proceedings had increased by almost half a million dollars and failed to explain why Fund IV's costs of attending the entire trial and the other Related Proceedings should be borne by the Plaintiff. In fact, the total trial costs should decrease since the trial will be shorter and counsel will have fewer witnesses to deal with and fewer points to prove/argue against. The tangible consequences of this 30% proposed uplift were very significant. Fund IV's estimated future fees (at 100% of capped hourly rates) for the PTR, trial preparation and the trial were now USD\$3,760,248.38. The Plaintiff argued that when a party has a figure for future costs 50% of which is attributed to one claim and 50% to another, when one claim fell away then it should remain the case that 50% is the accurate figure to attribute to the surviving claim. The costs of and other resources for dealing with that surviving claim should not change because the other claim had fallen away. Fund IV had failed to provide adequate evidence to explain why the dismissal of a claim should add such very substantial costs, much less why those costs should be borne by the Plaintiff.

Fund IV's claims – costs incurred

211. Mr Hayward had provided no detailed information about Fund IV's incurred costs.

Fund IV's claims – future costs

212. Mr Hayward's estimates just comprised a series of generic descriptions of possible future tasks together with a very high-level estimate of hours. No attempt had been made properly to justify the hours claimed or to link the hours claimed with the tasks said to be involved in the litigation. Furthermore, Fund IV's estimate of future costs for each and every phase of the case included time for senior and junior counsel, as well as an Ogier team comprising a partner, a managing associate, three senior associates, two associates and two paralegals – nine fee earners in total. That was excessive. This pattern of over-layering of legal costs had been repeated throughout Fund IV's fee estimates.

213. The Plaintiff submitted that it was important to note that many of Fund IV's estimates had increased very significantly from the estimates that accompanied its original application for security for costs. Its estimate for discovery had increased by 55%; its estimate for witness statements had decreased by 61%; its estimate for experts had increased by 167%; its estimate for trial preparation had increased by 141%; for trial had increased by 48% and post-trial by 30%.

214. As regards future discovery costs, Mr Hayward had explained that most of the review of the parties' incoming disclosure will be done by an external review team. Despite this Fund IV sought security for costs in respect of time spent by Leading Counsel and the Ogier team. Although the time estimated for each of those individuals was relatively small it was difficult to see why 10 fee-earners might be required to perform the work involved in this phase.
215. Mr Hayward had sought to justify the substantial increase for this phase by reference to the time spent negotiating the Discovery Protocol, the two hearings in 2022 relating to the production of the Settlement Agreement and other documents held by Mr Naqvi; an unanticipated increase in manual work and the work involved in considering the application relating to the CIDA Act. The Plaintiff said that this was unpersuasive. It was important to note that, (a) Fund IV's original estimate was premised on a very significant scope of work; (b) the parties' disclosure has been relatively modest; (c) the hearing in 2022 reflected Ogier's assumption that requests for further or specific discovery would be involved in this phase; (d) the costs of such applications was expressly included in Fund IV's earlier costs estimate; (e) the unanticipated increase in manual work associated with preparing Fund IV's documents for production was not explained; and (f) the costs of considering the application relating to CIDA Act must have been small since this was a straightforward application made, on the papers, with the consent of the other parties.
216. As regards amendments to the pleadings, Fund IV expected that the vast majority of the work involved in amending the pleadings would be undertaken by counsel but had estimated that nine Ogier fee-earners would also be involved in that effort, at a combined cost of US\$41,990. The Plaintiff argued that was difficult to see how this could be justified. Furthermore, it had been assumed that 65 hours would be spent by Leading Counsel and 80 hours by junior counsel but the amendments made in to Fund IV's Re-Re-Amended Defence had been modest.
217. As regards witness statements, Fund IV had again assumed that nine Ogier fee earners will be involved in preparing this single witness statement, with 35 hours of input from its counsel team. There was no reasonable basis for a task as simple as preparing a single witness statement requiring so many lawyers working for so many hours.
218. As regards the expert evidence, again Fund IV had assumed that nine Ogier fee earners will spend a total of 510 hours working on preparing, exchanging and reviewing expert evidence. Fund IV's estimate for its costs for this phase of the proceedings had increased by more than 160%. Although it was not entirely clear, it appeared that Fund IV expected to produce expert evidence on UAE law and the valuation of the assets provided by Mr Naqvi to the Plaintiff under the

Settlement Agreement. Mr Hayward had failed to explain why Fund IV's legal team would need to spend a substantial amount of time on the valuation evidence which was likely to be very limited given that the vast majority of those assets had already been sold. In addition, the fact that the matters requiring expert evidence on UAE law were complex did not justify Fund IV's substantial departure from its earlier estimate.

219. As regards pre-trial, trial preparation and the trial itself, Mr Hayward's explanations were wholly inadequate to justify a claim for more than US\$2m in security, particularly given the significant unexplained departure from Fund IV's earlier estimate. In any event, many of Mr Hayward's justifications for the increased estimate did not make sense. The expert evidence was narrow in scope, comprising a small number of discrete issues of UAE law and some valuation evidence relating to the handful of assets most of which had been sold. The volume of discovery had fallen dramatically since Fund IV's original estimate and the amendments made to the Plaintiff's Statement of Claim were unlikely meaningfully to increase the scope of the factual enquiry at trial. Overall, the issues that are to be argued at trial have narrowed significantly since Fund IV's initial application. Mr Hayward had assumed that the Jafar Proceedings will occupy 3-4 weeks of the trial and that the nine person Ogier team will spend a combined 1,105 hours participating in the trial. Even assuming a full four weeks, this equated to 55 hours – or more than one working week – per day of the trial. That was indicative of significant over-lawyering.
220. As regards post-trial costs, the estimated costs encompassed a significant range of work including post-hearing submissions and detailed assessment proceedings in relation to costs. These costs were speculative and may well not occur whether or not Fund IV succeeds at trial.
221. As regards disbursements, by far the largest component of this claim was for a review team of 15, each of whom were expected to spend 250 hours reviewing the parties' incoming discovery, for a total of 3,750 hours. However, the parties together disclosed only around 70,000 documents of which 3,500 were disclosed by Fund IV. Fund IV's estimate therefore assumed a review rate of just 17 documents per hour. This was to be contrasted with the GHF Parties estimate which anticipated that a professional document reviewer could review 150 documents per hour. Applying that metric, Fund IV's reviewers would need just 443 hours, just 12% of the time it has estimated to carry out this work. That alone would reduce GP8's claim by US\$462,000.

Fund IV's response to the Plaintiff's arguments

222. Fund IV noted that the SFC Judgment had set out the approach to awarding and quantifying security for costs with which it agreed. It was important to recognise that the Court was not engaged in a taxation exercise. It had neither the material (for example, underlying work product) nor the specific and important expertise to carry out that task (that of a taxing officer). Rather, the Court was tasked to determine an estimate as to the likely quantum of a party's costs going forward and an estimate of what amount of actual costs incurred may be recoverable. A proportionate exercise was to be carried out in the context of what should be a relatively short and routine hearing in the ordinary course.
223. Consistent with this approach, the Court had accepted in the SFC Judgment the general adequacy of the information provided by Fund IV at that time (see [74(b)]). The same approach had been taken by Fund IV to its evidence in support of its present application for additional security. There was no basis for the Court to revisit its conclusions about the appropriateness or adequacy of that approach.
224. The Plaintiff had suggested that the broad-brush approach to quantum was only intended to assist the Court when dealing with uncertainty, the implication being that the evidence put before the Court on an application for security for costs ought, as a general proposition, to address costs on a granular and detailed basis. No authority had been cited for this proposition and it made no sense. The evidence in support of an application should be tailored to the exercise which the Court was to carry out in adjudicating on that matter (i.e. proportionate). As recognised in the SFC Judgment the Court will seek *“to arrive at a fair and realistic, not necessarily a precise or generous, estimate of the costs to be incurred.”* If a broad-brush approach was to be taken it was not necessary for unduly detailed evidence to be produced and provided to the Court. Indeed, that would be counter-productive in unduly increasing costs and frustrating the purpose of taking a broad-brush approach. The appropriate course was for proportionate evidence to be adduced by the party seeking security setting out its historic costs and its estimates of costs going forward. That was what was required by way of proper justification of the claim and the underlying assumptions. This had been done by Fund IV.
225. Fund IV submitted that its costs breakdown was sufficiently detailed. It was commensurate with the evidence adduced on the previous occasion (that evidence having been accepted by the Court) and contained sufficient detail and particularity for the Court to conclude that the costs protection sought by Fund IV was, adopting a broad-brush approach, wholly justified. Moreover, and more generally, the Plaintiff was wrong to suggest that the Court ought to err in favour of the respondent where a costs breakdown was insufficiently detailed and that a cautious approach was

warranted where there was insufficient evidence explaining the basis upon which a costs figure had been reached. A cautious approach (applied in favour of the Plaintiff) is not in any event justified on applications of this nature. It would cut across the observations made at [72] of the SFC Judgment (“*The Court must have regard to the balance of prejudice and will generally accept that the financial impact of “getting it wrong in the defendant’s favour is ... usually less, indeed usually much less, compared with the financial impact of getting it wrong in the claimant’s favour... ”*). It would only serve to under-secure and prejudice Fund IV in circumstances where the Court had already found that there was a real risk in the context of enforcement; the Plaintiff had not provided any adequate assurance or information (including information as to the location of his assets) so as to obviate that real risk and the balance of prejudice weighed firmly in favour of Fund IV (as expressly recognised by the Court in the SFC Judgment at [70] and on which basis initial security was ordered). A large measure of caution was in any event already inherent in the application across the board.

226. The Plaintiff was also wrong to assert that there was a need for Fund IV to show a material change in circumstances supported by evidence where a top up was sought. Each summons fell to be judged on its own merits. Fund IV was entirely distinct from the GHF Parties. Each was running their own defence to the Plaintiff’s claims. The fact that Fund IV’s legal costs for a particular period of time in a given phase were higher than those of the GHF Parties’ costs was neither here nor there. The different defendants will not have precisely the same amount of costs, being incurred at the same rate at the same time. It was unhelpful for the Plaintiff to compare Fund IV’s historic and anticipated costs with those of the GHF Parties.
227. The Plaintiff’s claim that Fund IV’s fees and fee estimates were unreasonable or disproportionate in the context of his claims against Fund IV was unsustainable. The Plaintiff claims US\$232 million in deceit from Fund IV. His alternative claim for unjust enrichment/enrichment without cause is for US\$124 million. He claims interest on those sums from late 2017 at a rate of 2 3/8ths per cent per annum. By the end of the scheduled trial, the pre-judgment interest claimed by the Plaintiff on his primary case amounts to a further amount of approximately US\$33 million. The value of the claims has an obvious bearing on questions of reasonableness and proportionality. The total sum sought by Fund IV by way of security (taking into account the security that was granted in 2021) is approximately 3.6% of the Plaintiff’s claim. Fund IV noted that in *Traded Life Policies v Jeremy Leach* (unreported, 19 January 2021) at [110] Justice Cheryll Richards KC referred to “*the usual rule of thumb*” as being 10%. The anticipated costs were plainly commensurate with the quantum of the claim. The costs are also commensurate with its complexity. The Plaintiff’s claims are not – as he asserts – “*relatively simple*”. It is true that the

case overall is a little simpler by reason of his repleading of the case and abandonment of various other alternative claims, including the proprietary claims. However, the very substantial core complexity remained.

228. Fund IV also argued that the Plaintiff's claims that it was over-lawyering the case were unjustified. The Plaintiff claimed that Fund IV had "*over-lawyered*" the amount of fee earners on every task. The complexity of the case and the amount at stake justified a sizeable legal team working on the case. Furthermore, and importantly, the Jafar Proceedings were now proceeding to trial at a breakneck pace. Fund IV argued that the necessary consequence of a matter proceeding so quickly to trial was that a broader team was needed than if matters were being advanced at a slower, more conventional, pace. There needed to be a number of fee earners familiar with the matter (for example, reading into amendments) so that work could be allocated appropriately at the right level of seniority and cost and the matter advanced expeditiously to trial. It was striking, Fund IV said, that the Plaintiff had made this criticism of Fund IV without addressing the composition of his own legal team. Fund IV noted that problems had arisen as a result of the relatively small team at Forbes Hare and how discovery was – in the main – dealt with by Crescent's large in-house legal team (whose services, it is said, are being paid for by Mr Jafar personally). Supplementing Forbes Hare and Crescent, Mr Jafar was also utilising (at least) lawyers from Gibson Dunn and London-based junior counsel.
229. In response to the Plaintiff's challenge to the costs incurred and to be incurred in relation to discovery, Fund IV said that its previous estimates were, as was recognised in the SFC Judgment, early estimates. On that basis, the Court refused to grant Fund IV the security sought and instead ordered a lesser sum (without any underlying basis) with liberty to apply once the costs were known. The Court now has direct evidence on behalf of Fund IV as to the actual costs incurred. Instead of well-intentioned estimation, Fund IV knows what it has paid so far and has a better sense of what costs it is likely to incur. There was no proper basis to ignore what costs Fund IV had in fact incurred at this point in time. The Court should not dismiss what it knows (by reference to evidence supported by a statement of truth) on the basis of a supposed incongruence with an earlier estimate, which is so obviously out of date. The Plaintiff had improperly sought to take a detailed parsing of Fund IV's costs as if this were a taxation exercise.
230. As regards Fund IV's approach to the impact on its costs estimate of the settlement of the AH Proceedings, the Plaintiff was wrong to characterise this as an uplift on costs. What was happening was that the discount previously applied to the Plaintiff's benefit (by reason of common costs being split) no longer fell to be applied to the same extent. Under the prior

arrangements, Fund IV had made an assumption in its calculations that its costs within the Related Proceedings would be split 50:50 between the Jafar Proceedings and the AH Proceedings. As to that 50:50 allocation of costs more generally, and as noted at [16] of Hayward 7, this was a generous approach so far as it concerned the Plaintiff because Fund IV had in fact incurred more costs in relation to the Jafar Proceedings than the AH Proceedings. Given the resolution of the AH Proceedings, all costs going forward were now solely attributable to the Jafar Proceedings. The rationale for the previous approach had fallen away. What were previously common costs will still need to be incurred by Fund IV but there was no longer another claim to split them across. They will be solely attributable to the Jafar's Proceedings. On any taxation, the Plaintiff will be exposed to the entirety of Fund IV's future costs. There was no reason why Fund IV should be unsecured to a substantial extent because historically some of its costs were split with another action which is no longer proceeding to trial. In terms of methodology, Fund IV had therefore adjusted its estimates to take account of the fact that anticipated future common costs will now be wholly referable to the Jafar Proceedings. This has been achieved by attributing thirty percent of the anticipated costs of the AH Proceedings to the Jafar Proceedings in respect of the pre-trial review, trial preparation, miscellaneous/general correspondence and post-trial. Fund IV submitted that in the circumstances this was reasonable and justifiable.

The GHF Parties' response to the Plaintiff's arguments

231. The GHF Parties supported the core submissions made by Fund IV. In addition, they made a number of separate points. The following are their main additional points.
232. As regards the claim that the GHF Parties submitted as regards the top-up security, even though it was expressly contemplated by the SFC Order that an adjustment to the sums awarded in respect of discovery might be necessary, the Plaintiff had wrongly stigmatised the GHF Parties' request for a top-up of the security for their costs as indicating their lack of control of the disclosure process. Such submission was misplaced. The GHF Parties sought a top-up to the security granted in respect of discovery (as the SFC Order expressly contemplated) in large part because they have incurred very significant costs trying to rectify and make sense of the Plaintiff's efforts at providing discovery, which were and have been, as submitted by Leading Counsel for the GHF Parties at the hearing "*shambolic*" and have caused enormously time-consuming and costly problems for the GHF Parties in trying to identify, rectify and overcome the problems with the manner in which the documents have been provided. As regards the further security the amount sought was a fair, reasonable and proportionate estimate, given the value,

complexity, and importance of the claims of the amount of the costs which the GHF Parties are likely to incur in the defence of the claim being pursued by the Plaintiff.

233. The GHF Parties argued that the determination of an appropriate costs order was not a comparative exercise. Instead, the question was whether the sums sought by the GHF Parties are reasonable and proportionate on their own terms, with regard to the complexity, value, and importance of this litigation to them. Furthermore, the Court should be astute to guard against the Plaintiff's adding together the combined costs of the GHF Parties and Fund IV in the hope of creating an "eye-catching" figure. The only relevant consideration was whether the GHF Parties' costs are reasonable and proportionate on their own merits.
234. It was well-established in the authorities, both in this Court and in England, that security should be awarded for the entirety of likely recoverable costs, and that the Court should, as regards quantum calculations, err in favour of the defendant, on the basis that the potential prejudice to a plaintiff that is required to put up security is usually much less than the potential prejudice to a defendant: see the SFC Judgment at [72]. The GHF Parties submitted that the Plaintiff had sought to invert this well-established principle when he argued that where a costs breakdown was insufficiently detailed and there was insufficient evidence explaining the basis on which a costs figure has been reached. That may be right in principle, but this was not such a case.
235. The GHF Parties argued that it was common ground that at this stage a robust and broad-brush approach to the calculation of costs was required (see, for example, *Stokors* at [7]) and the SFC Judgment at [72]). Applying an English perspective, what was required was a level of detail that would satisfy a Court on a summary assessment of costs, or in a costs budgeting exercise. Mr Lewis's evidence exceeded that threshold. It was full, detailed, and adopted the same approach as was employed by the GHF Parties for the purposes of the SFC Hearing, which approach was described by the Court as being an "*appropriate methodology*" and "*adequate for these applications and represent[s] the legal teams' best estimates at this stage of their likely future fees*". The GHF Parties endorsed the Court's view which applied equally to the content of Lewis 13 and Lewis 15. In any event, it would be unjust for the GHF Parties now to be, in effect, penalised for adopting that same approach, which was condoned by the Court. Any criticisms of that approach such as are advanced on behalf of the Plaintiff (particularly in the absence of any appeal against the SFC Order and the reasoning contained in the SFC Judgment) should therefore be disregarded.

236. The GHF Parties say that their approach of allocating 75% of their overall costs of the Related Proceedings to the Jafar Proceedings followed the approach for the purpose of the SFC Hearing. The Plaintiff had argued that in the absence of any actual evidence that 75/25 was the relevant split the Court should be slow to accept a split other than 50/50. However, the GHF Parties submitted that there was such actual evidence (which had not been challenged substantively), in the form of the explanation provided by Lewis 6 as to the basis upon which that split was determined as being reasonable and appropriate. Moreover, this approach was accepted by the Court in the SFC Judgment (at [74e]) and in the SFC Order and was not appealed against by Mr Jafar. Consequently, Lewis 13, in support of this application, had cross-referred at [37(d)] to Lewis 6 and maintained the approach there adopted. Whilst the Plaintiff had objected on the basis that the GHF Parties had not carried out a further detailed review of time entries to check that the division of labour has remained (having already conducted such an exercise in advance of the SFC Hearing), this would have been disproportionate; and applying the accepted broad-brush basis for the assessment of costs in this context, there was no reason to think that the 75/25 allocation had changed to any or any material extent. Hence, there was no reason (and certainly no principled basis) for departing from that same allocation for the purposes of the present application.
237. As regards the Plaintiff's claim that 60% was the right figure, that approach had been based on one decision of a deputy judge in England (the *Steenbok Newco 10 SARL* case). The GHF Parties argued that the fact that one deputy judge in one case in a different jurisdiction chose to exercise his discretion regarding the quantum of security in a slightly different way, in an entirely different case, could cast no doubt on the approach that has already been adopted by this Court in relation to this case. The essence of the exercise of a judicial discretion was that different judges, in different cases, applying recognised and accepted principles might reach varying conclusions. Therefore, a different decision in a different case was irrelevant to what the Court may consider to be appropriate in this case. It would be odd for the GHF Parties' costs to be assessed on the assumption of a 60% recovery in circumstances where the SFC Judgment had assumed 70% in circumstances where nothing material has changed and in circumstances where the Plaintiff appears to have been content for that percentage to be applied (and chose not to appeal against the adoption of a 30% discount).
238. The GHF Parties submitted that it was always likely that an adjustment would be necessary to the security awarded in respect of the discovery phase. Lewis 6 expressly noted this likelihood at [27] given the "sheer scale" of the discovery task, the SFC Judgment expressly contemplated this, and it was the reason for the provisional terms of the order for security for costs in this

respect, as embodied in paragraph 5(b) of the SFC Order. As anticipated, the GHF Parties require a top-up to the security already awarded to them in relation to the discovery process because (a) of a series of cost-increasing events, some of them unforeseen, with which they had to engage following the making of the SFC Order such that the costs of the discovery exercise exceeded the estimates on which the amount of security originally granted was based and (b) the serious deficiencies which they have had to confront in relation to the Plaintiff's discovery. As to the first point, Lewis 13 explained these events at [46]-[50] and the GHF Parties submitted that these passages gave more than enough detail, at least at this stage, of the reasons why a top-up was necessary in relation to those particular matters. As to the second point, these serious deficiencies were explained in Lewis 15, at [7(a)-(k)].

239. The Plaintiff had complained that the GHF Parties had not adequately accounted for what he contended was a considerable reduction in the volume of documents than originally had been anticipated would need to be reviewed by the parties in the course of the discovery process. The submission was fallacious. What may or may not have been anticipated or contemplated as regards the volume of discovery had no relevance to an evaluation by the Court of the reasonableness of (what are in the main) the costs that the GHF Parties have in fact incurred in the course of and in the context of the actual discovery process with which they have been engaged. A discovery process which had been dominated by the problems created by the manner in which the Plaintiff had chosen to conduct his discovery process. Even assuming that it was correct to say that the volume of documentation provided on discovery was less than was anticipated by the parties, this had nothing to do with the Plaintiff. The AH JOLs were always recognised as being the main depository of relevant documents and therefore the greater burden as regards giving discovery in the Related Proceedings would fall on them. That a smaller volume of documents had been disclosed in the Related Proceedings was very much the result of the approach adopted by the AH JOLs in relation to their discovery obligations. No purpose could be served, the GHF Parties argued, by applying a non-fact based allowance premised upon how many documents it may have been thought might be the subject of discovery. All the GHF Parties could do, and have done, is set out how much time and costs has been expended and may in the future have to be expended, and why such actual and estimated costs are reasonable and proportionate.
240. The Plaintiff had also objected to the role played by FFP in respect of discovery, essentially on the basis that FFP were said to be (without any evidence) charging excessive fees for work that, it was further contended, counsel and Walkers have been engaged with. The Plaintiff had then reached the conclusion that FFP's fees should be disallowed in their entirety for the purposes of

any award of security for costs. The GHF Parties submitted that it did not follow from the fact that Walkers, counsel, and FFP had been engaged in addressing discovery and discovery-related issues that work in these areas was being duplicated. There was nothing to suggest, and there was no reason or basis to infer, that duplication had occurred or was occurring. Certainly the Plaintiff did not and cannot provide any evidence of such duplication of effort being present. The scale of the task and the number of issues that the discovery process had generated meant that input from the entirety of the team representing the GHF Parties had been required. There could be and was nothing unusual or unreasonable in that. Treating the fees of FFP as a discrete issue was in any event, the GHF Parties argued, academic because what ultimately mattered was whether the overall sums sought by the GHF Parties up to the discovery phase were reasonable and proportionate in the context of this case in view of the problems that the GHF Parties had encountered as a result of the error strewn attempts by the Plaintiff to give discovery (explained in detail in Lewis 15 at [51]-[55]). The amount of security that was sought by the GHF Parties in relation to this aspect of the proceedings was both reasonable and proportionate.

241. The Plaintiff had challenged the GHF Parties estimates of their future costs. He had said that excessive time had been allowed in relation to time costs for various future phases of the litigation, criticised the extent of FFP's involvement and proposed very significant discounts in respect of the disbursements claimed.

242. As regards the Plaintiff's proposed adjustments, the GHF Parties responded as follows:

- (a). the Plaintiff's proposed reduction of Leading Counsel to 40 hours and junior barrister to 120 hours was unwarranted. The pleadings are long, complex, and have been repeatedly amended, and it is obviously of critical importance that the issues were properly pleaded. The GHF Parties' estimate of US\$148,225 was reasonable and should be awarded. Having to deal with various iterations of the Plaintiff's pleadings and amendments was far from straightforward. The Plaintiff must accept that any additional hours that have been expended in having to deal with his various changes to his case and the consequent costs that the GHF Parties have had to incur are of his own making;
- (b). US\$352,450 was a reasonable estimate in respect of witness statements in view of the litigation's complexity and value;
- (c). in light of recent discussions with experts in both UAE law and in relation to the valuation of the Naqvi consideration, US\$192,710.00 was sought under this head. This was a

reasonable sum given the importance of the expert evidence on UAE law and valuation issues. There was also no principled basis for holding the GHF Parties to an earlier estimate. The Court should act on the basis of the information currently available and the reasonable estimates that have been put forward in evidence;

- (d). as regards trial preparation, the issue was whether US\$763,962.50 was a reasonable estimate of the costs for the preparation of a complex, high value fraud claim. The GHF Parties suggested that it clearly was, both taken in the round and also by reference to the specific matters as set out in Lewis 13 at [81] et seq;
- (e). as regards the costs of the trial, the Plaintiff's criticisms of the sums sought by the GHF Parties appeared to be based on an understanding that all of those costs will be incurred during a 4-week trial. That was incorrect and not what was intended by the reference to an assumption of a 4 week trial in the GHF Parties' schedule. The trial is listed for 12 weeks - 6 weeks of hearing from 6 November 2023, followed by a 4-week break from mid-December 2023 to mid-January 2024, then 2 further weeks of hearing starting in mid-January 2024. The GHF Parties' estimated costs relate to, (i) the 4 weeks of the trial in respect of the Plaintiff's claims, (ii) the preparation of closings during the 4-week break and any work done during non-trial days, and (iii) work done immediately after the trial including post-trial administration, correspondence with the parties, document management providers, transcribers. The GHF Parties submitted that the estimated figure of US\$1,264,480 was reasonable and proportionate;
- (f). the Plaintiff's suggestion that the miscellaneous correspondence was hypothetical or speculative was rejected. It was common in litigation for there to be a residual class of correspondence that does not fit easily under a particular phase. As had been explained at [33] of Lewis 15 provision for such costs was necessary and appropriate and should be allowed in full (US\$255,533.62); and
- (g). as regards the further discovery hearing, US\$265,342.14 was not disproportionate for an important 3-day hearing. Further, the Plaintiff appeared to make no allowance for the fact that an earlier CMC in February 2023 was vacated, the costs of which had been included in this figure.

243. As to FFP's involvement, the GHF Parties seek security in the total sum of US\$2,251,509.00. The rationale for the figure reached had been explained in Lewis 13 [91]-[101] and in Lewis 15,

[51]. The GHF Parties submitted that while these were clearly substantial they reflected the fact that this case was hard-fought, complex, and high-value litigation, and consequent upon the persistent shortcomings on the part of the Plaintiff in relation to discovery, far greater costs than might have been reasonably expected have been incurred by the GHF Parties (see Lewis 15 at [54]). The GHF Parties submitted that this sum was reasonable and proportionate in the context of a US\$232 million claim in which the Plaintiff's discovery process had been little short of chaotic.

Discussion and decision

General approach and issues

244. In the SFC Judgment I said the following regarding the general approach to be adopted by the Court to determine the quantum of the security for costs (underlining added):

“25. *As regards the quantum of the security for costs to be ordered by the Court, the GHF Parties submitted that since the relevant risk in this case was the risk of non-enforcement (as opposed to additional burdens of obtaining enforcement), security usually would, and in this case should, be ordered by reference to the costs of the Plaintiff's proceedings. That was the amount that the Court considered the GHF Parties would be likely to recover following a detailed assessment if awarded their costs on a standard basis after a trial: AHAB v SICL [2016] (2) CILR 244 (AHAB v SICL, 2016 (2)) at [98], applying Stokors SA v IG Markets Ltd [2012] EWHC 1684 (Comm.) (Stokors) at [5]....*

26. *The GHF Parties noted that the Chief Justice had said that the “exercise of assessment of quantum for these purposes must of necessity be by application of a broad-brush approach”: AHAB v SICL, 2016 (2) [62] and [98]. The objective is to arrive at a fair and realistic, not necessarily a precise or generous, estimate of the costs to be incurred by the GHF Parties at trial. The Chief Justice had applied the judgment of Mr Justice Popplewell in Stokors at [7] where the learned judge said this:*

“although the exercise required looks forward to what will happen at a detailed assessment of costs, it is not the task of the court when hearing an application for security to undertake a similar exercise, to seek to carry out a detailed assessment. It is necessary to approach the evidence about the amount of costs which have and will be incurred, and their reasonableness or otherwise, on a robust basis and applying a broad-brush.”

.....

“71. *As Moulder J held in Pipia:*

“Given the conclusion that the defendant has shown a real risk, the defendant is entitled to security for the full amount: [Danilina] at [64]:

“In my judgment, once it has been established that there are “substantial obstacles” sufficient to create a real risk of non-enforcement, the starting point is that the defendant should have security for the entirety of the costs and there is no room for discounting the security figure by grading the risk using a sliding scale approach””.

72. *I note and consider that I should follow the approach of Popplewell J in Stokers, at [7], [8] and [9] which has, as I have noted, been followed by the Chief Justice in AHAB v SICL. The Court must have regard to the balance of prejudice and will generally accept that the financial impact of “getting it wrong in the defendant’s favour is usually less, indeed usually much less, compared with the financial impact of getting it wrong in the claimant’s favour. That factor ... is usually the reason for resolving any doubts in favour of a defendant rather than a claimant.” Furthermore, “It is necessary to approach the evidence about the amount of costs which have and will be incurred, and their reasonableness or otherwise, on a robust basis and applying a broad-brush”.*
73. *In my view, this is as a case in which security for costs should be awarded upon the hypothesis that if the GHF Parties and the Fourth Defendant succeed, they will be awarded their costs on a standard basis....”*
245. Accordingly, the Court has a discretion to award security in an amount which it considers just having regard to all the circumstances of the case. The appropriate amount will generally be the sum which the Court considers, based on a robust review of the evidence before it and applying the broad-brush approach required on an interlocutory judgment of this type, that the applicant would be likely to recover in a detailed assessment if awarded costs on a standard basis following the trial, having regard to the factors set out in GCR O.62, r.13(1) and (2).
246. The objective is to arrive at a fair and realistic but not necessarily a precise or generous estimate of the costs which are likely to be incurred and awarded on such an assessment. The applicant for security must provide information regarding its incurred and estimated future costs in sufficient detail to enable the Court to make this estimate (and test the reasonableness of the estimates provided by the applicant).
247. The Plaintiff has argued that where there is insufficient evidence explaining the basis on which a costs figure is reached, the Court may adopt a cautious approach and revise down the figure to be used for the purpose of calculating the amount of the security. He noted that in *Re China Shanshui Cement Group Ltd* (Unreported, Grand Court, 20 May 2022, FSD 161 of 2018 (NSJ)) I had held (at [57]) on a security for costs application that in relation to incurred costs since I had not been provided with any details or breakdown of the work done by the various fee earners listed in the relevant costs schedule (for example by reference to workstreams) I would, in light of objections raised, apply a 50% discount to such costs.

248. At the SFC Hearing, the GHF Parties had cited and relied on the judgment of Mr Peter Macdonald Eggers QC sitting as a deputy High Court Judge in *Tugushev v Orlov* [2018] EWHC 3471 (Comm.) (*Tugushev*) at [23] (see [27] of the SFC Judgment). It is worth setting out the principles identified by the Deputy Judge:

“23. *The principles discussed in these authorities provide some assistance. However, at best, they provide guidance in what I believe both parties accepted was a “broad-brush” approach to assessing the quantum of security for costs. Nevertheless, I would venture the following principles which I shall take into account in undertaking this general quantification exercise:*

- (1) *The purpose of an order for security for costs is to provide protection to a defendant who is being sued by a claimant who may well not be in a position to satisfy a costs order made against the claimant at the conclusion of the action or of a particular stage of an action.*
- (2) *That protection must be suited for the purpose and therefore cannot exceed any sum which goes beyond what may reasonably be expected to be recovered by the defendant in the event that the claimant is ordered to pay the defendant's costs.*
- (3) *In determining what may reasonably be expected to be recovered by way of a costs order, the Court should take into account the nature of the litigation, or the stage of the litigation, to which the proposed security relates, what that litigation entails in terms of the provision of legal services by both counsel and solicitors, the production of factual and expert evidence, and other associated costs and disbursements.*
- (4) *The costs associated with such litigation, or the relevant stage of the litigation, and for which security is sought should be costs which, as an estimate, can be considered by the Court to be both reasonable and proportionately incurred and reasonable and proportionate in amount. Costs which are unreasonably incurred or are unreasonable in amount should not be included in a security for costs order.*
- (5) *By CPR rule 44.3(5), costs incurred are proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings, (b) the value of any non-monetary relief in issue in the proceedings, (c) the complexity of the litigation, (d) any additional work generated by the conduct of the paying party, and (e) any wider factors involved in the proceedings, such as reputation or public importance.*
- (6) *In determining a security for costs application, the Court should exclude from any security amount costs which the Court is not satisfied can be justified on any view as reasonable and proportionate. That is, the exercise of assessing the quantum of a security for costs order should not be influenced by any costs which a party chooses to incur over and above what is reasonable and proportionate in the circumstances.*
- (7) *The quantification of security is an objective assessment to be carried out by the Court as best it can based on the available evidence and information.*

- (8) *Although I accept that the quantification of an order for security for costs is necessarily a “broad-brush” exercise of assessment, bearing in mind the possible prejudice to the respondent of too much security being ordered, the Court must interrogate the estimates of incurred and future costs provided by the applicant. This exercise will of course not nearly approximate a detailed assessment of costs, but it will be similar to a summary assessment or a costs budgeting exercise. To this end, it is incumbent on the applicant to provide a sufficiently detailed breakdown of costs in support of its application to satisfy the Court that the amount of security which will be ordered will provide the necessary protection to the applicant and avoid any unnecessary prejudice to the respondent. In the event that a sufficiently detailed breakdown is before the Court, in order to ensure that the security ordered provides the necessary protection to the applicant, the Court should resolve any doubt in favour of the applicant. However, if there is no sufficiently detailed breakdown of costs before the Court, any uncertainty arising from the inadequate breakdown should be resolved in favour of the respondent.*
- (9) *An allowance should be made for any reduction of costs which would be made in an eventual assessment of costs. In the ordinary course, costs will be assessed on the standard basis. However, it is relevant to consider whether or not there is a real possibility, whether probable or not, that an order for indemnity costs might be made against the claimant. That does not mean that the Court must decide whether the assessment of costs on an indemnity basis is likely to be appropriate. It is the realistic possibility of such an assessment being ordered which justifies the Court taking this into account in determining the quantum of any security to be provided.*
- (10) *The applicant for security for costs will bear the burden of satisfying the Court that the amount of the security for costs to be ordered is in accord with these considerations.”*

249. These principles seem to me to be broadly right, although they must not be understood as requiring a very detailed breakdown and explanation for each category and every line item of actual or projected costs to enable the Court to conduct the interrogation referred to. That would be inconsistent with the broad-brush and robust approach sanctioned by the authorities (see the comments on the judgment in *Tugushev* of Cockerill J in *Maroil Trading Inc and another v Cally Shipholdings Inc and others* [2020] EWHC 3041 (Comm)). The level of detail, as I have said, must be sufficient to enable the Court to make a general and high level composite assessment as to the reasonableness and proportionality of the actual and projected costs in light of the likely outcome of a future assessment on taxation (without the need to assess a reasonable figure for every line item – in *Maroil* Cockerill J looked at the likely outcome on a detailed assessment as a single percentage and applied that – although she took into account the fact that on a taxation what is recovered is a factor of exactly how reasonable individual costs are and so individual line items in the documents before her could give a flavour of the appropriate percentage, whether it should be seventy per cent, sixty per cent or another figure). As the Fund Parties rightly pointed out, the Court is not involved in an exercise anywhere near

the depth and range of a taxation. Having said that, in some cases and for some items, more detail may be needed, perhaps because the sums involved appear to be very large and out of the ordinary or the exercise in relation to which fees are to be incurred is unusual and needs to be explained to allow the Court to understand why it is necessary or why the manner in which it is to be conducted is, in general terms, reasonable. Subject to these qualifications it seems to me that Mr Macdonald Eggers QC was right to recognise the interest of the respondent to a security for costs application and to say that “[i]n the event that a sufficiently detailed breakdown is before the Court, in order to ensure that the security ordered provides the necessary protection to the applicant, the Court should resolve any doubt in favour of the applicant. However, if there is no sufficiently detailed breakdown of costs before the Court, any uncertainty arising from the inadequate breakdown should be resolved in favour of the respondent.” So the Plaintiff is right to this extent; that if and where the Fund Parties have failed to provide a sufficiently detailed breakdown judged though by what is required by the broad-brush approach, the Court can and will usually resolve doubts and uncertainties in favour of the Plaintiff as respondent.

250. The basis of the SFC Order was set out at [74] of the SFC Judgment:

“74. I consider that in all the circumstances, the proper approach is to award security for costs for 70% (a) of the actual costs up to the date of the hearing of these applications and (b) of the estimated costs of the GHF Parties and the Fourth Defendant (subject to the adjustments made below) up to the conclusion of the discovery process, with the GHF Parties and the Fourth Defendant being given liberty to apply thereafter for further security to cover the period up to and after the trial (and liberty for all parties to apply for an adjustment to the amount of costs allocated to discovery after the arrangements for discovery have been settled):

.....

(d). It seems to me that reliable estimates can only be produced once the arrangements for discovery have been settled. For present purposes, I consider that it is reasonable to attribute US\$1 million to estimated discovery costs for each of (i) the GHF Parties and (ii) the Fourth Defendant. However, I will give the parties liberty to apply for an adjustment of this sum after the arrangements for discovery have been settled and the level of work involved has become clearer.”

251. In the SFC Order, the Fund Parties were “given liberty to apply thereafter [i.e., after discovery] for further security to cover the period up to and after the trial (and liberty for all parties to apply for an adjustment to the amount of costs allocated to discovery after the arrangements for discovery have been settled).”

252. That the security awarded in respect of discovery was provisional and subject to a general adjustment upon a further review of more detailed and reliable evidence as to the work that would need to be done was shown by the fact that in the SFC Judgment I awarded only a modest percentage of the projected discovery costs (for example, the GHF Parties sought US\$1,325,873.50 and I awarded US\$700,000).
253. As is clear from these passages, I accepted that following the making of the SFC Order, the Fund Parties would be able to apply for further security in respect of the estimated costs after discovery and up to the end of the trial and for an adjustment of the security awarded in respect of the costs of discovery. As regards discovery, it was envisaged that the Fund Parties could apply after the arrangements for giving discovery had been settled so that the work and time costs involved could more reliably be estimated. But it is entirely consistent with the SFC Order that the application be made at or after the conclusion of the discovery process (or after most of the work had been completed) since the purpose of deferring a decision on the discovery related security was to ensure that the Court had a sufficient understanding of the work to be done, or done, so that it could make an informed assessment of what was reasonable in the circumstances. For the purpose of any further application with respect to the costs of discovery it would be sufficient that the actual costs had been incurred or that events had moved on sufficiently to enable a more reliable assessment of such costs to be made.
254. As regards whether a percentage discount should be applied and if so what percentage should be used, it seems to me that there is no hard and fast rule. It depends on the circumstances. It is likely that there will be some reduction on the basis that the full amount will not be recovered on assessment. 70% seems to me to a reasonable starting point to reflect the likely discount on an assessment but 60% may in some cases also be appropriate. The discount to be applied will depend on the view and impression that the Court forms as to the categories of work and costs, or particular cost items that are likely to be subject to a discount on an assessment. I concluded in the SFC Judgment (at [74]) that a 70% general discount was appropriate on the facts. I must review whether such a percentage remains appropriate on the facts as presented on the Top Up Summonses. I would note that it seems to me that in *Steenbok* the Court did not seek to lay down a general rule that 60% should always be the right starting point in a case where it was assumed that costs would be taxed on the standard basis. That figure was used because it was appropriate on the facts of the case. In his judgment Mr Hancock KC said as follows (underlining and emphasis added):

“11. Taking these authorities together, the Claimants submit that it is wrong to suggest that 75% is the "starting point" in this case. Rather, the Court must assess all of the

*circumstances of the case to reach a conclusion on the most likely costs award following trial. They argue that the appropriate percentage figure **here** is that originally claimed, namely 60%.*

12. *In my judgment, the safest course is to assume that costs will be assessed on the standard basis, that being the likelihood, particularly since the only effect of an order for indemnity costs is to reverse the burden of proof on reasonableness and avoid the need for an inquiry into proportionality, which is an inquiry unlikely to be relevant in a case of this sort.*
13. *In these circumstances, I also accept that Claimants' submission that the correct percentage, on a broad brush basis, is 60%.*"

The Plaintiff's specific challenges

255. I have summarised the extensive objections raised and challenges made by the Plaintiff above. They fall into the following main categories:

- (a). the aggregate amounts claimed by the Fund Parties are too high and are disproportionate and unreasonable;
- (b). the Fund Parties have failed adequately to particularise and explain the justification for the additional costs incurred to date and to be incurred in relation to the discovery process;
- (c). the Fund Parties have failed adequately to particularise and explain the justification for their estimates of future costs of the proceedings after the discovery process up to trial;
- (d). the apportionment of the Fund Parties' costs between the Jafar Proceedings and the other Related Proceedings; and
- (e). the costs incurred by the GHF Parties' claims in relation to FFP.

Fund IV

256. I will deal with the Plaintiff's general objections to and criticisms of Fund IV's claim to security after considering the Plaintiff's detailed objections to particular sums claimed or estimates made by Fund IV.

257. These specific and detailed objections were set out in the Jafar Fund IV Calculations.

258. As I have noted, Fund IV now seeks to adjust the amount of its security to cover its actual costs incurred to 30 April 2023 to take account of the increase in those costs (covering disbursements and the fees charged by its Cayman attorneys, Ogier, and Leading Counsel) above the estimate on which the SFC Order was based. Fund IV claims US\$1,666,964.69 (after applying the 30% discount to the total figures). This was on the basis that 100% of the actual legal fees charged by Ogier and leading counsel between 30 June 2021 and 30 April 2023 was US\$4,166,713.84 (as per the Fund IV Costs Schedule). This was split between the costs for the period 30 June 2021 to 31 December 2022 of US\$2,489,277.28 and between 31 December 2022 and 30 April 2023 of US\$1,677,436.56. The Plaintiff submits that Fund IV should be awarded further security of only US\$428,571 (assuming that the Court accepts his submission that a 40% discount should generally be applied to the gross figures) or US\$500,000 (if the Court did not).
259. I have summarised above (see [144]-[152]) the explanation given by Mr Hayward as to the need for additional work and the work done:
- (a). the Plaintiff complains that this explanation is inadequate. While Mr Hayward had identified the relevant workstreams and the costs incurred by Ogier and counsel (and A&M), he had failed to explain how the costs were split between the workstreams or the time spent on each workstream. There is some force in this criticism. It would have been helpful to allocate the legal team's fees to particular workstreams since that would assist in assessing whether the sums spent and work done appear to be reasonable and proportionate. The amounts involved are very substantial and the period covered lengthy. But when the explanation and information provided by Mr Hayward is examined it can be seen that at least some of the information needed for such an assessment had been provided. Mr Hayward had explained that (after applying the 30% discount) US\$1,156,857.62 of the costs of Fund IV's legal advisers incurred in the period from 30 June 2021 to 31 December 2022 (totalling US\$1,742,494.10) related to discovery.
 - (b). the Plaintiff challenged the reasonableness of this total figure (US\$1,742,494.10) on the basis that the sums incurred were much higher than the equivalent sum for the GHF Parties. The Plaintiff said that "*the difference [was] staggering and therefore unjustifiable.*" While I accept that a large difference between the fees incurred by different defendants may raise a concern and require an explanation or more careful scrutiny of the higher fees, it does not follow from the difference that the higher fees are *ipso facto* and inevitably excessive and unreasonable. Whether that is the case depends on a review of the work done and time spent and whether they were reasonable and proportionate. Different parties even if on the

same side in the proceedings are entitled to adopt different approaches to the conduct of the litigation, each of which may be reasonable.

- (c). the Plaintiff argued (in relation the significant discovery costs for the period between January and April 2023) that Fund IV had failed properly to explain why the problems complained of in relation to the Plaintiff's discovery had led to such a vast increase in costs. The Plaintiff said that the explanation given in Hayward 16 was inadequate. It seems to me that this criticism is unjustified. The nature and range of the problems which Fund IV (and the GHF Parties) complained of and the extent of the work which they have claimed was required to respond to these difficulties have been set out at length in the evidence filed on various applications and it seems to me to be clear that the reasons for the work done have been explained and are known to the Plaintiff and that the work required would need to be substantial.
- (d). the Plaintiff objects to the level of fees because he says the conduct of the defence by Fund IV has been over lawyered. Too many attorneys appear to be working on the case and more than are reasonably necessary to deal with the proceedings. This is a claim that is more fully set out in relation to Fund IV's estimated future costs because Fund IV has provided details of the fees earners who it expects to spend time on particular workstreams (as it had done for the purpose of the SFC Hearing). I do have some concerns, as I explain below, at the number of fee earners from Ogier who are involved in all aspects of the case although I accept that it is reasonable for Fund IV to say that it has been necessary to increase the team and the number of fees earners involved because of the rush to trial in this case.
- (e). the Plaintiff also complains that in the period between January and April 2023, Fund IV claims for work done by its legal team described as the commencement of work on expert evidence but that no expert had yet been appointed (since no fees were paid in this period to its UAE law expert), so that an explanation is needed. This seems to me to be an unjustified challenge which descends to an inappropriate level of granularity. It is self-evident that preparatory work on the expert evidence will be needed even before the expert has been appointed.
- (f). the Plaintiff complains that Fund IV has failed adequately to explain and particularise the work done (and therefore to justify the reasonableness of the sums charged, totalling US\$589,864.48) by A&M for the period between 31 December 2022 to 30 April 2023. Mr Hayward had simply stated that A&M were Fund IV's e-discovery providers and forensic

accountants but he had not explained why Fund IV might need forensic accountants in this case. Only the US\$90,000.00 being the previous estimate of A&M's hosting fees (see Hayward 16 at [10.1]) should be allowed. This criticism does have some force. It is self-evident that material costs will be spent on an e-discovery provider during the intensive discovery phase of the proceedings, particularly in this case where there have been significant problems with the discovery process and it seems to me that the use of forensic accountants is likely to be fully justified in this case. But the costs are material and without further details of what was done it is difficult to form a firm view as to the extent to which these fees will be recoverable on an assessment.

260. The Plaintiff raised the following objections to Fund IV's estimated future costs:

- (a). as regards discovery, the Plaintiff argues that instead of the US\$99,131.38 claimed by Fund IV (being 70% of the subtotal of US\$141,616.25 set out in the Fund IV Costs Schedule) only a reduced sums (either US\$71,387 or US\$83,285.00) should be allowed. The Plaintiff complained that too many fee earners and too much time had been allocated to the workstream. It is right that the Fund IV Costs Schedule projected that Ogier would use one partner and five associates to do the work and that Mr Ayres KC would also be involved. Having such a large team is difficult to justify (and it is certain that a substantial discount and disallowance could be expected on a taxation where a large number of fee-earners are all spending substantial amounts of time on a single task). But a review of the projected hours shows that most of the time is to be spent by just two of the associates (one managing associate and the most junior associate spending 180 out of the 227 hours) and that the time to be spent by the partner (five hours) and the other associates (42 hours) is limited. The paralegal, although listed, is not projected to be spending any time on this workstream. Mr Ayres KC is only projected to spend 2 hours on this workstream. Accordingly, the effective team involved is relatively small. Assuming that a fee-earner is working flat out and recording 8 hours per working day, that is 40 hours per five-day week. That means that the core team of the two lead associates would be spending just over two full weeks on this workstream. In my view, the total amount of the projected time is not clearly or self-evidently unreasonable or disproportionate having regard to the tasks which on the evidence this workstream is likely to involve.
- (b). as regards the anticipated further CMC, since this is now not going to take place, I agree with the Plaintiff that the projected time should be removed and disallowed.

- (c). as regards factual witness evidence, the Plaintiff argues that instead of the US\$89,266.63 claimed by Fund IV (being 70% of the gross costs projected in the Fund IV Costs Schedule) only a reduced sum (either US\$49,975) or US\$58,305) should be allowed. The Plaintiff argues that the amount claimed is excessive since Fund IV will only have one factual witness and too many attorneys are allocated to the workstream. But as the narrative in the Fund IV Costs Schedule makes clear, the projected work relates not just to Fund IV's own factual witness but also to the Plaintiff's witnesses of fact and the total time allocated of 160 hours, while arguably full, is not obviously excessive or unreasonable. Most of that time is to be spent by two of the more junior fee earners and a paralegal. Mr Ayres KC and junior counsel are each projected to spend 20 hours on this workstream which does not seem to me to wholly unreasonable. The Plaintiff's suggestion that the time allocated to four of the Ogier fee-earners be disallowed is arbitrary and speculative.
- (d). as regards expert witness evidence, a substantial sum is projected and claimed by Fund IV, namely US\$275,404.50 being 70% of the total figure given in the Fund IV Costs Schedule. Once again, the Plaintiff argues that only a reduced sums (either US\$145,714 or US\$170,000) should be allowed. He says, as I have noted, that Fund IV has failed adequately to explain and justify the substantial (160%) increase above its previous estimate, not allocated time between the different experts and failed to justify such a large team all of whom are anticipated to be fully engaged. The total time projected for the 7 Ogier fee-earners is 470 hours with substantial amounts of time being allocated to all associates including the senior and managing associates (and 40 hours to the partner). Mr Ayres KC is projected to spend 50 hours and junior counsel is projected to spend 65 hours on this workstream. The Plaintiff has suggested that five Ogier fee earners and 20 hours for Mr Ayres KC and 40 hours for junior counsel would be sufficient. As I have noted, a large team is difficult to justify and a substantial discount can be expected on a taxation where a large number of fee-earners are all spending substantial amounts of time on a single task. I have no doubt that working with the UAE law experts will be a time consuming and challenging exercise and that issues with the valuation experts will require careful attention and some time. But I find it hard to see that such a large and fully-engaged team is reasonable and proportionate, even taking into account the need for extra resources because of the accelerated timetable to trial. It seems to me that it is reasonable to assume that a material discount is to be expected on an assessment, probably above the 30% discount which is already provided for. I would discount Fund IV's figure by a further 30% (US\$82,621.35) giving a figure of US\$192,783.15 for this workstream.

- (e). as regards the pre-trial review, Fund IV anticipates that 7 fee-earners will spend 330 hours and that Mr Ayres will spend 50 hours and junior counsel 60 hours (giving a total time estimate of 440 hours). Fund IV claims US\$261,331.53 while the Plaintiff proposes either US\$85,714 or US\$100,000. The Plaintiff says that Fund IV has once again failed to explain or justify the substantial increase above its previous estimate or why its projected costs are so much greater than those of the GHF Parties (Walkers have projected a total of 290 hours for its fees earners and counsel at a projected cost of US\$173,200). Once again, I consider that it is hard to see how such a large and fully engaged team (all the fee earners are projected to spend substantial periods of time) can be justified or regarded as proportionate and that it is likely that a material discount will be applied on taxation, probably above the 30% discount already provided for.
- (f). as regards trial preparation, Fund IV has allocated US\$1,450,960.88 (being 70% of its total projected costs). This represents 1,580 hours for 7 fee-earners each of whom is projected to spend substantial time on the workstream. Mr Ayres KC and junior counsel are each projected to spend 400 hours (giving a total of 2380 hours). The Plaintiff proposes that only US\$584,211 or US\$681,580 be allowed. He says that the substantial increase above Fund IV's previous estimate has not been and cannot be justified (taking into account in particular that there will only be a small number of discrete issues of UAE law and in relation to the valuation evidence - relating to the few assets that the Plaintiff received from Mr Naqvi under the Settlement Deed, most of which have already been realised - the amount of documents to be discovered and likely to be considered at trial has fallen dramatically since Fund IV made its original estimate, the amendments made to the Plaintiff's statement of claim are unlikely meaningfully to increase the scope of the factual enquiry at trial and the issues that are to be argued at trial have narrowed significantly since the SFC Hearing in light of the simplification of the Plaintiff's case). Once again, I have a concern at the size of the fully-engaged team and the total time estimate appears to me to be high albeit that trial preparation for what is still (despite the Plaintiff's protestations to the contrary) a case involving substantial factual and legal complexities will undoubtedly require a significant amount of time. Once again, I anticipate that it is likely that a material discount will be applied on taxation, probably above the 30% discount already provided for.
- (g). as regards the trial itself, Fund IV has allocated US\$919,881.46 (once again this being 70% of its total projected costs). The Plaintiff proposes US\$493,920 or US\$576,240. Fund IV projects once again that a team of 7 fee earners will be actively engaged for the 3-4 week

trial, spending a total of 1,105 hours. That is 276.25 hours per week. The Plaintiff argues that the time allocated is excessive, disproportionate and unjustifiable. I have a good deal of sympathy with this view. I note that 4 fee earners charging 10 hours per day for a 5 day working week would spend 200 hours per week for the 4 week trial. While I appreciate that substantial resources will need to be deployed during the trial in addition to the time to be spent by the counsel team, it seems to me that the size of the team and the total projected time is impossible to justify. Even assuming that only the partner and a maximum of two associates are in Court full time and the others are working on trial related issues in the office, it is impossible to see that all the team is needed and all the projected time is reasonable and proportionate. Once again the estimated costs are likely to be subject to a material discount on taxation, in this case almost certainly above the 30% discount already provided for.

- (h). as regards what Fund IV in the Fund IV Costs Schedule labels “*Misc/General Correspondence*”, Fund IV anticipates 395 hours being spent by the 7 Ogier fee earners, 20 hours by Mr Ayres KC and 25 hours by junior counsel. Fund IV has allocated US\$258,633.38 to this workstream (once again being 70% of the total time estimate). The Plaintiff argued that with the exception of correspondence, Mr Hayward had failed to identify any work that was said to be involved in this phase and that correspondence had already been accounted for in Mr Hayward’s estimates for the remaining phases. Therefore only a general allowance of US\$50,000.00 was appropriate. The Fund IV Costs Schedule provides no narrative to explain the anticipated work, but in Hayward 16 this workstream is combined with the post-trial workstream and, as the Plaintiff pointed out, the only activity identified unrelated to the post-trial workstream was correspondence. No further details are provided in Hayward 17. This workstream is intended to cover additional activity that at this stage it is impossible to particularise but which is likely to be required. It is therefore unsurprising that Fund IV has not attempted to provide details of the work to be done. However, even though a significant part of the projected time is that of the most junior associate in the team, the total amount of time appears to be high and the assumption that the full team will need to be involved is hard to justify. The total figure also appears to be high for what is in essence a buffer category.
- (i). as regards post-trial work, Fund IV has allocated US\$402,246.16 (being 70% of the total projected costs). This is based on 480 hours of Ogier time with each of the 7 team members being involved. Mr Ayres KC is projected to spend 100 hours and junior counsel 90 hours. The Plaintiff argues that estimated costs of this phase encompass a significant range of

work including post-hearing submissions (which would ordinarily form part of the costs of trial) and detailed assessment proceedings in relation to costs which are speculative and may well not eventuate, whether or not Fund IV succeeds at trial. The Plaintiff submits that no costs should be allocated to this category. It seems to me (even though I note that Walkers has not included a separate category for post-trial work) that it is realistic and reasonable to assume that costs will be incurred in dealing with the judgment, order and consequential matters (although it is not clear that Fund IV can properly assume that the costs of dealing with costs will be recoverable) and that such costs will be material. But the total projected figure does appear to be high, particularly on the assumption that the counsel team will be spending just under 200 hours in total.

- (j). as regards disbursements, Fund IV has projected a total of US\$353,641.25 (US\$200,000 for “*expert witnesses on various matters of valuations of the Naqvi consideration*”, US\$103,641.25 for Opus and US\$50,000 for sundries). The Plaintiff argues that Fund IV has failed to justify the increase of US\$100,000 above its previous estimate. However, I found the Plaintiff’s objection on this workstream to be without substance.

261. The Plaintiff has objected that the aggregate amounts claimed by Fund IV are too high and are disproportionate and unreasonable. The sums involved, he says, self-evidently cannot be justified for litigation of this type and in the circumstances of this case. It seems to me that while the costs are clearly high, my review of the projected costs by reference to and for each workstream shows that a substantial amount of work is both needed and justified and that, subject to the concerns regarding the size of Ogier’s team and the full deployment of that team on each workstream, the Plaintiff’s objections are unjustified. It cannot be said (and there is no evidential basis for saying) at least for the purpose of a security for costs application that the sums claimed are exaggerated or obviously unacceptable and disproportionate for this type of litigation. The Plaintiff is entitled to be concerned at the expense but his objections on this aspect seem to me to be somewhat overblown for rhetorical effect.

262. The Plaintiff has also objected that Fund IV has failed adequately to particularise and explain the justification for its cost estimates. I have already identified what I consider to be some deficiencies in this regard but subject to these points reject the Plaintiff’s claim that further granularity and details was needed for this type of application. I accept Fund IV’s reply submissions on this issue.

263. As regards the Plaintiff's challenge to Fund IV's apportionment of its costs between the Jafar Proceedings and the other Related Proceedings, as I have noted at [159] above, Fund IV says that an adjustment is needed to reflect the fact that some of the costs that will be incurred had previously been allocated to the AH Proceedings which have now settled. Fund IV had identified those costs which related to activities and matters that were common to the Jafar Proceedings and the AH Proceedings and allocated 50% of such costs to each set of proceedings. Those costs will still be incurred but can no longer be split in this way. Fund IV's estimates needed to take into account the amount of those once common costs that would now be incurred only in relation to the Jafar Proceedings. Fund IV recognised that the settlement of the AH Proceedings will result in a reduction in the total amount of such common costs but proposed that a reasonable albeit rough and ready assumption be made that estimated costs for each workstream from and including the PTR workstream be increased by 30%. Mr Hayward, as I have noted, provided an explanation and table in Hayward 17. As I have noted, the Plaintiff rejected the proposition that the settlement of the AH Proceedings justified any increase in Fund IV's estimated costs in the Jafar Proceedings. The costs of dealing with the surviving claim should not change because the other claim had fallen away. In any event, Fund IV had failed to provide adequate evidence to explain why the dismissal of a claim should add such very substantial costs, much less why those costs should be borne by the Plaintiff.
264. As I understand it, Fund IV is saying that its estimate for each relevant workstream from the PTR stage onwards in substance represented only 50% of the total cost it expected to be incurred (for work of that description). An equal amount had been allocated to and treated as costs to be incurred in the AH Proceedings. It had calculated that the costs to be incurred (for each workstream) were double its Jafar Proceedings' estimate but had only sought to include 50% of the total costs for the purpose of its security for costs application against the Plaintiff because it assumed that the other half would be treated as costs in the AH Proceedings. Fund IV's methodology involves assuming that after the settlement of the AH Proceedings, instead of 100% of the total common costs (in both sets of proceedings) being needed less work will be needed and lower overall costs will be incurred. But all of the reduced aggregate costs will have to be borne by the Jafar Proceedings. Fund IV has sought to estimate how much more (than the original 50% of the total common costs) is likely to be incurred. Its methodology assumes that the reduced aggregate costs (for the activities that were common to both sets of proceedings) will still exceed 50% of the previous estimate (which had been allocated to the Jafar Proceedings). Fund IV, again as I understand it, estimates that after the settlement of the AH Proceedings the total cost for the work that was previously treated as being needed for both sets of proceedings will be 65% of the

original aggregate estimate. It has increased its costs estimate by 30% of the 50% originally allocated to the Jafar Proceedings (and not by 30% of the total aggregate costs).

265. On this basis, it seems to me that the Plaintiff is wrong to say that the costs of dealing with the surviving Jafar Proceedings should not change because the AH Proceedings had settled and been discontinued. Fund IV's total costs estimate for the work to be done for the relevant stages of the Jafar Proceedings is (and has always been) higher than the estimate given the before the settlement for the purpose of its security for costs claim. It had reduced the Jafar Proceedings' costs estimate used for the purpose of calculating its claim for security on the assumption that part of those costs (those properly referable to the AH Proceedings) would be separately recoverable in those other proceedings.
266. It is not easy to assess whether Fund IV's approach is reasonable. But I do not consider, as the Plaintiff argues, that the Court cannot and should not form a view on the reasonableness of Fund IV's approach without more evidence and a detailed explanation of the effect of the settlement of the AH Proceedings. Fund IV had identified the workstreams involved. They all relate to the trial and the work to be done to prepare for, to attend and after the trial which is was assumed would involve a trial of both sets of proceedings. It is possible and reasonable to draw inferences and broad-brush conclusions as to the likely impact on costs of there being no trial in the AH Proceedings. In my view it is reasonable to assume that the discontinuance of the AH Proceedings will not reduce the time needed to be spent on these matters and in Court by 50% and Fund IV's estimate that 65% of the time originally projected will be needed. It is probably a cautious and generous estimate but not a wholly unreasonable or unrealistic one. It is an estimate that can properly be made for the purpose of the broad-brush and approximate approach required on a security for costs application.
267. Taking into account and weighing all of these points and considerations, it seems to me that the just result in all the circumstances is to award Fund IV security for costs for 65% (rather than 70%) of its incurred costs and 60% (rather than 70%) of its estimated future costs, together with 100% of its incurred and estimated disbursements save that the costs relating to the anticipated further CMC should be excluded and the sum to be included in respect of A&M's work for the period between 31 December 2022 to 30 April 2023 should be limited to US\$500,000. This reduction from the amount claimed reflects the issues and concerns I have identified in relation to the reasonableness and proportionality of certain of Fund IV's incurred costs and its estimates with respect to future costs (and in some cases the actual and projected level of staffing) and their likely impact on the sums recoverable by Fund IV in a subsequent taxation. The 5% and 10%

reductions represents a not-inconsiderable sum but in my view are suitable and fair in the circumstances. I will ask the parties to calculate and seek to agree the precise figures.

The GHF Parties

268. Once again, I shall first deal with the Plaintiff's specific and detailed points made in the Jafar GHF Parties Calculations and then turn to his more general objections and challenges.

269. As regards work relating to discovery:

- (a). the GHF Parties now seek further security of US\$1,269,084.98. This is a net figure after deducting the US\$700,000 already awarded by way of security for discovery (see Lewis 15, sworn on 21 June 2023 at [21] and [22]). This comprises (before deduction of the US\$700,000) costs incurred up to the end of the Respective Relevant Periods (26 January 2023 in relation to Walkers and 30 November 2022 for counsel and FFP) of US\$1,325,636.01; costs after that to 30 April 2023 (the Revised Relevant Period) of US\$340,928.97 and estimated costs thereafter to the conclusion of the discovery phase of US\$302,520. At the time that Lewis 13 was sworn (on 3 February 2023) the GHF Parties sought a net figure of US\$975,531.01 (see Lewis [15] at [14]). The Plaintiff argued that no sums should be allowed for the actual costs of discovery to date. As I have noted, the Plaintiff submits that this very high level of fees is out of all proportion to the volume of work that was reasonably required for discovery and represents a massive increase above previous estimates provided by Mr Lewis. The Plaintiff noted that in Lewis 13, Mr Lewis had estimated that only a further US\$349,895 would be spent on discovery. As regards the estimated future costs, the Plaintiff argued that only 60% (or if the Court considered it to be more appropriate, 70%) should be allowed as the GHF Parties' evidence revealed a number of flaws including work done in dealing with discovery from the AH Parties and duplication of work.
- (b). there is, as is clear from my summary of the parties' submissions, a major dispute between the Plaintiff and the Fund Parties as to the reasonableness of the extensive work done and time spent by the Fund Parties on discovery matters. The Plaintiff considers that the Fund Parties in general and the GHF Parties in particular have allowed the costs relating to discovery to get wildly out of control. The time spent has failed to reflect the substantial reduction in the volume of relevant data sets and in the documents to be discovered and reviewed. The Fund Parties strongly reject these claims. They deny that the discovery exercise has been significantly reduced and point to the extensive difficulties that have

resulted from deficiencies in the Plaintiff's discovery process and the multiple applications which they have been required to make to remedy and obtain relief in respect of those deficiencies. The Plaintiff claims that these difficulties have been greatly exaggerated. The Fund Parties deny this and point to the evidence filed and the nature of the relief obtained in their successful applications. This wide ranging dispute cannot be resolved on this application. What I am required to do is, having regard to the evidence filed by the GHF Parties, tested against the challenges made by the Plaintiff, for a high-level view as to what sum the GHF Parties would be likely to recover on a taxation and the extent to which the GHF Parties' evidence shows that the type and level of costs they have incurred and project are likely to be considered reasonable and proportionate.

- (c). there is no doubt that the sums claimed for work done are substantial but on the GHF Parties' evidence the volume of work that their legal advisers have been required to undertake, exceptionally in light of the problems with the Plaintiff's discovery which they have identified, has also been substantial. As I have noted, Mr Lewis set out in Lewis 13 (at [47]) the reasons for the increase in the costs associated with the discovery process and at [48] the further work that had been done. He did so in some and in my view sufficient detail (although some further particulars could have been provided – for example, I would like to have seen in a single table a full set of the hours charged by all the fee earners for all the discovery work). The Plaintiff's criticisms do not in my view seriously undermine or challenge the credibility of Mr Lewis' account. While the level of the amount sought and the large volume of work done suggest that there should be some increased discount to reflect the likely level of reductions under the scrutiny of an assessment, I do not consider that such an increased discount should be substantial. In my view, a discount of 35% (applying a 65% rather than a 70% multiplier) is appropriate.
- (d). the same reasoning applies to the estimated future costs. Mr Lewis in Lewis 15 at [20] set out details of the legal team that would be involved (leading and junior counsel and a partner, associate and paralegal from Walkers) and the estimated time they would need to spend. The total hours are 512 hours with a substantial majority of the time (320 hours) being allocated to more junior staff, being the associate from Walkers. This is a sufficient level of detail from which it appears that the amount of work for the projected tasks (see Lewis 15 at [18]) is not unreasonable and that the work is being suitably allocated within a modestly sized team (although time spent dealing with discovery from the AH Parties should not be included). Once again, in my view a discount of 35% (applying a 65% multiplier) is appropriate.

270. As regards the sums claimed in respect of the anticipated further hearing relating to discovery (US\$265,342.14) the Plaintiff argued that since the hearing had now taken place (in February 2023) and separate costs orders had been made, there was no need to award or justification for awarding security for costs in respect of the costs of the application. The cost orders will need to be paid in accordance with their own terms. I agree.
271. As regards the sums claimed in respect of the amendment to the pleadings, the GHF Parties claimed US\$148,255 (being 70% of the total time spent). This was based on 345 hours of the legal team's time including 75 hours of Mr Atherton's time, 150 hours of junior counsel's time and 40 hours of partner time. The Plaintiff argued that the time allocated to these senior members of the team was unreasonably high and proposed reductions in the number of hours allocated to each of them. The Plaintiff also claimed that time spent on these further amendments were unreasonably high. He said that it could be inferred from the GHF Parties' evidence that their costs of amending their pleadings will be around 50% of the costs of preparing their pleadings in the first place and substantially amending them. That was self-evidently excessive. A review of the GHF Parties' Re-Amended Defence showed that the exercise of amending their pleadings was not so involved. In my view, the proposed time reductions were speculative and unjustified and I do not accept that it is reasonable to conclude that the total time spent and costs incurred were clearly unreasonable and disproportionate.
272. As regards the preparation and service of factual witness statements, the GHF Parties project total costs of US\$503,500 and seek further security of US\$352,450. This was based on 850 hours with 300 hours of counsel's time, 100 hours of partner time, 300 hours of associate time and 150 hours of paralegal time. Mr Lewis explained the basis on which these estimates were prepared in Lewis 13 at [73]-[76]. He assumed that the GHF Parties will need to prepare at least three factual witness statements. The Plaintiff complained that Mr Lewis had failed to provide sufficient detail to allow the Court to decide whether the estimated time was reasonable and proportionate. He said, as I have noted, that Mr Lewis had not identified the witnesses, what issues they were expected to cover and why three witnesses might be required to address those issues and only provided a generic list of activities that might ordinarily be involved in preparing witness statements. In my view, these criticisms are unjustified. Mr Lewis has provided sufficient information for the purpose of a security for costs application. He has identified the number of expected factual witnesses and the GHF Parties' legal team have provided an estimate of the time they expect to be needed with a suitable break-down of the lawyers involved and their respective estimated time costs. The process involved in dealing with factual witnesses is well understood and does not

need further elaboration. The estimated time and costs of the suitably sized legal team (with a substantial amount of time being allocated to the junior members of the team) appear to me to be reasonable.

273. As regards expert evidence, the GHF Parties project total costs of US\$275,300 and seek security of US\$192,710. Mr Lewis dealt with expert evidence at [77]-[79] of Lewis 13. He acknowledged that at that stage the estimates were preliminary as the precise range of work involved remained to be settled. But he explained that the estimates were based on work being needed with a UAE law expert and a valuation expert. Mr Lewis provided an update in Lewis 15 as to the much higher fees payable to the experts but not as to the work to be done by the legal team. Walkers schedule of costs showed that they estimated that 470 hours would be needed with 240 hours of counsel's time, 80 hours of partner time, 100 hours of associate time and 50 hours of paralegal time. The Plaintiff complains once again that the GHF Parties have only provided generic list of tasks and insufficient detail. But once again, I consider this criticism to be unjustified. I accept that it would have been helpful if Mr Lewis had provided an update to confirm the number of experts, the issues they were addressing and an update on the work to be done by the legal team but I do not regard the absence of such an update as critical (as I have said there is some information in Lewis 15). The Court is broadly aware of the UAE law issues which arise, which appear to be complex, and can conclude that a material amount of time will need to be spent on this part of the expert evidence (I am wholly unsurprised at the substantial increase set out in Lewis 15 in the fees payable to the UAE law expert). The position regarding the valuation evidence is less clear because the Court does not know what impact the sale of the relevant assets will have had on valuation disputes and the issues that need to be addressed by the valuation evidence. But I am prepared to assume that there will be substantive points in dispute and a material amount of work to be done on the expert valuation evidence (this is supported by the substantial fees now said, in Lewis 15, to be payable to the valuation expert). In light of the evidence produced and these assumptions, it seems to me that the total volume and cost of the projected work, the composition of the legal team and the allocation of the work among the members of the legal team are reasonable. I do not regard the Plaintiff's challenge based on the relationship between the projected costs of the UAE law expert and those of the legal team as changing that view.

274. As regards the pre-trial review, the GHF Parties project total costs of US\$173,200 and seek security of US\$121,240. This is based on 290 hours of time of which 40 hours relate to Mr Atherton, 80 hours relate to junior counsel, 40 hours relate to the partner, 80 hours relate to the associate and 50 hours relate to the paralegal. As regards trial preparation (including skeleton

arguments) the GHF Parties project total costs of US\$845,125 and seek further security of US\$591,587.50. This is based on a total of 1325 hours with 250 hours been projected for Mr Atherton, 250 hours for junior counsel, 150 hours for the partner, 525 hours for the associate and 150 hours for the paralegal. The projected costs of preparing trial bundles are separately set out. The total cost for this is projected to be US\$73,050 and security of US\$51,135 is sought. It is estimated that 165 hours will be spent with 5 hours for Mr Atherton, 20 hours for junior counsel, 10 hours of partner time, 30 hours of associate time and 100 hours of paralegal time. Mr Lewis provided an explanation as to the anticipated tasks and how the estimates had been prepared at [80]-[83] of Lewis 13. The Plaintiff, as I have noted, complained once again that this explanation was only based on a generic list of activities, which gave no real guidance as to what work would be needed and involved, and that too much time had been allocated to the Walkers' team since it was to be expected that most of the relevant tasks would be carried out primarily by counsel, who were projected to spend a considerable amount of time on trial preparation. The Plaintiff said that at best it appeared that there would be a vast duplication between the work of Walkers and the counsel team. Once again, it seems to me that the Plaintiff's criticism and challenges are unjustified. It seems to me that the total estimated time is, broadly speaking, not unreasonable for a trial of the type which will take place in the Jafar Proceedings and that the allocation of time as between counsel and the Walkers' team is also not unreasonable. It is to be expected that counsel will spend a substantial amount of time preparing for the trial and drafting skeletons but also that the Walkers team will be required to spend substantial amounts of time. I see no clear or proper basis for the allegation of duplication.

275. As regards the time relating to the trial itself, the GHF Parties have estimated total costs of US\$1,806,400 and sought security in the sum of US\$1,264,480. This is based on a total of 2520 hours made up of 450 hours each for Mr Atherton and junior counsel, 800 hours of partner time (2 partners), 800 hours of associate time (4 associates) and 20 hours of paralegal time. Mr Lewis explained the basis of the GHF Parties' calculations in Lewis 13 at [84]-[87]. In addition, the GHF Parties' Supplemental Submissions provided an expanded explanation. At [45(5)] they said that: "*the trial is listed for 12 weeks - 6 weeks of hearing from 6 November 2023, followed by a 4-week break from mid-December 2023 to mid-January 2024, then 2 further weeks of hearing starting in mid-January 2024. The GHF Parties' estimated costs relate to (i) 4 weeks of trial in respect of Mr Jafar's claims, (ii) the preparation of closings during the 4-week break and any work done during "non-trial" days, and (iii) work done immediately after the trial including post-trial administration, correspondence with the parties, document management providers, transcribers etc. We note that Fund IV's costs estimate includes a "Post-Trial" phase ... for certain of the same matters.*"

276. The Plaintiff argues that the time estimate is exaggerated and too high and that no adequate justification has been provided for the substantial increase above the previous estimate. He says that even though a longer trial has been ordered, Mr Lewis failed to explain why the work involved should be any greater than the work that he assumed would be involved at the time of his original estimate. The Plaintiff also noted that Mr Lewis had assumed that Walkers' attorneys would spend a total of 1,620 hours attending to the demands of the trial, which amounted to 43 hours – or approximately one working week – for each day of the 38 day trial period. On any view, he said, that was excessive.
277. Accordingly, the GHF Parties' time estimate, as I understand it, assumes a 12 week period for the trial and that during this period 2 partners will spend 400 hours each and four associates will spend 200 hours each. One paralegal will also spend 20 hours. One partner and one associate will attend Court each day of the trial and one associate will do so for half the time (see the annotation at the top of the box headed "*Trial*" in the Walkers costs schedule). On a rough and ready basis it seems to me to be reasonable to assume, at least as a starting point, that those working on the trial will each be spending 8 hours per day for each of the 8 weeks of the hearings (being 38 working days, since the Court will not be sitting for two working days) and 8 hours during the four week break (being 20 working days). On this basis, each of fee earners would be spending $304 \text{ hours} + 160 \text{ hours} = 460 \text{ hours}$ (which is close to the time estimated for each of the counsel team). If one assumes that there will be weekend working and that on some days the 8 hour estimates will be exceeded, it can be seen that a figure of around 450/460 hours is not unreasonable for the full time fee earners and represents a benchmark number. The GHF Parties have assumed that two Walkers' partners will need to be involved and that they will spend 800 hours in aggregate (so they will not both be full time using my benchmark numbers). In addition, four associates will together be spending 800 hours (that is approximately 200 hours each).
278. It seems to me that it is unfortunate that Mr Lewis did not seek to provide a fuller explanation of this very substantial estimate, in particular as to the need for two partners and four associates. The GHF Parties' Supplemental Submissions are a helpful but incomplete elaboration. In my view, using my benchmark numbers, the total projected time is on the high side but not wildly so. But I consider it likely that on a taxation there is likely to be a substantial discount above the 30% figure which has already been applied. In the circumstances it seems to me to be reasonable to reduce the GHF Parties' estimate so that partner time is 650 hours (roughly and just under one and a half times my benchmark number of 460 hours) and associate time to 700 hours. This will

reduce the total estimated time costs (before discount) for partners to 650 x 860 = US\$559,000 and associates to 700 x 625 = US\$437,500.

279. As regards miscellaneous and general correspondence, the GHF Parties have estimated a total cost of US\$275,550 and seek security in the sum of US\$192,885. This is based on an estimate of 417 hours comprising 27 hours for Mr Atherton, 50 hours for junior counsel, 80 hours of partner time, 250 hours of associate time and 10 hours of paralegal time. Mr Lewis dealt with this workstream in Lewis 13 at [88]-[91]. Mr Lewis says that this estimate accounts for “*a number of workstreams...including inter partes correspondence, work on general case management and case assessment*”. It is clear from his description that this is a buffer workstream designed to capture further work that has not been anticipated and covered by the other workstreams but is considered likely to be needed. The Plaintiff argues, as I have noted, that this workstream should be disallowed since the work envisaged is incidental to the other workstreams and therefore duplicative of the GHF Parties’ claims in relation to those workstreams phases. In my view, while a buffer category designed to pick up activity not covered by the specified workstreams and to cover general litigation management work is justifiable, the amount of projected time and the estimated cost are high. I would reduce the estimate by half for security for costs purposes (to US\$96,442.50).
280. As regards disbursements, in Lewis 13 (at [57]), Mr Lewis estimated a total expense of US\$1,271,905.95. This sum was itemised in figure 3 in that paragraph of Lewis 13 as follows:

Printing/Photocopying/General	47,353.95
Expert travel and accommodation	30,000.00
Expert fees	10,000.00
Witness travel and accommodation	80,000.00
Opus 2, Consilio (third party professional service providers to host data room for disclosure purposes)	20,000.00
Forensic Advisors - FFP	1,084,552.00

281. As I have noted above, in Lewis 15, Mr Lewis set out the actual disbursements up to 30 April 2023 and revised estimates for each category:

- (a). as regards Opus2, Consilio, there are three categories of expense. First, incurred costs. Second, the costs for hosting the parties' discovery data. Thirdly, the cost of services for the trial. In addition to the US\$20,000 identified in Lewis 13, the GHF Parties now seek a further US\$275,713.48 (giving an overall total of US\$295,713.48). As regards incurred costs, between Lewis 13 and 30 April 2023 the GHF Parties incurred actual costs of US\$58,941.00 (US\$38,941.00 more than the estimate above of US\$20,000). Mr Lewis said that these costs largely related to the hosting of the parties' discovery data. As regards future data hosting costs (for a further eight months of data hosting costs) Mr Lewis estimated an additional US\$157,176.00 up to the end of trial. In relation to trial related services, Opus2 costs related to the provision of services for the trial total US\$106,128.64 (for the GHF Parties' share) and applying the percentage split of 75% that the GHF Parties consider appropriate to reflect the split between each of the Related Proceedings, the share to be allocated to the Jafar Proceedings is US\$79,596.48.
- (b). as regards the fees for their experts, the GHF Parties have engaged with their experts on the valuation and UAE law issues and now have an updated and more accurate estimate. The estimate for the valuation expert is now US\$347,000.00 and for the UAE law expert is US\$187,500.00. Accordingly, the GHF Parties now seek supplemental future security for these costs in the aggregate sum of US\$524,500.
- (c). as regards FFP's costs, as noted, in Lewis 13 the GHF Parties said that they expected to incur costs of US\$1,084,552.00. The relevant methodology for this estimate was set out in Lewis 13 at [91] –[101]. However, as noted above, in the period from 1 February 2023 to the end of May 2023, the GHF Parties had incurred actual forensic costs in the Jafar Proceedings in the sum of US\$1,893,193. The GHF Parties now estimate the total further costs for FFP from 1 February 2023 to 31 December 2023 will be US\$2,251,509.
- (d). accordingly, GHF Parties now seek security for disbursements in the sum of US\$3,239,076.43. This represents an increase in an amount of US\$1,967,170.48 compared to the Original Disbursements sought in Lewis 13.

282. As Mr Lewis noted in Lewis 13 that the GHF Parties had in the SFC Order been awarded a sum of US\$1,416,395.28 up to the conclusion of the discovery process as security for costs in respect of disbursements which comprised FFP forensic costs of US\$750,000.00 and other disbursements of US\$666,395.28.
283. The Plaintiff notes that the total amounts paid and to be paid to FFP is very substantial. The total paid and to be paid is US\$4,070,052.74. The Plaintiff argues that the work done by FFP has in large measure been inadequately explained and appears to duplicate entirely the work for which the GHF Parties seek separate security in respect of Walkers' and counsels' time costs. The Plaintiff says that FFP's disbursements should be discounted very significantly. The GHF Parties' response is that although high, the sums paid and payable to FFP are reasonable in the context of the hard-fought, complex, and high-value litigation, and are consequent upon the persistent shortcomings in the Plaintiff's discovery.
284. The Plaintiff raised similar concerns regarding the reasonableness and recoverability of the costs of FFP at the SFC Hearing. In 74(g) of the SFC Judgment, I concluded that *"in light of the uncertainty over the discovery process and the issues raised by the Plaintiff concerning the position of FFP, the amount to be attributable to forensic advice (from FFP or others) should be US\$750,000 (rather than US\$1 million), which represents the same estimate as had been provided by Alvarez & Marsal for the Fourth Defendant..."* As the Plaintiff pointed out, there remains a very substantial difference between the costs incurred by Fund IV in respect of its technical e-discovery team and the sums paid by the GHF Parties to FFP (whereas the GHF Parties had FFP approximately US\$1.8m Fund IV had paid A&M US\$321,328 as at the date of the Fund IV Top-Up Summons). As I have previously said, I do not regard a direct comparison between the costs incurred by the Fund Parties as helpful in assessing what is reasonable as different parties may and are entitled to adopt very different strategies and approaches and each may still be reasonable. But I accept that the sums sought in respect of FFP are very high and that there are real issues over the extent to which they are justifiable and proportionate and as to their recoverability on taxation. It seems to me that the sums for the future estimated costs should be substantially discounted. They should be reduced by half. As I have noted, the GHF Parties' estimate for FFP costs from 1 February 2023 to 31 December 2023 is US\$2,251,509 and accordingly for the purpose of determining the quantum of security that sum should be reduced to US\$1,125,755.
285. The Plaintiff challenged the estimated costs for the GHF Parties' valuation evidence on the basis that there was no justification for the increase above the previous estimate. I do not accept that.

It is clear that the figure for the valuation expert's fees is now more realistic and it appears to me to be reasonable. The Plaintiff also raised issues relating to the level of printing and photocopying costs and travel and accommodation expenses but I do regard these as having any substance.

286. I turn finally to consider the Plaintiff's other objections.

287. First, the Plaintiff challenges the GHF Parties' allocation of 75% of their costs to the Jafar Proceedings. The Plaintiff submits that the GHF Parties have not produced any evidence to support their allocation and that the Court should therefore not accept it. The Plaintiff submits that in the absence of supporting evidence the Court should assume and adopt a 50/50 allocation (which was the allocation made by Fund IV prior to the settlement of the AH Proceedings). The Plaintiff says that the fact that the 75/25 split was adopted and accepted by the Court for the purpose of the SFC Order did not preclude him from challenging its use now. The allocation used for the purpose of the SFC Order followed a detailed review of time entries by Walkers to identify which time entries applied to each of the Related Proceedings but no such exercise had been done for this application. The GHF Parties reject this challenge and maintain that there is sufficient and unchallenged evidence to support and justify their approach. Lewis 6 sets out the basis on which the allocation was previously made and determined to be reasonable and appropriate and Lewis 13 cross-refers at [37(d)] to Lewis 6 and maintains the approach there adopted. Further, they argue, a further detailed review of time entries to check that the division of labour has remained (having already conducted such an exercise in advance of the first SFC Hearing) would have been disproportionate. The GHF Parties argue that applying the accepted broad-brush basis for the assessment of security for costs there was no reason to think that the 75/25 allocation had changed to any or any material extent and no reason (and certainly no principled basis) for departing from that same allocation for the purposes of the present application. It seems to me that the Plaintiff's challenge is unjustified. As the GHF Parties submitted, they had put in evidence a confirmation that they considered the 75/25 split to be reasonable and justified when initially applied, had at that stage outlined the methodology they had used to reach this view and now confirmed that the same methodology had been applied for the purpose of this application. It is implicit that they considered that the split remained reasonable and appropriate. There is no evidence to indicate to the contrary and no basis on which the Court can properly second-guess the GHF Parties' evidence or assessment.

288. Secondly, the Plaintiff claimed that the GHF Parties were over-secured in respect of their actual costs as a consequence of the SFC Order. The GHF Parties say that the evidence shows to the contrary and refer to the table at [32] in Lewis 13 and say that the Plaintiff is simply wrong. I agree.
289. As will be clear from the commentary I have provided in relation to the GHF Parties' actual and estimated costs for each workstream, I do not accept the Plaintiff's claims of general overmanning and of claims for disproportionate sums (incurred and estimated) which constitute evidence of the litigation process being out of control and a fundamental failure to manage expenses.



The Hon. Mr Justice Segal
Judge of the Grand Court, Cayman Islands
2 October 2023